

Ireland, High Court, F.O. v Refugees Appeals Tribunal & anor, [2014] IEHC 123

Deciding bodies and decisions

The High Court of Ireland, Judgement of 31 January 2014, Record No. 2009/1198 JR, [2014] IEHC 123

Area of law

Asylum law

Subject matter

Asylum – credibility – transit through safe countries

Summary Facts Of The Case

The applicant claimed to have fled Afghanistan after he refused to take part in a suicide bombing in the capital of Kabul. He had been sent to Pakistan for schooling by his father who was a former member of the Taliban. While in Pakistan he claimed to have been subjected to forms of indoctrination and recruited to carry out a suicide bombing attack in Kabul. Upon arrival in Kabul he did not carry out the attack but instead fled. He claims his life would be in danger from both Government authorities and the Taliban if he returned to Afghanistan.

He claims to have travelled through Iran, Greece and the UK. At another stage of the investigation he also claims to have travelled through Kazakhstan. He spent some months in Greece in particular and transited through the UK, arriving in Belfast before travelling to Dublin.

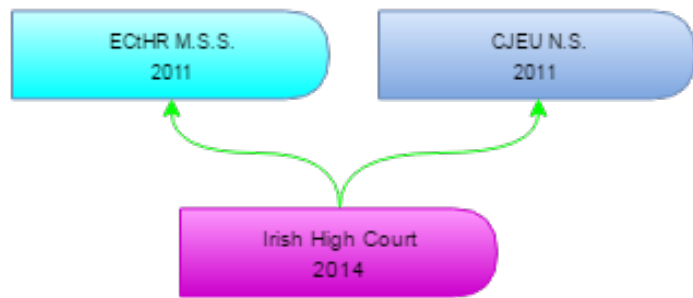
His application was rejected at both first instance and upon appeal to the Refugee Appeals Tribunal. In particular it was found the applicant lacked credibility based firstly on the account given of his father's involvement in his schooling and secondly (and primarily) on his travel history. It was found that if he had indeed suffered from a real fear of persecution he would have applied for asylum in the first safe country. In coming to this finding the RAT member relied on the citation of a Canadian case (*Asamoah*). He sought judicial review of the rejection before the High Court.

Relation to the scope of the Charter

The case did not concern a direct application of the Charter. Rather the finding of the Court of Justice in *NS* that there exists a systematic violation of Article 4 EU Charter in Greece was used to confirm the reasonableness of the applicant's failure not to apply for asylum in Greece and

therefore affirm his credibility.

Diagram



Vertical (Irish High Court - ECtHR and CJEU)

Sources - EU and national law

- Article 4 - Prohibition of torture and inhuman or degrading treatment or punishment
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Sources - CJEU Case Law

- CJEU, Case C-411/10, *N.S. and others*, ECLI:EU:C:2011:865
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Sources - ECtHR Case Law

- ECtHR, *MSS v Belgium and Greece*, Application no. 30696/09, 21 January 2011
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Sources - Internal or external national courts case law

- The High Court of Ireland, Case *A.M.K. (a minor) v Refugees Appeals Tribunal*, [2014] IEHC 380
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Comments

The judgement of the Irish High Court is important as it constructively develops the legal reasoning on credibility of asylum applications in cases involving previous travel history through one or several safe countries. The High Court stated that the failure to file an asylum application in one of the transit safe countries is not sufficient in itself to dismiss the credibility of an asylum applicant. The judgement instead proposes a 'reasonable explanation test', whereby the credibility of the application is not jeopardised if the asylum seeker can reasonable explain the circumstances that determined her or him to refrain from making such an application in the transited countries. In the case at hand, the reasonable explanations for not seeking asylum protection in front of Greek and UK authorities related to the systemic deficiencies in the Greek asylum system and the automoatic transfer practice to Greece of UK authorities which was found in breach of EU Charter in NS case.
