

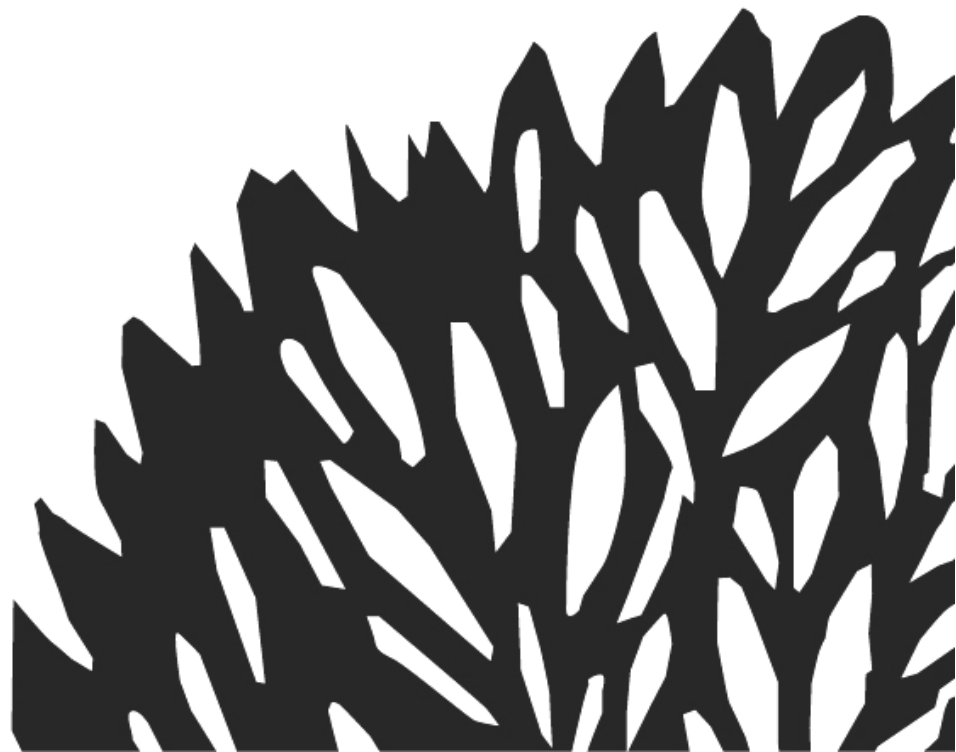


Cessation of international protection

Mark Symes

Garden Court Chambers

21 November 2019



Cessation of international protection

Mark Symes, Garden Court Chambers

21 November 2019



 @gardencourtlaw

General approach

- Burden of proof: "resting on a State that contends that a person who has been recognised as a refugee has ceased to have that status" – Lord Brown in *Hoxha*
- "Precautionary attitude on the part of a decision-maker whose decision potentially poses grave consequences for the subject of the decision": High Court of Australia in *QAAH* – the minority judgment mentioned in the importance of fairness and an opportunity to comment on cessation



 @gardencourtlaw

Acts of the asylum seeker 1

- “contacts of a lesser nature with the country of origin were permitted without causing the cessation of refugee status”: Case Report IJRL/0123 1992 BverwG 9 C 126.90[1992] 4 IJRL3
- Grahl-Madsen in *The Status of Refugees in International Law* (1966) vol 1 at p 384 cited in *Rezaei* [2001] FCA 1294 (Fed Court of Australia) - for there to be a re-availment of the protection of the country of nationality there needs to be shown the voluntary and conscious choice of subjection to the government of the relevant country
- *cf RD Algeria* [2007] UKAIT 00066: “Passports are not ornamental adornments or collectors’ items ... Where a person obtains a passport it will be assumed that he or she intends to avail himself of the protection of the state that issued the passport. It is of course open to the appellant to rebut the inference”

Acts of the asylum seeker 2

- *DL (DRC)* [2008] EWCA Civ 1420
- A recognised refugee who thereafter obtains the citizenship of his host country, whose protection he then enjoys, loses his refugee status
- It is open to the States Parties to prescribe the procedures under which cessation pursuant to Article 1C(3) will have effect within their individual jurisdictions
- If a State Party has not established any such procedures, cessation of refugee status pursuant to Article 1C(3) will take place automatically (the case was heard alongside the appeal which became *ZN (Afghanistan)* [2010] UKSC 21 but this ruling survived)

Change of country conditions

- QD Art 11(2): “Significant and non-temporary nature such that the refugee’s fear of persecution can no longer be regarded as well-founded” (IR 339A)
- *SB Haiti* [2005] UKIAT 00036: “temporary changes in a situation of volatility do not suffice. Time should be allowed for the changes to consolidate, so as to show their durability”
- CJEU in *Abdulla* [2010] EUECJ C-175/08 “permanently eradicated” – though this includes reference to whether protection is available from international organisations controlling the State or a substantial part of the territory of the State
- Note the same protection is found re subsidiary/humanitarian protection: “whether the change of circumstances is of such a significant and non-temporary nature that the person no longer faces a real risk of serious harm”: but that does not apply to Article 3 ECHR which (for now) represents a bare risk assessment

Atrocious past persecution

- Found in UNHCR Handbook
- But not part of Article 1A(2) nor in Qualification Directive (though features in Recast)
- Not part of the Refugee Convention (*Hoxha* UKHL)
- But part of Home Office policy:

“Where a person has experienced treatment and past persecution of particularly grave proportions, the policy recognises that such persons “cannot reasonably be expected to return”.”
- So relevant were there to judicial review proceedings on pure public law grounds, and to proportionality if there is an Article 8 claim?

The detour in *Dang*

- *Dang* [2013] UKUT 43 (IAC) looks at revocation under Rule 339A
- Article 14 of the Qualification Directive enables Member States to revoke, end, or refuse to renew status
- Because the Refugee Convention and Qualification Directive are arranged differently, one must distinguish between refugee status granted under the QD vis-à-vis status under the RC - which exists independently of any State recognition
- RC contains no provisions for the revocation of status on the ground that a person falls within art 33(2): so 'refugee status' under QD/Irs may cease, but the individual's status as a refugee under the Convention is not affected: cf s2 AaIAA 1993 which prevents the Rules from laying down "any practice which would be contrary to the [Refugee] Convention".

The excursion in *Essa*

- Section 72 NIAA 2002 provides that
 - “(2)-(4) [Presumptions re dangerousness & danger to community due to criminal sentence]
 - (9) [where Refugee Convention ground raised and section 72 certificate made]
 - (10) The Tribunal or Commission hearing the appeal—
 - (a) must begin substantive deliberation on the appeal by considering the certificate, and
 - (b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the ground specified in subsection (9)(a).”
- *Essa* [2018] UKUT 244 (IAC)
 - (1) an appeal under s 82(1)(c) is an appeal against revocation of the basis upon which the leave referred to in s 82(2)(c) was granted;
 - (2) the appeal is to be determined by reference to the provisions of the Refugee Convention, as that is the only ground allowable under s 84(3)(a); but
 - (3) where s 72(10) applies, it requires the appeal to be dismissed even though the ground is made out

Cancellation of Refugee Status 1

- Directive 2004/83 Art 14(3): 'Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person, if, after he or she has been granted refugee status, it is established by the Member State concerned that: (b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of refugee status.'
- Transposed into Rules: HC 395 r 339A(viii):

339AB. This paragraph applies where the Secretary of State is satisfied that the person's misrepresentation or omission of facts, including the use of false documents, were decisive for the grant of refugee status.

Cancellation of Refugee Status 2

- UNHCR Guidelines on International Protection No 3: "Cancellation is based on a determination that an individual should not have been recognised as a refugee in the first place. This is, for instance, so where it is established that there was a misrepresentation of material facts [so avoiding exclusion] ..."
- New Zealand RSAA in *Refugee Appeal No 75574* (29 April 2009) – "[76] ... Because the refugee definition is declaratory, not constitutive of the status of a refugee, as a matter of treaty law a person who is not a Convention refugee but who obtains a favourable determination of refugee status through fraud or similar deception is not entitled to the status of a refugee. Recognition of such status must be withdrawn on the deception being discovered"
- Member State must revoke subsidiary protection status if it granted that status when the conditions for granting it were not met, in reliance on facts which have subsequently been revealed to be incorrect, and notwithstanding the fact that the person concerned cannot be accused of having misled the Member State on that occasion: *Bilali* [2019] EUECJ C-720/17

Thank you

020 7993 7600 immigrationclerks@gclaw.co.uk @gardencourtlaw