



Fornah v. Secretary of State for the Home Department

[2006] UKHL 46, [2007] 1 AC 412

Country: United Kingdom

Region: Europe

Year: 2006

Court: House of Lords

Health Topics: Sexual and reproductive health, Violence

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment

Facts

The House of Lords tried two asylum appeals together in this case: Secretary of State for the Home Department v. K (FC), and Fornah (FC) v. Secretary of State for the Home Department. The second case involved Fornah, a 15-year old girl from Sierra Leone who sought asylum in the United Kingdom on the grounds that she was at risk of being subjected to female genital mutilation (FGM) in Sierra Leone. The Secretary of State rejected her request on the ground that girls in danger of FGM did not constitute a "social group" within the meaning of the Refugee Convention. She appealed to an Adjudicator, who granted her asylum and held that she was part of the social group of "young girls in danger of being circumcised." The Secretary of State appealed to the Immigration Appeal Tribunal, who reversed the Adjudicator's decision. Fornah appealed to the House of Lords, with the United Nations High Commissioner for Refugees intervening.

Decision and Reasoning

The House of Lords allowed the appeal. They held that FGM clearly constituted treatment which would amount to persecution within the meaning of the Refugee Convention, and that therefore the only live issue was whether the Appellant was a member of "a particular social group." All of the Lords found that the Appellant did belong to such a group. However, they were divided 3-2 on whether to define the group as "women in Sierra Leone" generally, or "uninitiated" women in Sierra Leone who had not yet been subjected to FGM.

The majority formed by Lords Rodger, Brown, and Hope defined the group as women in Sierra Leone who had not yet been initiated into FGM, with Lord Bingham indicating that he would be willing to adopt this definition if his own was not the majority position. Although the Lords acknowledged that social groups must not be defined solely by the persecution they suffer, they considered that such a "circularity problem" did not arise in this case, because the trait of being uninitiated could be identified independently of the FGM. Furthermore, their Lords considered that initiated women were no longer at risk of FGM, while uninitiated women faced discrimination and prejudice not suffered by women in general. Defining the social group as women generally would oversimplify the risks faced by particular social groups.

On the other hand, Lord Bingham defined the group as "women in Sierra Leone," while Baroness Hale adopted a similar but narrower definition of the social group, which she defined as "women in Sierra Leone belonging to tribes that practiced FGM." Their LordsTM preferred these broader definitions, as they allowed the social group to be defined independently of the alleged persecution. Being female, Sierra Leonean, and of a particular ethnic group were all traits that existed independently of FGM. Furthermore, their Lords were of the opinion that it was unnecessary to define the social group to include only at-risk persons, as even in many accepted categories of social group, privilege or special circumstances would allow some members to avoid persecution.

Decision Excerpts

"On that evidence, I think it clear that women in Sierra Leone are a group of persons sharing a common characteristic which, without a fundamental change in social mores is unchangeable, namely a position of

social inferiority as compared with men. They are perceived by society as inferior. That is true of all women, those who accept or willingly embrace their inferior position and those who do not. To define the group in this way is not to define it by reference to the persecution complained of: it is a characteristic which would exist even if FGM were not practised, although FGM is an extreme and very cruel expression of male dominance.â€• Para. 31.

â€œSo one can say, with greater precision, that the particular social group is composed of uninitiated indigenous females in Sierra Leone. I do not think that there can be any objection to defining the group in these terms. It has the advantage of excluding from the group those who have already been initiated. They can never be said under any circumstances to be still at risk. It has the advantage too of excluding those who carry out the mutilation, all of whom have already been initiated. It excludes also those females who, although living in Sierra Leone, are not at risk because they are not members of any tribe or ethnic group which is indigenous to that country.â€• Para. 56.

â€œIn other words, the world has woken up to the fact that women as a sex may be persecuted in ways which are different from the ways in which men are persecuted and that they may be persecuted because of the inferior status accorded to their gender in their home society. States parties to the Refugee Convention, at least if they are also parties to the International Covenant on Civil and Political Rights and to the Convention on the Elimination of All Forms of Discrimination against Women, are obliged to interpret and apply the Refugee Convention compatibly with the commitment to gender equality in those two instruments.â€• Para. 86.

â€œNot all persecution gives rise to a valid asylum claim. Very bad things happen to a great many people but the international community has not committed itself to giving them all a safe haven. People fleeing national and international wars, famine or other natural disasters are referred to as refugees, and offered humanitarian aid by the international community, but they do not generally fall within the definition in the 1951 Convention. Asylum can only be claimed by people who have a well-founded fear of persecution â€œfor reasons of race, religion nationality, membership of a particular social group or political opinionâ€™. Of these â€œmembership of a particular social groupâ€™ has proved the most difficult to define, but is increasingly being used to push the boundaries of refugee law into gender-related areas such as domestic violence, enforced family planning policies, and FGMâ€• Para.97.

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