

Asylum: Demonstrations at Embassies: UK Court Decides

Many people attend outside embassies in London demonstrating against governments of their countries of origin for a whole range of reasons. People demonstrate under the banner of democracy, human rights and others seek a complete change of government in their countries. People do so agitating for human rights to be respected and seeking to draw international attention to their different causes. Demonstrations have been staged for good causes but others with ulterior motives. It is significant to note that many people have also used these demonstrations as evidence in support of their claims for asylum in the UK. Any such claims for asylum are characterised as surplus activities basically referring to circumstances which have happened after they left their countries. Demonstrations of such a nature are deemed political activity to justify a conventional reason for one seeking asylum.

The question which arises is whether all demonstrations at embassies by foreign nationals are justified and could be used in support of asylum claims. It is almost a trend that people claiming asylum would provide photographs and evidence of attendance. At times they are interviewed at the demonstrations as evidence in support of their asylum claims. Others simply provide any such evidence without knowledge of what really they need to outline and what would be expected of them in courts. In the case of *BA (Demonstrators in Britain- risk on return) Iran*, the appellant BA entered the UK in 2008 on a student visa which expired in 2009 and thereafter he decided to claim asylum in the UK. He participated in five demonstrations outside the Iranian Embassy in London. He was involved in demonstrations when there were protests both in Iran and around the world following what were perceived to be malpractices leading to the re-election as president of Iran of Mahmud Amedinejad over his rival, Mir – Hussein Mousavi. The appellant in that case also featured briefly for 2-3 seconds in a video clip of the demonstrations, chanting anti- regime slogans. The clip was uploaded onto YouTube and is thus available on the internet. The appellant's photographs also appeared in a story about protests in a magazine and in anti regime publications.

The first Immigration judge who dealt with the case found that the appellant "deliberately and opportunistically attempted to establish a claim as a refugee sur place" by participating in the demonstrations. However, the judge added: "I do not however take this into account when assessing the appellant's risk upon return". Even if the appellant had been involved opportunistically in demonstrations to lay the basis of his asylum claim sur place, the judge said, on his own evidence he had only attended five demonstrations, with hundreds of others. He was not politically active while in Iran. The judge then made findings– about the extent to which the Iranian authorities could, or would try to, identify the appellant from among the demonstrators and the risk he faced, were he to be identified, when he was not perceived to be a political dissident by the Iranian authorities. Even applying the lower burden of proof, and resolving doubts in the appellant's favour, the judge was not satisfied that there were substantial grounds for believing that the appellant, if returned to Iran

would face a real risk of persecution, death, torture or inhuman or degrading treatment or punishment.

However, the appellant appealed to the Upper Tribunal and the court had occasion to provide detailed guidelines as to what the courts should look at when considering demonstrations and surplus activities. The court ruled that it is not enough for an applicant to simply attend at the demonstrations and to hang around with others without more. The Upper Tribunal discussed and concluded that there are four factors which have to be considered by the courts when dealing with surplus activities. The factors are: (i) the type of sur place activity involved; (ii) the risk that a person will be identified as engaging in it; (iii) the factors triggering inquiry on return of the person and; (iv) in the absence of a universal check on all entering the **country**, the factors that would lead to identification at the airport on return or after entry. For each factor there is a spectrum of risk. The factors are not exhaustive and may overlap.

(i) Nature of sur place activity

- Theme of demonstrations – what do the demonstrators want (e.g. reform of the regime through to its violent overthrow); how will they be characterised by the regime?
- Role in demonstrations and political profile – can the person be described as a leader; mobiliser (e.g. addressing the crowd), organiser (e.g. leading the chanting); or simply a member of the crowd; if the latter is he active or passive (e.g. does he carry a banner); what is his motive, and is this relevant to the profile he will have in the eyes of the regime
- Extent of participation – has the person attended one or two demonstrations or is he a regular participant?
- Publicity attracted – has a demonstration attracted media coverage in the United Kingdom or the home **country**; nature of that publicity (quality of images; outlets where stories appear etc)?

(ii) Identification risk

- Surveillance of demonstrators – assuming the regime aims to identify demonstrators against it how does it do so, through, filming them, having agents who mingle in the crowd, reviewing images/recordings of demonstrations etc?
- Regime's capacity to identify individuals – does the regime have advanced technology (e.g. for facial recognition); does it allocate human resources to fit names to faces in the crowd?

(iii) Factors triggering inquiry/action on return

- Profile – is the person known as a committed opponent or someone with a significant political profile; does he fall within a category which the regime regards as especially objectionable?
- Immigration history – how did the person leave the **country** (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry and/or being detained for more than a short period and ill-treated (overstayer; forced return)?

(iv) Consequences of identification

- Is there differentiation between demonstrators depending on the level of their political profile adverse to the regime?

(v) Identification risk on return

- Matching identification to person – if a person is identified is that information systematically stored and used; are border posts geared to the task?

In the case under discussion the Upper tribunal reversed the earlier decision by the first Immigration Judge and allowed the appeal on asylum and human rights grounds. The above factors have a bearing not only to Iranians but to other nationalities who seek to rely on demonstrations in the UK in their asylum claims. Popular claimants in this regard are Burmese, Iranians, Eritreans and Zimbabweans. The real question in most cases is what follows for an individual claimant. It is not good enough for a person to be simply a hanger over with no real commitment to the oppositionist cause. It does not require affirmative evidence to establish a probability that the intelligence services of repressive states monitor the internet for information about oppositionist groups.

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