

Article 31 of the Refugee Convention and the right to settle

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R (ota) SE v SSHD

- To have been heard on 29 January 2020.
- Respondent conceded judicial review proceedings.
- Point of public importance. Professor Goodwin Gill expert report.
- Whether Art 31 relates to prosecution/ criminal/ penal sanctions or *other immediate or incidental sanctions or disadvantages were also to be included, where they were clearly linked to irregular entry or presence.*

Article 31 Refugee Convention

- Article 31(1) of the 1951 Convention relating to the Status of Refugees sets out as follows:
- *‘The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.’*
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Asfaw [2008] 1AC 1061

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- *“The Refugee Convention had three broad humanitarian aims. The first was to ensure that States acceding to the Convention would afford a safe refuge to those genuinely fleeing from their home countries to escape persecution or threatened persecution [...]. Such refugees were not to be returned to their home countries. The second aim was to ensure reasonable treatment of refugees in their countries of refuge, an aim to which most of the articles in the Convention were addressed. **The third aim, broadly expressed, was to protect refugees from the imposition of criminal penalties for breaches of the law reasonably or necessarily committed in the course of flight from persecution or threatened persecution.**”*

Section 31 Immigration and Asylum Act 1999

- The refugee defence
- The consequence of the judgment in Adimi, was that section 31 of the Immigration and Asylum Act 1999 was implemented. The refugee defence was modelled on article 31(1).

Criminal Cases Review Commission and Court of Appeal [「]Landmark _」 Chambers

- Refugees have been entitled to CCRC for a review of their convictions for irregular entry and stay.
- In *Nori*, in 2016, Court of Appeal indicated that such cases should be referred directly to it with a view to quashing convictions.
- Not always available to refugees.
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Immigration Rules – potentially ultra vires?

- **“Requirements for indefinite leave to remain for persons granted refugee status or humanitarian protection**
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- *339R. The requirements for indefinite leave to remain for a person granted refugee status or humanitarian protection, or their dependants granted refugee status or humanitarian protection in line with the main applicant or any dependant granted leave to enter or remain in accordance with the requirements of paragraphs 352A to 352FJ of these Rules (Family Reunion), are that:*
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Contd.

- *(iii) the applicant has not:*
- *a. been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years; or*
- ***b. been convicted of an offence for which they have been sentenced to imprisonment for at least 12 months but less than 4 years, unless a period of 15 years has passed since the end of the sentence; or***
- *c. been convicted of an offence for which they have been sentenced to imprisonment for less than 12 months, unless a period of 7 years has passed since the end of the sentence; or*
- Text

Immigration Rules

- *339S. Indefinite leave to remain for a person granted refugee status or humanitarian protection will be granted where each of the requirements in paragraph 339R is met.*
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- *Refusal of indefinite leave to remain for a person granted refugee status or humanitarian protection*
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- ***339T. (i) Indefinite leave to remain for a person granted refugee status or humanitarian protection is to be refused if any of the requirements of paragraph 339R is not met.***

Section 2 Asylum and Immigration Appeals Act 1993

- *“nothing in the immigration rules (within the meaning of the [Immigration Act 1971] shall lay down a practice which would be contrary to the convention.”*

UNHCR view

- UNHCR Expert Round Table Conclusions (Geneva, November 2001) [at 10(h)] that : “*The term ‘penalties’ includes, but is not necessarily limited to, prosecution, fine, and imprisonment.*”
- *Other jurisdictions.*

Article 31 Vienna Convention

- **Article 31 General rule of interpretation**
- *1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*

Conclusions

- ‘Penalties’ must be understood in a wider sense that includes the right to settle.
- Art 31 should not only relate to the period immediately after arrival
- Scope and meaning of Art 31 must be considered in the light of the object and purpose of the Convention.
- Immigration Rules are arguably ultra vires in their unamended form

Thank you for listening

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