



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 28 October 2020

Published on 16 November 2020

FOURTH SECTION

Application no. 30919/20
H.A.
against the United Kingdom
lodged on 22 July 2020

STATEMENT OF FACTS

The applicant, Mr H.A., is a stateless person of Palestinian origin who was born in 1998 and lives in Swansea. He is represented before the Court by Ms V. Delgado of Duncan Lewis Solicitors, Harrow.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The applicant's asylum claim

The applicant was born in the Ein El-Hilweh refugee camp (also transliterated from Arabic as Ain Al-Hilweh) in Lebanon. The United Nations Relief and Works Agency for Palestinian Refugees ("UNRWA") provides access to education, health and other services in the camp.

In 2015 the applicant was caught up in fighting in the camp and was injured. He was subsequently approached by rival paramilitary factions in the camp who wished to recruit him. In the summer of 2017, there was a battle in the camp which lasted for twenty days.

In November 2017 the applicant left the camp. He arrived in the United Kingdom where he claimed asylum and humanitarian protection on 11 December 2017. He claimed that if returned to Ein El-Hilweh he would be targeted for recruitment by rival paramilitary factions within the camp and forced to fight.

On 4 April 2018, the applicant’s claim was refused. The Secretary of State did not accept that the applicant had been targeted for recruitment by different extremist groups in the camp, highlighting inconsistencies in his accounts of events. The situation in Lebanon and in the camp was such that he could still receive protection from the UNRWA. He was therefore not entitled to claim asylum because Article 1D of the 1951 UN Convention on the Status of Refugees (“the Refugee Convention”) excluded from its ambit those receiving protection or assistance from UN organs or agencies other than the Office of the United Nations High Commissioner for Refugees (“UNHCR”). It was moreover not accepted that the applicant had a genuine subjective fear on return or that there was any risk of treatment that would breach Article 2 or Article 3 of the Convention. Although he had claimed in interview to have refused to be recruited by extremist groups on several occasions and to have been threatened by them as a result, no actual harm had come to him or his family.

2. The decisions of the domestic courts

(a) The First-Tier Tribunal

The applicant appealed to the First-tier Tribunal (“FTT”) arguing that the decision was in breach of the Refugee Convention, Article 15(c) of the European Union’s Qualification Directive (see below) and Articles 3 and 8 of the Convention. In particular, he contended in his notice of appeal that his removal would be incompatible with his Article 3 rights as there was a real risk that he would face ill-treatment contrary to that Article. In his skeleton argument he explained that he would be at risk of serious harm if returned to the Ein El-Hilweh camp as a result of the internal armed conflict currently taking place there.

The applicant relied, *inter alia*, on an UNRWA email of 18 May 2018 confirming that the UNRWA did not manage the refugee camps in Lebanon and was not responsible for physical security or law and order in its fields of operation. The email explained that the Lebanese authorities generally did not exercise control in the camps; Palestinian political and armed factions exerted some forms of control. The result of this arrangement was that camps often lacked a single recognised authority exercising the responsibilities attached to the provision of public services and security, including law enforcement. This created an insecure environment with extremely limited access to law enforcement and justice mechanisms for camp inhabitants. As regards the Ein El-Hilweh camp, the

email noted that in the last several years there had been a marked increase in the intensity and frequency of armed violence between political factions and groups which had had a significant humanitarian impact. While the UNRWA had generally been able to continue delivering its services in accordance with its mandate, between August 2015 and August 2017 it had suspended its operations for approximately forty days because of violence.

On 30 May 2018, the FTT dismissed the appeal. It referred at the outset to country guidance in this Court's judgment in *Auad v. Bulgaria*, (no. 46390/10, 11 October 2011), and the domestic cases of *KK, IH, HE (Palestinians-Lebanon-camps) Lebanon CG* and *MM and SH (Stateless Palestinians – KK, IH, HE reaffirmed) Lebanon CG* (see below). It further referred to a 2016 report by the UNHCR (see below). Having reviewed the evidence, the FTT found the applicant to be generally credible. In particular, it was credible that someone such as him would be a target for recruitment by more than one organisation in the camp, whose predominant interest was numerical superiority over rivals. The judge noted that the applicant had been unable to explain in his asylum interview the consequences of his refusal to be recruited and had stated that there had been no adverse consequences for him or his family. However, the judge observed in this respect that although past harm was generally accepted as evidence of future risk, the lack of past harm did not undermine the risk of future harm on return.

The judge found that the applicant was, however, excluded from the protection of the Refugee Convention by Article 1D. He had received assistance from the UNRWA until he had left the camp and such assistance remained available to camp occupants. The applicant had failed to show that there had been threats to his life or physical security such as to enable it to be said that UNRWA protection had ceased.

There was moreover no risk of serious harm contrary to Article 15(c) of the Qualification Directive either from indiscriminate violence on its own, or by such violence taken together with his personal circumstances, to justify the grant of subsidiary protection. The judge considered that the evidence showed that there had been a few incidents of specifically targeted violence between members of identified militia groups, resulting in collateral injury to civilians and damage to property. He was not satisfied that the conditions in the camp met the standard necessary to show that the applicant faced a general risk from indiscriminate violence by his mere presence. The applicant had suffered no actual violence, and since no threats had been carried out against him or his family there was no evidence of factors enhancing his level of risk from indiscriminate violence.

Finally, the FTT found that that the applicant did not qualify for humanitarian protection on the basis of a real risk of serious harm, including a risk of torture or inhuman or degrading treatment or punishment. It noted that the applicant had not relied upon any evidence of past treatment

amounting to serious harm to him or his family, and as regards future risk he relied on the background evidence to which the judge had already referred. The judge considered that the evidence presented did not show that the applicant would face a real risk of serious harm in future if returned to the camp: the incidents of violence relied upon in this respect were few and far between. While the protective role within the camp appeared to be in the hands of a Palestinian joint security force, composed of multiple Palestinian factions, the applicant had failed to establish that he was at real risk of serious harm from those organisations and that he would therefore not be able to seek their protection were he to be at risk of suffering serious harm.

(b) The Upper Tribunal

The applicant sought permission to appeal. He argued that the judge had failed to apply the law properly and had wrongly found the applicant to be excluded from refugee protection under the Refugee Convention. The FTT refused permission to appeal on 25 June 2018.

In renewed Grounds of Appeal to the Upper Tribunal, the applicant advanced two grounds of appeal. He argued, first, that the FTT had erred in finding that he was not entitled to protection under the Refugee Convention. Second, he contended that the judge had failed to appropriately assess the available evidence of violence in the camp when considering Article 15(c) of the Qualification Directive or Article 3 of the Convention. His assessment of these arguments was therefore inadequate and thus amounted to an error of law. On 31 July 2018 the Upper Tribunal granted permission to appeal on each ground, noting that the points raised, particularly in Ground 1, concerning the efficacy of protection in the camp, merited consideration.

On 9 July 2019, the Upper Tribunal dismissed the appeal. At the outset of its decision it noted that the applicant challenged only the FTT's conclusions as regards the Refugee Convention. It is unclear why it considered this to be the case given the two grounds advanced in the renewed grounds of appeal and the terms of the decision granting leave to appeal. The Upper Tribunal agreed with the FTT that the applicant was excluded from the protection of the Refugee Convention by Article 1D. Assessing whether the applicant's departure from the camp had been involuntary for the purposes of the Refugee Convention claim, the tribunal recorded that he had been subject to rival attempts to recruit him in the camp. Although, it noted, he had been beaten up by Fatah in 2016 when he refused to join them, it did not appear that there had been any lasting difficulty from them or from any of the other groups.

(c) The Court of Appeal

The applicant sought permission to appeal. He argued that the Upper Tribunal had erred in law when concluding that he was excluded from the protection of the Refugee Convention. He further relied upon his grounds of appeal to the Upper Tribunal which he asserted had not been dealt with. The Upper Tribunal refused permission to appeal on 14 August 2019.

The applicant subsequently applied directly to the Court of Appeal for permission to appeal. In revised grounds of appeal, he challenged the finding as regards Article 1D of the Refugee Convention and further argued that since the FTT had found it credible that he would be targeted for recruitment, there was a future risk to him upon return and, even if he was excluded from protection under the Refugee Convention, he still enjoyed subsidiary human rights protection under Article 3 of the Convention. In an accompanying skeleton argument, he pleaded that the tribunals had materially erred in law in not assessing a free-standing future risk on return claim and that they ought to have done so even if the point had not been advanced before them. He argued that given that the FTT had found credible his claim that groups in the camp had sought to recruit him, he belonged to a risk group of those to be targeted for forced recruitment and his Article 3 claim ought therefore to succeed.

On 1 November 2019, the Court of Appeal refused permission to appeal. The judge noted that while the Ein El-Hilweh camp was plainly not at all a pleasant place to be, that did not establish the Article 3 ground, and the FTT's rejection of the Article 15(c) claim was revealing. He upheld the findings of the FTT and the Upper Tribunal in respect of the first ground of appeal and, as regards the second, said that it did not appear to have been argued in the FTT at all and had not been in the written grounds of appeal to the Upper Tribunal.

B. Relevant domestic law and practice

In *KK, IH, HE (Palestinians-Lebanon-camps) Lebanon CG* (2004) UKAIT 00293, the Immigration Appeal Tribunal said that although conditions for stateless Palestinians living in refugee camps in Lebanon were harsh and they did not enjoy the same political, economic and social rights as Lebanese citizens, these matters did not in themselves cross the Article 3 threshold.

In *MM and SH (Stateless Palestinians – KK, IH, HE reaffirmed) Lebanon CG* (2008) UKAIT 00014, the Asylum and Immigration Tribunal held that the conditions in refugee camps in Lebanon did not reach the threshold to establish a breach of Article 3 of the Convention, and reaffirmed *KK, IH, HE (Palestinians-Lebanon-camps) Lebanon CG*.

C. Relevant European Union material

The Qualification Directive (Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011) sets out standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted. The Directive provides that a person who does not qualify as a refugee is eligible for subsidiary protection where substantial grounds have been shown for believing that the person concerned would face a real risk of suffering serious harm if returned to his country of former habitual residence, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country. Pursuant to Article 15(c) of the Directive, “serious harm” consists, *inter alia*, of a serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

D. UNHCR report

The UNHCR published a report in February 2016 entitled *The Situation of Palestinian Refugees in Lebanon*. It observes:

“Palestinian individuals may reportedly be at risk of being subjected to harassment, threats or abuse at the hands of militant factions in the camps. As the Lebanese authorities have no access to the camps ..., those at risk can reportedly not seek protection from the Lebanese authorities. Whether or not the concerned individual could seek protection from political factions or inter-factional popular/security committees in the camp reportedly depends on the individual’s political affiliations and/or connections with influential persons or families.” (footnotes omitted)

As regards the Ein El-Hilweh camp specifically, the report notes:

“In the 1980s and 1990s, Ein El-Hilweh camp reportedly became the main focus of groups considered jihadist, which sought to take advantage of the security vacuum that followed Israel’s invasion in 1982. This situation still reportedly persists today, with not only members of such groups, but also fugitives wanted by Lebanese authorities reportedly residing in the camp.

Most recently, in late August 2015, tensions between rival groups reportedly resulted in six days of fighting between the Fatah Party and the Salafist Jund Al-Sham and their respective allies, which led to six Palestinians being killed and/or wounded, and some 3,000 Palestine refugees being displaced. Some houses were reportedly taken over by armed groups, and there was destruction of homes and infrastructure. According to reports, the fighting was triggered by the attempted assassination of a local Fatah member on 21 August 2015. Heavy fighting was reported in the vicinity of a number of UNRWA installations, including schools and health clinics. Despite a ceasefire having been reached, the situation reportedly remains extremely tense in the camp. Newly formed Palestinian Joint Security Forces, composed of multiple Palestinian factions, ranging from secular to Islamic factions, including Fatah, Usbat Al-Ansar, Ansar Allah and the Alliance of Palestinian Forces, are reportedly in charge of law enforcement within the camp, in coordination with the Lebanese

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authorities, namely the Lebanese Army, which guard the entrances of Ein El-Hilweh Camp. However, recent armed clashes have reportedly hampered the efficiency of this cooperation.” (footnotes omitted)

COMPLAINT

The applicant complains under Article 3 of the Convention that he faces a real risk of severe mistreatment by paramilitary groups upon return to the Ein El-Hilweh camp in Lebanon. He complains in particular that the domestic courts considered only whether he was excluded from the protection of the Refugee Convention on the basis of pre-flight events, and failed to address the merits of his claim of future risk.

QUESTIONS TO THE PARTIES

1. Has there been a violation of Article 3, taken alone or in conjunction with Article 13, on account of the failure of the domestic courts to examine whether the applicant's risk of forcible recruitment by extremist groups in the Ein El-Hilweh camp gave rise to a real risk that he would be subjected to treatment contrary to Article 3 of the Convention upon return to Lebanon?

2. Would the applicant face a real risk of being subjected to treatment contrary to Article 3 of the Convention upon return to Lebanon?