

Briefing on the Supreme Court ruling on Rwanda – November 2023

Background

In April 2022 the Government set up the [Rwanda asylum plan](#), a new system for dealing with applications from asylum seekers. Instead of all asylum applications being considered by the Home Office in the UK, the government drew up a Memorandum of Understanding with Rwanda whereby some asylum seekers would be sent to Rwanda and have their asylum decisions decided under the Rwandan asylum system. If their application was successful, they would stay in Rwanda, if not they could be returned to the country they were fleeing. Either way this was a cruel system to set up for those asking the UK for protection.

The Claimants were 10 individual asylum-seekers who entered the UK irregularly in small boats, who could have been dealt with under this scheme, challenged the Rwanda asylum plan in court.

Supreme Court result

In December 2022, the Divisional Court [dismissed](#) the general challenge to the policy. But in June 2023, the Court of Appeal, by a 2-1 majority found that the policy was [unlawful](#).

The UK's Supreme Court delivered its [ruling](#) on the Rwanda case on 15th November 2023.

The Supreme Court ruled against the government, determining that it would **not be safe to send those seeking asylum to Rwanda as their asylum decision making system was not robust enough**.

There was a risk that the asylum seekers could be subjected to refoulement, i.e. returned to their countries of origin despite facing risk of human rights abuses. The Supreme Court stated that this is illegal under both international and UK domestic law, including the Refugee Convention, the European Convention on Human Rights and the UK's Human Rights Act.

The judgement relates specifically to Rwanda and does not consider the lawfulness of the policy of offshoring asylum decisions.

What does this mean for the government?

The government cannot currently go ahead with its plans to fly asylum seekers to Rwanda for their asylum decisions to be made there. This is not the courts dictation to government but rather the courts ensuring the **government follows the laws that parliament created**.

The government is looking at ways to overcome this ruling. Home Secretary, James Cleverly, has said it will not be necessary to leave the European Convention on Human Rights. However, the government is looking at other mechanisms and finding ways to avoid complying with the European Convention by including clauses in new legislation.

To deliver on the Rwanda policy as proposed, the government would need to, in effect:

1. Leave several international treaties the UK signed including the European Convention on Human Rights, the UN Convention against Torture and the UN Covenant on Civil and Political Rights.
2. Even then, 'refoulement' goes against customary international law¹, which exists outside actual treaties or laws.

¹ rules that come from "a general practice accepted as law" and exist independent of treaty law

3. 'refoulement' is also banned in domestic law by the Asylum and Immigration Appeals Act 1993 and the Human Rights Act 1998.

What does this mean for us?

As Jews, we have experience of seeking refuge in foreign countries in circumstances where to be sent back would mean certain death.

It is no surprise that the legislation is aimed at reducing the rights of minorities, in this case those seeking protection in the UK. As a minority ourselves, we know the importance of standing up for the rights of other minorities.

Along with 129 other organisations, René Cassin has signed a [joint statement](#) welcoming the judgement.

The threat of withdrawing from the [European Convention on Human Rights](#) being made by right wing members of the government appears to have reduced. However, is it something we will be keeping under review.

The European Convention in particular, and the overarching modern human rights framework, are outcomes of the Holocaust and influenced by Jewish lawyers, Hersch Lauterpacht, Raphael Lemkin and Monsieur Rene Cassin. As such, they are part of our legacy.

At René Cassin we will continue to work with partners to emphasise the importance of human rights, and the European Convention on Human Rights, in maintaining dignity, fairness and respect.

About René Cassin

www.renecassin.org

René Cassin is a UK human rights charity (Reg No 1117472), named after the French-Jewish co-author of the UN's 1948 Universal Declaration of Human Rights.

René Cassin works to promote and protect universal rights drawing on Jewish experience and Jewish values. René Cassin works:

- within the Jewish community – by building support for human rights values amongst British Jews.
- in the wider community – by bringing the authority of a Jewish perspective on issues that resonate with Jewish experience.

Contact us at info@renecassin.org