



Hungarian Helsinki Committee

# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

A project of the Hungarian Helsinki Committee  
co-financed by the European Commission

## Case Summary

Country of Decision/Jurisdiction	<b>United Kingdom</b>
Case Name/Title	PS (Sri Lanka)
Court Name	Court of Appeal of England and Wales
Neutral Citation Number	[2008] EWCA Civ 1213
Other Citation Number	
Date Decision Delivered	06/11/08
Country of Applicant/Claimant	Sri Lanka
Keywords	Assessment of Facts and Circumstances; Actors of Protection; Past persecution; Standard of Proof; State protection.
Head Note (Summary of Summary)	State protection should be assessed in the appellant's home area, in the absence of an internal relocation alternative. The Tribunal erred in finding that the fact that the applicant had been raped at her home on 3 separate occasions over a short period by government soldiers had the same effect on assessing future risk as if she had been raped by civilians. The soldiers appeared to act with impunity whereas that would not necessarily be the case for civilians. In assessing future risk past experience was central, as reflected in Article 4(4) of the Qualification Directive and by common sense.
Case Summary (150-500)	
<i>Facts</i>	<p>The appellant was a Tamil woman from the Jaffna Peninsula in Sri Lanka, an area where the LTTE had long been active. In November 2006 she was raped in her home, which was also a grocery shop, by two Sri Lankan soldiers who used to make purchases there. Five days later one of them returned with another soldier, and both of them raped her. A week or so later the same two returned and again raped her, holding her father at gunpoint so that he would witness it. The appellant later tried to kill herself by setting fire to herself. She failed, but her father took her to the home of her uncle who arranged her departure from the country. Before she left she found out that she was pregnant and then miscarried or aborted. In the interim the soldiers had returned to her home, looking for her.</p> <p>Her application for asylum was refused and she appealed. Her appeal was initially allowed by the Immigration Judge. However, the Secretary of State applied for reconsideration and the Tribunal dismissed the appeal. It found that the appellant had not established that she was a risk of serious harm in the future and that the Tribunal's current country guidance showed that there was adequate state protection in Sri Lanka. The appellant appealed to the</p>



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee  
co-financed by the European Commission*

	Court of Appeal.
<i>Decision &amp; Reasoning</i>	<p>The Court of Appeal allowed the appeal on the basis that the appellant was entitled to subsidiary protection.</p> <p>The Tribunal had erred in finding that the country guidance decision of LP (Sri Lanka) supported a finding that the appellant could access state protection. LP (Sri Lanka) only provided guidance on the availability of state protection for Tamils returned to Colombo. As there was no allegation that the appellant could internally relocate, Lord Justice Sedley reasoned that “[t]he appellant’s experience and continuing fear was not of ill-treatment by the authorities in Colombo: it was of repeated sexual abuse by state military personnel in Jaffna. Her case is that, with perpetrators in the uniform of the state, there was no sensible possibility of state protection from conduct bearing clear hallmarks of toleration and impunity, and that is why she fled. To this I can see no answer on the evidence. The second immigration judge’s characterisation of the soldiers’ conduct as no different from that of civilian rapists is, with respect, unsustainable. The whole point was that, unlike ordinary criminals, the soldiers were in a position to commit and repeat their crime with no apparent prospect of detection or punishment”.</p> <p>Secondly, the standard of proof in assessing future risk had been set at too high a level. Contrary to the Tribunal’s finding there was a “real risk” that the soldiers would find out that she had returned. Government soldiers were stationed in the vicinity of the appellant’s home and were able to act with impunity. The Court found that “...given the legal test of risk and the centrality given (by [Article 4(4) of the Qualification Directive], but by common sense too) to past experience as a guide to future risk, the facts accepted by both tribunals established a real risk that, if returned home, the appellant would again be targeted for rape by rogue soldiers stationed in the locality”.</p>
<i>Outcome</i>	Appeal allowed, the case was remitted to the Secretary of State to determine what form of protection the appellant should be granted.
Subsequent Proceedings	
<b>EU Legal Provisions Applicable</b>	
Qualification Directive	Yes
Asylum Procedures Directive	
Reception Conditions Directive	
Dublin II Regulation	
Returns Directive	



Hungarian Helsinki Committee

# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee  
co-financed by the European Commission*

<b>Legal Provisions Cited</b>	
1951 Refugee Convention	
Qualification Directive	Articles 4(4), 6, 15, 16 (by reference to relevant domestic provisions)
Asylum Procedures Directive	
Reception Conditions Directive	
Dublin II Regulation	
Returns Directive	
ECHR European Convention on Human Rights	
CFREU Charter of Fundamental Rights of the European Union	
TFEU Treaty on the Functioning of the European Union	
ICCPR	
CRC	
CAT	
ICESCR	
CEDAW	
ICERD	
UNHCR Handbook	
Geneva Conventions & Additional Protocols	
European Social Charter	
ICC Statute	
<b>Case Law Cited</b>	
CJEU Cases Cited	
ECtHR Cases Cited	<i>NA v United Kingdom</i> App No 25904/07 [2008] ECHR 616 (17 July 2008).



Hungarian Helsinki Committee

# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee*

*co-financed by the European Commission*

Other Cases Cited	<i>Sivakumaran</i> [1988] AC 958, <i>LP (Sri Lanka)</i> CG [2007] UKIAT 00076
Other sources cited	Refugee or Person in Need of International Protection (Qualification) Regulations 2006, Regulations 2 and 3, Immigration Rules HC395, paragraphs 339C, 339E and 339K, Macdonald's <i>Immigration Law and Practice</i> , 7 <sup>th</sup> ed, section 12.27.
Observations/Comments	The Court of Appeal did not explore whether, on the facts of the case, the applicant was entitled to refugee status.