



Immigration & Asylum Law

JELIA SANE

BARRISTER, DOUGHTY STREET CHAMBERS

IMMIGRATION AND ASYLUM LAW: CORE PRACTICE AREAS

- ▶ Asylum/Refugee
- ▶ Deportation
- ▶ Unlawful detention
- ▶ Trafficking
- ▶ Nationality
- ▶ EEA
- ▶ Points Based System

IN FOCUS: LITIGATING THE EU REFUGEE CRISIS

- ▶ UNHCR and IOM estimate that:
 - ▶ **65.6** million people uprooted by violence/conflict/persecution including **22.5** million refugees- **20** people forcibly displaced **every minute**.
 - ▶ Europe: +**1,000,000** (2015); + **390,000** (2016); + **185,000** (2017); **12,000** (2018).
 - ▶ Number of asylum applications in the EU doubled between 2014 and 2015
 - ▶ High number of unaccompanied minors
 - ▶ Barriers to asylum: lack of access to information and legal advice; misinformation/pressure exerted by smugglers; fear and mistrust of authorities; suspicion and disbelief; delays in national systems; poor material reception conditions.

The Calais Jungle

- ▶ Formally dismantled October 2016 by French authorities
- ▶ 7000 adult residents + 1850 lone children evacuated to reception centres across France where able to claim asylum
- ▶ Majority of residents were Afghan and Eritrean
- ▶ Very poor material conditions
- ▶ No effective access to **asylum** or **family reunification** (in the case of children, no mechanism for identification and protection)

ZAT v SSHD: THE LEGAL CHALLENGE

- ▶ 7 applicants from Syria- 3 unaccompanied minors + 1 dependent in the Jungle and 3 relatives based in the UK
- ▶ Right to family reunification under Article 8(1) Dublin Regulation III
 - ▶ “[w]here the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or sibling of the unaccompanied minor is legally present, provided that is in the best interests of the minor.”
- ▶ French Dublin process not working effectively for unaccompanied minors in Calais: particularities of the French asylum system- linked with the care system.
- ▶ Only 1 successful transfer of an unaccompanied minor between 2010-2015

ZAT v SSHD: THE LEGAL CHALLENGE

- ▶ Wrote to the Secretary of State: admit under Article 8 ECHR (family life) without waiting for a formal take charge request under Dublin.
 - ▶ Evidence
 - ▶ Article 17 Dublin
 - ▶ Article 8 ECHR: admission for the purposes of refugee family reunification
- ▶ Refusal challenged by way of judicial review in the Upper Tribunal:
 - ▶ Dublin not effective in France
 - ▶ Dublin does not exclude human rights protection (ECHR)
 - ▶ Best interests of the child, special obligation to facilitate reunion of lone children
 - ▶ Disproportionate interference with Article 8 ECHR

ZAT v SSHD: THE OUTCOME

- ▶ Upper Tribunal [2016] UKUT 61 (IAC)
 - ▶ Legal test under Article 8: is the interference proportionate?
 - ▶ Dublin Regulation is a '**material consideration of undeniable potency**' in the proportionality exercise such that '**judges will not lightly find that, in a given context Article 8 operates in a manner which permits circumvention of the Dublin Regulation procedures**'.
 - ▶ However on the facts, balance in favour of admission: young age; vulnerable mental state; adverse impact of prolonged separation;
 - ▶ Ordered admission

▶ Court of Appeal [[2016] EWCA Civ 810

- ▶ UT had placed insufficient weight on the importance of adhering to Dublin + too great a weight on the conditions in the Jungle
- ▶ An application for entry by an unaccompanied child, without first invoking the relevant Dublin III Regulation in France, can "**only be justified in an especially compelling case**".
- ▶ This is only the case if it can be shown that the system of the Member State in question "is **not capable of responding adequately to their needs**" and it would "**generally be necessary for minors to institute the process in the country in which they are in order to find out and be able to show that the system is not working in their case**"
- ▶ Court concluded that had the 'especially compelling' test been made, not clear that UT would have reached the same findings and allowed appeal on that basis. No further order made because SSHD did not seek return of the 4 appellants.

Where are we now

- ▶ Jungle demolished in October 2016
- ▶ Home Office 'expedited process' for claims by unaccompanied children under Dublin III and s.67 Immigration Act (Dubs Amendment)
- ▶ *R (on the application of AO & AM) v Secretary of State for the Home Department [2017] UKUT 168*
- ▶ *Citizens UK v SSHD [2017] EWHC 2301 (Admin)*
- ▶ *Help Refugees Limited v Secretary of State for the Home Department ([2017] EWHC 2727 (Admin*

