

R (on the application of AAA and others) (Respondents/Cross Appellants) v Secretary of State for the Home Department (Appellant/Cross Respondent)

Case ID: 2023/0093

Case summary

Issues

The Supreme Court is asked to decide the following legal questions:

1. Did the Divisional Court apply the wrong test when determining whether removal to Rwanda would breach article 3?
2. If the Divisional Court applied the right test, was the Court of Appeal entitled to interfere with its conclusion that Rwanda was a safe third country?
3. If the Divisional Court applied the wrong test or there was another basis for interfering with its conclusion, was the Court of Appeal right to conclude that Rwanda was not a safe third country because asylum seekers would face a real risk of refoulement?
4. Did the Home Secretary fail to discharge her procedural obligation under article 3 to undertake a thorough examination of Rwanda's asylum procedures to determine whether they adequately protect asylum seekers against the risk of refoulement?
5. Were there substantial grounds for believing that asylum seekers sent to Rwanda will face a real risk of treatment contrary to article 3 in Rwanda itself, in addition to the risk of refoulement?
6. Does the Asylum Procedures Directive continue to have effect as retained EU law? This is relevant because the Directive only permits asylum seekers to be removed to a safe third country if they have some connection to it. None of the claimants has any connection to Rwanda.

Facts

These appeals arise out of claims brought by individual asylum seekers ("the claimants") who travelled to the UK in small boats (or, in one case, by lorry). The Home Secretary declared the claimants' claims for asylum to be inadmissible, intending that they should be removed to Rwanda where their asylum claims would be decided by the Rwandan authorities. Her decisions were made in accordance with the Migration and Economic Development Partnership ("MEDP") between the UK and Rwanda, recorded in a Memorandum of Understanding and a series of diplomatic "Notes Verbales".

Under paragraphs 345A to 345D of the Immigration Rules, if the Home Secretary decides that an asylum claim is inadmissible, she is permitted to remove the person who has made the claim to any safe third country that agrees to accept the asylum claimant. On the basis of the arrangements made in the MEDP, the Home Secretary decided that Rwanda was a safe third country for these purposes. This is "the Rwanda policy".

The claimants (and other affected asylum seekers) challenged both the lawfulness of the Rwanda policy generally, and the Home Secretary's decisions to remove each claimant to Rwanda. The Divisional Court held that the Rwanda policy was, in principle, lawful. However, the way in which the Home Secretary had implemented the policy in the claimants' individual cases was procedurally flawed. Accordingly, her decisions in those cases would be quashed and remitted to her for reconsideration.

The appeal to the Court of Appeal concerned only the challenges to the lawfulness of the Rwanda policy generally. By a majority, the Court allowed the claimants' appeal on the ground that the deficiencies in the asylum system in Rwanda were such that there were substantial reasons for believing that there is a real risk of refoulement. That is, a real risk that persons sent to Rwanda would be returned to their home countries where they face persecution or other inhumane treatment, when, in fact, they have a good claim for asylum. In that sense Rwanda was not a safe third country. Accordingly, unless and until the deficiencies in its asylum processes are corrected, removal of asylum seekers to Rwanda will be unlawful under section 6 of the Human Rights Act 1998. This is because it would breach article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment. The Court of Appeal unanimously rejected the claimants' other grounds of appeal.

The Home Secretary now appeals to the Supreme Court on issues (1) to (3) below. AAA (Syria) and others and HTN (Vietnam) cross appeal on issues (4) and (5). AS (Iran) also cross appeals on issue (4). ASM (Iraq) appeals on issue (6).

Judgment appealed

[\[2023\] EWCA Civ 745](#)

Parties

Appellant(s)

Secretary of State for the Home Department

Respondent(s)

- (1) AAA (Syria)
- (2) AHA (Syria)
- (3) AT (Iran)
- (4) AAM (Syria)
- (5) NSK (Iraq)

Intervener

United Nations High Commissioner for Refugees

Appeal

Justices

Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Briggs, Lord Sales

Hearing start date

9 October 2023

Hearing finish date

11 October 2023

Watch hearing

9 October 2023 [Morning session](#) [Afternoon session](#)
10 October 2023 [Morning session](#) [Afternoon session](#)
11 October 2023 [Morning session](#) [Afternoon session](#)

Judgment details

Judgment date

15 November 2023

Neutral citation

[2023] UKSC 42