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# Supreme Court Cases on Asylum - February 2014

The Supreme Court has recently reached important decisions on two cases involving interpretation of the law relating to asylum. **The first of these** is *I.A, v. Secretary of State for the Home Department (Scotland)* [2014] UKSC 6. The appellant was a citizen of Iran who left Iran for Iraq in 1998 at the age of 16 and successfully applied to the office of the United Nations High Commissioner for Refugees (UNHCR) for asylum in Iraqi Kurdistan under the Refugee Convention, on the ground that he feared persecution in Iran as a member of a Kurdish political party. He left Iraq for Turkey in 2002 and was again recognised there as a refugee. In 2007 he arrived in the United Kingdom and applied for asylum here. His application was refused by the Secretary of State and his appeal against refusal was dismissed by an immigration judge. The main ground for refusal by the Secretary of State was lack of credibility of evidence given in support of his application. This was upheld by the immigration judge, who also considered the importance of the grant of refugee status by the UNHCR. This was accepted as a significant matter, but no evidence had been made available by the UNHCR to show the justification for the grant and the findings by both the Secretary of State and the immigration judge provided clear and substantial grounds for reaching a different conclusion.

2 The appellant appealed against the immigration judge's decision to the Scottish Court of Session but his appeal was dismissed. He appealed from this dismissal to the Supreme Court. The Supreme Court held that the decision of the UNHCR, the agency with worldwide responsibilities for refugees, was entitled to great respect, but nevertheless upheld the decision of the immigration judge which had been properly reached on the basis of the evidence before her. Following the dismissal of the appeal by the Court of Session material explaining the reasons for the grant of asylum was made available by the UNHCR and with it it would be open to the appellant to submit a fresh application for asylum.

**Comment on first case**

3 The 1951 Refugee Convention sets out the obligations of Contracting States which are parties to the Convention to accept refugees from persecution for one or other of the reasons set out in the Convention. It does not specifically confer on the UNHCR itself power to grant refugee status but clearly such grants are made from time to time and their validity is respected by the national courts and other authorities of Contracting States.

4 **The second case** is that of *R (on the application of EM (Eritrea) v. Secretary of State for the Home Department* [2014] UKSC 12. It is concerned with the application and interpretation of an important part of the law of the European Union, Council Regulation 343/2003, commonly referred to as Dublin II. This is the Regulation which in essence provides that the initial responsibility for considering an asylum application made within the EU rests with the Member State in which the applicant first applied. The appellants in the case were three Eritrean nationals and one Iranian who had claimed asylum initially in Italy. What fell to be decided was whether they could be returned to Italy in accordance with the provisions of the Council Regulation or whether returning them would expose them to inhuman or degrading treatment which would be contrary to Article 3 of the European Human Rights Convention (ECHR). Italy as a member state of the EU is presumed to be safe for returning asylum seekers and in the normal way any claim that

such persons could not be returned there would be treated as clearly unfounded. The Iranian appellant claimed to have been tortured as a political prisoner in Iran, as a result of which he was psychologically damaged and in need of treatment which he would be unable to obtain in Italy, where he would also be homeless, The three Eritrean appellants alleged that they had been left homeless and destitute in Italy and two of them who were women said that they had been repeatedly raped in Italy.

5 The Court of Appeal when considering the cases had concluded that Italy could be considered as unsafe only if there was shown to be a systemic failure in its treatment of returned asylum seekers, i.e. a failure which was the result of practices regularly followed in the course of that treatment. The allegations made by the appellants could not be considered to be evidence of systemic failure and therefore Italy could not be considered unsafe. The Supreme Court disagreed and ruled that the evidence of ill treatment given by the appellants was sufficient to regard Italy as unsafe. The appeal was allowed and the cases were remitted to the Administrative Court to consider the evidence and determine on the facts whether in each of the cases it was established that there was a real risk that if they were returned to Italy they would be subjected to degrading or inhuman treatment in contravention of Article 3.

**Comment on second case**

**6** It is a cause for some concern that this case was decided on the basis that all the facts alleged by the appellants were correct, leading to the final ruling that the case should be sent back to the Administrative Court for considering the evidence and determining the facts for the purpose of a judicial review. From the account given in the judgment of the Supreme Court the evidence on which the cases of the appellants was based was highly dubious. However, this is the way in which the Dublin II Regulation works and in the normal way the case would have been sent back to Italy without having been considered in full in the United Kingdom. The decision means that the case will not now be sent back to the Italian authorities but will have to be decided in the United Kingdom. It is also a matter for concern that there should be a finding that the asylum system of a major Member State of the European Union is unsafe, even though the Court did not make a finding of systemic lack of safety.

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