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United Kingdom - The Queen on the application of ZAT, IAJ, KAM, AAM, MAT, MAJ and LAM v. Secretary of State for the Home Department

Country of Decision:

United Kingdom

Country of Applicant:

Syria

Date of Decision:

29-01-2016

Citation:

JR/15401/2015; JR/154015/2015

Court Name:

Upper Tribunal (Immigration and Asylum Chamber)

Keywords:

Best interest of the child
Family member
Family reunification
Family unity (right to)
Material reception conditions
Reception conditions
Request that charge be taken
Responsibility for examining application
Unaccompanied minor
Vulnerable person

Relevant Legislative Provisions:

International Law

International Law > UN Convention on the Rights of the Child

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [1]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [2] > [Article 3](#) [3]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [4] > [Article 4](#) [5]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [2] > [Article 8](#) [6]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [4] > [Article 7](#) [8]

European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [9]

European Union Law > [EN - Recast Reception Conditions Directive, Directive 2013/33/EU of 26 June 2013](#) [10]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [11] > [Article 6](#) [12]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [11] > [Article 8](#) [13]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [11] > [Article 10](#) [14]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [11] > [Article 18](#) [15]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [11] > [Article 20](#) [16]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [11] > [Article 21](#) [17]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [11] > [Article 22](#) [18]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [11] > [Article 27](#) [19]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [11] > [Article 29](#) [20]

Headnote:

The Upper Tribunal ordered the Secretary of State for the Home Department to immediately admit four vulnerable Syrians from an unofficial migrant camp in France to the United Kingdom in order to be reunited with refugee family members during the examination their asylum applications. Although they had not applied for asylum in France or been subject to Dublin procedures, the particular circumstances meant that failing to do so would lead to a disproportionate interference with their right to respect for family life.

Facts:

This case concerned seven applicants from Syria. Four were living in the unofficial camp near Calais known as 'the Jungle'. Three of them were unaccompanied minors and the other was the adult dependent brother of one of them who suffered from mental health problems. The other applicants were their siblings, who had refugee status in the UK.

They argued that the refusal of the Secretary of State for the Home Department (SSHD) to admit them to the UK to be reunited pending the determination of the asylum applications of the first four applicants amounted to a disproportionate interference with their Article 8 ECHR right to family life.

The factual matrix concerned three main issues:

1. The conditions at 'the Jungle'

The Upper Tribunal considered that living conditions at 'the Jungle' were appalling and highly dangerous, referring to a recent order by the Lille Administrative Tribunal and relying on witness statements and reports by humanitarian organisations and volunteers.

2. The circumstances of the applicants

The first four applicants had fled the war in Syria where they had suffered trauma. There was medical evidence diagnosing one of them with PTSD and all with stress disorders. They had each enjoyed family life in Syria with their brothers who were now in the UK. All were desperate to be reunited with their siblings in the UK. None of them had applied for asylum in France.

3. The laws, practices and arrangements for processing asylum applications in France and prevailing conditions for the reception and treatment of asylum applicants

Considering a report by Nils Muiznieks and the AIDA France report of January 2015, the Tribunal noted shortcomings in relation to provision of accommodation and other services and insufficient and inappropriate reception conditions for unaccompanied asylum seeking children in France. It noted that administrative difficulties in making an asylum claim in France may distance children and others from the possibility of family reunion recognised in the CEAS.

The principal argument of the applicants was that Article 8 ECHR, in conjunction with Article 7 EUCFR, gave rise to a positive obligation on the SSHD to admit the first four applicants to UK territory, relying in particular on [Tuquablo Tekle v. The Netherlands](#) [21] and [Mayeka and Mitunga v. Belgium](#) [22].

The SSHD argued that no legal duty was owed to the applicants as they were unlawfully present in France and had made no application for entry clearance to the UK. In addition, they were not asylum seekers and had chosen not to make use of Dublin procedures, which it considered to enshrine various safeguards that struck the Article 8 proportionality balance.

Decision & Reasoning:

The Upper Tribunal considered that the case turned on whether the SSHD's refusal to admit the first four applicants swiftly to the UK, in circumstances falling outside the proper application of the Dublin Regulation mechanisms, amounted to a disproportionate interference with their rights pursuant to Article 8 ECHR.

It found it 'highly probable' that if they had applied for asylum in France, they would be subject to a successful 'take charge' request and subsequent transfer to the UK under the provisions of the Dublin III Regulation relating to family unity.

The SSHD rightly argued that strict adherence to the Dublin Regulation pursued a legitimate aim by the UK of the public interest in effective and orderly immigration control. However, this was a general consideration unrelated to the individual circumstances, needs and merits of the applicants in the present case.

In its assessment of proportionality the Tribunal considered that a number of factors led to the conclusion that the SSHD's refusal would amount to a disproportionate interference of the applicants' right to respect for family life. These were: the age of the first three applicants, the

psychological damage of the first four applicants, the likelihood of further psychological harm if denied entry, delay of at least a year in reunification under the Dublin procedures, previous enjoyment of family life, the urgent need for family reunification on the facts of the case, the inadequacy of Dublin procedures to allow this in the short to medium term, the absence of a parental figure in the lives of the first four applicants, the potential for quick reestablishment of family life upon entry to the UK, the willingness of the last three applicants to care and support the first four and the avoidance of further suffering that they would be subjected to if they remained at 'the Jungle'.

As the first four applicants had not made an asylum claim, they could not be considered to be asylum seekers, and were simply family members of the latter three. The Tribunal thus made a mandatory Order for the SSHD to admit them, provided that they first submitted a letter to the French authorities claiming asylum. In this way, it sought to reconcile the requirements of the Dublin Regulation principles whilst ensuring that the administration of the CEAS did not disproportionately interfere with the applicants' Article 8 rights.

Outcome:

The applicants were granted permission for judicial review, and the substantive challenge was successful. The Upper Tribunal made a mandatory order that upon any of the first four applicants submitting to the French authorities a letter claiming asylum, and sending the SSHD a copy of this and confirmation of it being sent, they should be admitted to the UK with a view to determining their application under the Dublin Regulation.

Subsequent Proceedings :

On 2 August 2015, the Court of Appeal gave its ruling in the case [Secretary of State for the Home Department v ZAT \(Syria\) & Ors](#) [23] concerning the relationship between the Dublin III Regulation and the rights to private and family life pursuant Article 8 ECHR.

The Court of Appeal concluded that the Upper Tribunal had erred in its approach to the Dublin III Regulation in relation to Article 8 ECHR. According to the Court, an application for entry by an unaccompanied child, without first involving the relevant Dublin III Regulation in France, can "only be justified in an especially compelling case". This is only the case where the applicants "can show that the system of the Member State that they do not wish to use, in this case the French system, is not capable of responding adequately to their needs". In the particular circumstances of this case, the evidence is unlikely to meet the required threshold of "an especially compelling case" in order to completely bypass the initial procedural stage of the Dublin procedure on the grounds of Article 8 ECHR.

The Court of Appeal allowed the appeal. As the SSHD did not seek the return of the four vulnerable asylum seekers to France, the Court made no further return order. At the present time, the SSHD has granted refugee status to two of the applicants.

Observations/Comments:

This was a test case and lawyers claim to have identified many other unaccompanied minors living at 'the Jungle' with family members in the UK. The judges in the case were highly critical of conditions at 'the Jungle', as well as the political response from the authorities. A number of people have died attempting to reach the UK irregularly from Calais, whereas the effect of this decision was that the applicants could enter in a safe and legal manner.

The Tribunal, however, emphasised the intensely fact-specific nature of this case, and the special situation of the applicants which tipped the balance in the Article 8 proportionality assessment. It viewed the case as a 'family reunion case pure and simple'.

Attachment(s):

 [jr-15401-15405-2015-zat-others-final.pdf](#)[24]

Other sources cited:

Articles 3, 10 and 22 of the UN Convention on the Rights of the Child.

Evidence: detailed witness statements and reports from the applicants, their legal representatives, lawyers practising in France, representatives of humanitarian organisations and volunteers

Psychiatric reports showing that the first three applicants are suffering from recognised stress disorders

Psychiatric reports diagnosing the fourth applicant with a psychiatric disorder and post-traumatic stress disorder

Report by Nils Muiznieks, Council of Europe Commissioner for Human Rights, September 2014

Asylum Information Database (AIDA) report of January 2015

Joint Ministerial declaration on UK/French cooperation on managing migratory flows in Calais, dated 20 August 2015

National / Other Legislative Provisions:

[United Kingdom - Section 7 Human Rights Act 1998](#) [25]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

[2] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[3] https://m.asylumlawdatabase.eu/node/195#toc_12

[4] <https://m.asylumlawdatabase.eu/node/453>

[5] https://m.asylumlawdatabase.eu/node/453#toc_29

[6] https://m.asylumlawdatabase.eu/node/195#toc_46

[7] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[8] https://m.asylumlawdatabase.eu/node/453#toc_42

[9] <https://m.asylumlawdatabase.eu/node/353>

[10] <https://m.asylumlawdatabase.eu/node/4039>

[11] <https://m.asylumlawdatabase.eu/node/4037>

[12] https://m.asylumlawdatabase.eu/node/4037#toc_114

[13] https://m.asylumlawdatabase.eu/node/4037#toc_135

[14] https://m.asylumlawdatabase.eu/node/4037#toc_146

[15] https://m.asylumlawdatabase.eu/node/4037#toc_196

[16] https://m.asylumlawdatabase.eu/node/4037#toc_217

[17] https://m.asylumlawdatabase.eu/node/4037#toc_229

[18] https://m.asylumlawdatabase.eu/node/4037#toc_238

[19] https://m.asylumlawdatabase.eu/node/4037#toc_285

[20] https://m.asylumlawdatabase.eu/node/4037#toc_314

[21] <http://www.asylumlawdatabase.eu/en/content/ecthr-tuquabo-tekle-and-others-v-netherlands-application-no-6066500-1-march-2006>

[22] <http://www.asylumlawdatabase.eu/en/case-law/ecthr-mubilanzila-mayeka-and-kaniki-mitunga-v-belgium-application-no-1317803>

[23] <https://www.judiciary.gov.uk/wp-content/uploads/2016/08/Home-Office-v-ZAT-judgment.pdf>

[24] <https://m.asylumlawdatabase.eu/sites/default/files/aldfiles/jr-15401-15405-2015-zat-others-final.pdf>

[25] <https://m.asylumlawdatabase.eu/en/national-and-other-legislation/united-kingdom-section-7-human-rights-act-1998>