



Forged Documents - Refugee Convention Article 31

The 1951 Convention relating to the status of refugees (the Refugee Convention) is the United Nations treaty regulating the acceptance by Contracting States of persons claiming asylum on account of their fleeing persecution in their countries of origin for reasons of race, religion, nationality, membership of a particular social group or political opinion. Various aspects of the law relating to asylum are discussed in several legal briefing papers on this website. The purpose of this paper is to draw attention to a recent decision of the Criminal Division of the Court of Appeal relating to the application of Article 31 of the Refugee Convention and the related section 31 of the Immigration and Asylum Act 1999. Article 31 is headed "Refugees unlawfully in the country of refuge" and paragraph 1 of that Article states:

"The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming from a country where their life or freedom was threatened in the sense of Article 1, [i.e. because of fears of persecution for any of the reasons stated above] enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

Section 31 of the 1999 Act gives detailed effect to this Article in UK law by making it a defence for a refugee who has come to the UK directly from a country where his life or freedom was threatened within the meaning of the Refugee Convention and is charged with specified offences to show that he:

- (a) presented himself to the authorities in the UK without delay;
- (b) showed good cause for his illegal entry or presence in the UK: and
- (c) made a claim for asylum as soon as was reasonably practical after his arrival in the UK.

The specified offences are listed in subsection (3) of section 31 and relate to forgery, deception and falsification of documents under the Immigration Act 1971 and other enactments.

2 These provisions fell to be considered by the Court of Appeal Criminal Division in *R.v Mateta and others* [2013] EWCA Crim 1372 in a judgment delivered on 30 July 2013. All five defendants had been individually convicted of offences under the Identity Documents Act 2010 because they had presented forged passports on entry or on leaving the UK and were sentenced to terms of imprisonment. All had been granted asylum either on application or on appeal against refusal. They had not been made aware of section 31 and had been advised by their legal advisers that they had no option but to plead guilty. It was clear from the facts in each case that if they had pleaded not guilty and section 31 had been pleaded, the defence would have been valid and the defendants would have been acquitted. The advisers had clearly failed in their duty to their clients.

3 Although the defendants had pleaded guilty their appeals were successful and their convictions were quashed by the Court of Appeal. The legal basis for this decision, based on earlier case law, is set out in paragraph 22 of the judgment of Lord Justice Leveson. In the normal way following a guilty plea an application for leave to appeal would be refused, but the Court held that the pleas in these cases were nullities because there had been no true acknowledgement of guilt. The defendants had been wrongly advised and their convictions were unsafe.

Comment

4 The section 31 defence is available only to a refugee as defined in the Refugee Convention and would not in the normal way be of assistance to a failed asylum seeker. Furthermore, the refugee must show that he complied with the three requirements set out in paragraph 1 above. There is a further hurdle to be cleared as set out in section 31(2), which states that if on his way to the UK the refugee stopped in another country he will have the benefit of the defence only if he shows that he could not reasonably have been expected to benefit from the Refugee convention in the other country. In practice a transit stop on the way would not be regarded as bringing this subsection into operation. Undue delay in claiming asylum after arrival will go against him and may well in any event affect the credibility of evidence given in support of his claim to refugee status.

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