23RD NOVEMBER 2017 *BY JAMES PACKER*

Strasbourg dismisses compensation claim for not allowing asylum seeker to work

Daniel Negassi v the United Kingdom **(application no. 64337/14) was an appeal to the European Court of Human Rights with a complaint that the Home Office's failure to grant Mr Negassi permission to work, while waiting for a decision on his asylum claim, was a breach of his right to respect for his private life under Article 8 of the European Convention of Human Rights (ECHR). Though handed down several months ago, it is worth looking at as a rare example of judicial consideration of this kind of claim.**

Complaint to the European Court of Human Rights

Mr Negassi argued that the refusal to grant him permission to work constituted an interference with his private life under Article 8, which was not in accordance with the law, and that as he had been unlawfully prevented from taking up an offer of a job, he ought to receive compensation.

The UK government submitted that the applicant's complaint was inadmissible under Article 35(3)(b). This was because Mr Negassi had not suffered a "significant disadvantage" when the government refused to give him access to the employment

market on the mistaken basis that he had not made a "claim for asylum" – even though the decision in *R (ZO) and MM* [2009] EWCA Civ 442 had made plain that his "representations" were on their true construction "a further claim for asylum". (The Home Office's further appeal to the Supreme Court in that case was dismissed and criticised as not following "any conventional basis of reasoning".) Mr Negassi responded that he suffered "significant disadvantage" because of the impact his inability to work had on both his personal life and his ability to integrate into the community.

The government also argued that Mr Negassi had suffered no real disadvantage, because the job he was offered would not have satisfied the new conditions now set out in paragraph 360 of the Immigration Rules (which now limit asylum seekers to employment in "shortage occupations" as defined by the Department of Work and Pensions).

The court found Mr Negassi's complaint to be inadmissible because it could not be said that the applicant suffered a "significant disadvantage" in the sense that the decision not to grant him permission to work led to serious adverse consequences. Mr Negassi, the court stated, had not suffered from any actual prejudice. Had the full scope of Article 11 of the Reception Directive been known to the Secretary of State, the applicant would not have satisfied the criteria now in place in the Immigration Rules.

Thoughts on the case

This is a very disappointing decision. To start with, by the time Mr Negassi commenced his judicial review, and before he received his offer of employment, the Court of Appeal had already ruled (in *R (ZO)* and *MM*) that people in his position ought to be allowed to work in accordance with the earlier version of paragraph 360 of the Immigration Rules. There was no stay on the effect of that decision, and the restriction to "shortage occupations" was only brought in several months later after the concurring judgment of the Supreme Court, so it is hard to see any justification for the argument that the Secretary of State would have changed the Rules earlier if she had appreciated the true position.

More fundamentally, in ordinary claims for damages, it is not a defence to say "I would not have acted unlawfully and thereby cost you money if I had properly understood the law". Damages for breaches of human rights are supposed to be awarded on the ordinary legal principles of the individual member state, so it is difficult to understand why a different standard should apply in this case.

Finally, those who represent asylum seekers and witness the destitution into which they are often forced, and the despair and helplessness that not being able to support themselves or their families through work engenders, will join me in wondering if the Strasbourg court is really right to suggest that those suffering from an unlawful denial of a right to work for years at a time are not suffering a "significant disadvantage".

At least it is still possible to bring such claims to Strasbourg. Mr Negassi's claim had also included, at the domestic level, claims for damages in relation to the breach of his rights under EU law (as the right for asylum seekers with undecided claims to enter the labour market is governed by an EC Directive). As James Segan of Blackstone Chambers has pointed out in his excellent post, the "Great Repeal Bill", in its draft form, appears to extinguish such rights.

James Packer of Duncan Lewis represented Mr Negassi with the assistance of Richard Wilson QC of 36 Bedford Row leading Declan O'Callaghan of Landmark Chambers.

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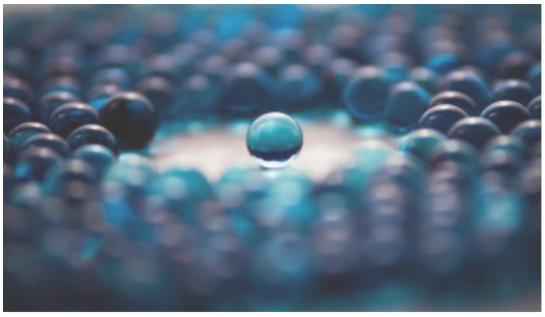

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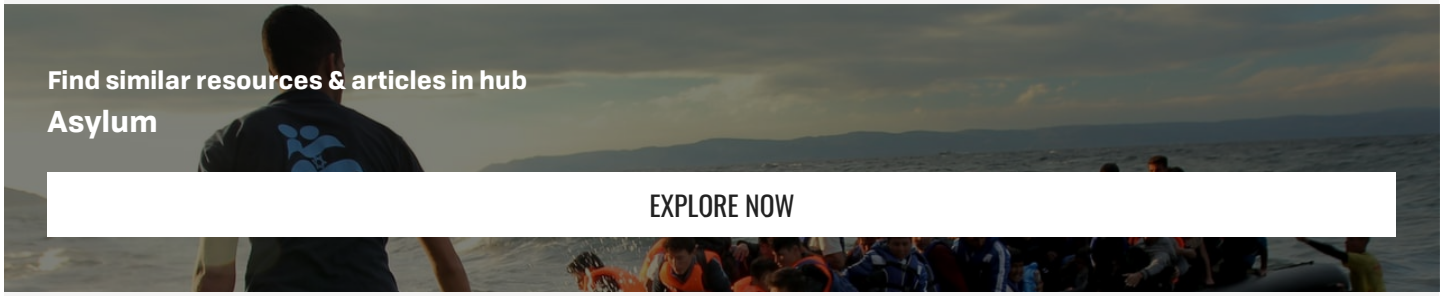

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