

**Zadání pro argumentační seminář „Mezinárodní právo veřejné II - právo uprchlické“
Ak. rok 2005-2006**

Manželé S. pocházejí ze severní části státu Nigérie a patří ke křesťanské části obyvatelstva. V zemi žije cca 250 etnik. 50% obyvatel vyznává islám a jejich podíl se nadále a vytrvale zvyšuje. Křesťané tvoří cca 42% obyvatel, zbytek vyznává tradiční domorodá náboženství. Rozhraní mezi oběma největšími náboženskými skupinami probíhá horizontálně zhruba uprostřed federace. Severní region této země je převážně muslimský, ve Středním pásmu se ve velkém počtu vyskytují muslimové i křesťané. V mnoha oblastech Středního pásma probíhá náboženské napětí. Během posledních dvou let se do Středního pásma vrátilo etnicko-náboženské násilí. Odhady počtu obětí se pohybují mezi 1000 a 1500 osob. Mnoho jižních etnických skupin je převážně křesťanských.

Ústava zaručuje svobodu vyznání, včetně svobody měnit náboženství nebo víru a svobodu šířit své náboženství nebo víru a svobodu učení, praktikováním a dodržováním. V některých směrech však vláda tato práva omezila. Ve 12 severních státech pokračovalo provádění rozšířeného práva šarí'a, což vedlo ke zpochybnění svobody vyznání zaručené ústavou a v některých případech k podnícení etnicko-náboženského násilí. Obecně se ve státech s jasnou převahou křesťanů nebo muslimů výslovně preferuje víra většiny obyvatel. Zákon zakazuje náboženskou diskriminaci. Ke konci roku byly ve 12 severních státech platné různé verze islámského trestního práva šarí'a. Soudy řídicí se právem šarí'a vydávali rozsudky „hadd“, jako např. amputace za krádež, bití holí za smilstvo nebo veřejnou opilost nebo smrt ukamenováním.

Manželé S. žijí v bytě o velikosti 35 m² s pěti dětmi. Nedaří se jim najít jiné bydlení, jelikož pronajímatelé nechávají klienty vyplnit formulář, do kterého se vyznačuje náboženská příslušnost. Byt je vždy přednostně přidělen klientovi náležejícímu k muslimské většině. Děti nemohly studovat na škole, která by vyhovovala jejich zájmům z důvodu své náboženské příslušnosti. Často nachází před svým domem hanlivé nápisy poukazující na jejich náboženskou příslušnost a jsou obtěžováni výhružnými telefonáty. Pan S. pracuje u křesťanského muže. Několikrát k zaměstnavateli vtrhla skupina muslimských mužů, která jim oběma vyhrožovala znásilněním jejich manželek, „jestli nekonvertují k islámu“. Zavolali policii, která však nikdy nepřijela. K odchodu ze země se odhodlali poté, co byl syn surově zbit při protestech proti rozšiřování práva šarí'a. Přestěhování se do jihovýchodní části se jim jeví jako nemožné z důvodu těžké sociální a finanční situace, ceny nemovitostí jsou v jihovýchodní části podstatně vyšší, obávají se rovněž rozšiřování islámu po celém území státu.

Otázky:

1. Jaké jsou rozhodující skutečnosti pro posouzení, zda se jedná v tomto případě o pronásledování?
2. Jedná se v tomto případě o pronásledování ve smyslu Ženevské úmluvy z roku 1951?
3. Pokud ano, v jakém jednání spočívá pronásledování?
4. Může být diskriminace pronásledováním ve smyslu Ženevské úmluvy z roku 1951?
5. Je pro posouzení žádosti o azyl důležité, že se na „obtěžování“ rodiny S. nepodílely státní orgány?
6. Změnila by se situace žadatelů, kdyby na území severní části státu nebylo zavedeno trestní právo šaría?
7. Lze na daný případ aplikovat i jiné mezinárodní smlouvy o lidských právech?

Literatura:

- 1) příručka UNHCR (http://www.unhcr.cz/publ_guides.htm)
- 2) Čepelka, C., Jílek, D., Šturma, P.: Azyl a uprchlictví v mezinárodním právu, Brno, Masarykova Univerzita, 1997.
- 3) Ženevská úmluva z roku 1951
- 4) §2 odst. 6 zákona č.325/1999 Sb., o azylu
- 5) UNHCR: Doporučení z oblasti mezinárodní ochrany – Azylové žádosti založené na tvrzení o pronásledování z náboženských důvodů podle článku 1A (2) Úmluvy 1951 a/nebo jejího Protokolu o statutu uprchlíků z roku 1967, HCR/GIP/04/06

Přiložené dokumenty

1. **výňatky ze zprávy o dodržování lidských práv v Nigérii**

<http://hrw.org/reports/2005/nigeria0505/>

Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States

This report was written by Carina Tertsakian, researcher in the Africa Division of Human Rights Watch. It was edited by Sonya Maldar, researcher, Michael Clough, advocacy director, and Georgette Gagnon, deputy director, all in the Africa Division; Wilder Tayler, Legal and Policy director; and Iain Levine, Program director.

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Summary

In the first half of 2004, hundreds of people were killed in inter-communal fighting between Muslims and Christians in and around the town of Yelwa and the southern part of Plateau State, central Nigeria, bringing the total number of victims of the violence in Plateau State

since 2001 to between 2,000 and 3,000. The violence reached a peak between February and May 2004 in the area around the towns of Yelwa and Shendam. There were many attacks during this period, but two stood out in terms of their scale, the number of victims and the level of preparation and organization. On February 24, 2004, armed Muslims killed more than seventy-five Christians in Yelwa; at least forty-eight of them were killed inside a church compound. Then on May 2 and 3, large numbers of well-armed Christians surrounded the town of Yelwa and killed around seven hundred Muslims. Yelwa and many surrounding villages suffered massive destruction, and tens of thousands of people were displaced.

One week later, on May 11 and 12, Muslims in the northern city of Kano—several hundred kilometers away from Plateau State—took revenge for the Yelwa attack and turned against Christian residents of Kano, killing more than two hundred. A once localized dispute in a specific part of Plateau State had escalated into a religious conflict of national dimensions. Most of the victims of the violence in Plateau and Kano states were unarmed men, women and children who were targeted simply because of their religion.

The federal government and security forces bear a heavy responsibility for the massive loss of life in Yelwa and Kano. In Yelwa, the security forces were absent during the attack of May 2-3. Around 700 people had already been killed by the time the army intervened. Likewise in Kano, around 200 people had been killed before peace was restored. Then, instead of protecting those at risk and trying to arrest the perpetrators, some of the police and soldiers deployed to Kano carried out dozens of extrajudicial killings, contributing further to the violence. Their actions in Kano were typical of the response of the security forces to previous outbreaks of inter-communal violence in other parts of Nigeria.

The conflict in Plateau State stems from longstanding disputes over land and political and economic privileges between ethnic groups who consider themselves “indigenes,” or original inhabitants of a particular area, and those whom they view as “settlers.” These disputes are not a new phenomenon in Plateau State, but until 2001, they had not led to large-scale loss of life. In September 2001, tensions suddenly exploded in the state capital Jos, and around 1,000 people were killed in just six days. What had originally been an ethnic and political conflict turned into a religious one, as the ethnic divide happened to coincide with the religious divide: the conflict between “indigenes” and “settlers” became a conflict between Christians and Muslims, as both sides exploited religion as an effective way of mobilizing large-scale support. The violence then spread out of Jos to other parts of Plateau State, and scores, and possibly hundreds, more people were killed in 2002 and 2003 in a cycle of attacks and counter-attacks by both Muslims and Christians. Muslims and Christians from different ethnic groups have become increasingly well-armed and have attacked their opponents with impunity, using religion as a tool to whip up sentiment and to spur on their followers.

Despite the escalation of the conflict in Plateau State since September 2001, and clear warning signs of the likelihood of further violence, the Nigerian government did not take any effective action and allowed the conflict to spiral out of control. Finally, when Yelwa was attacked on May 2-3, 2004, the scale of the violence could no longer be ignored. On May 18, 2004, Nigerian President Olusegun Obasanjo declared a state of emergency in Plateau State.

Relative calm was restored in the following months, and the Plateau State government embarked on a number of initiatives as part of a peace process under the state of emergency. But since the state of emergency in Plateau State was lifted in November 2004, the momentum to find long-term solutions to the conflict seems to have been lost. Critically,

justice has not been delivered. There have been some arrests, but the people responsible for planning or organizing the violence have not been prosecuted; neither have the police or soldiers responsible for killings in Kano. As evidenced by the chain of events in Plateau State over the last four years, the mere absence of fighting since May 2004 cannot be interpreted as a definitive end to the conflict. Until the root causes of the conflict are addressed, the violence could be reignited at any time, especially in the run-up to the next general elections, scheduled to take place across Nigeria in 2007.

In July 2004, Human Rights Watch researchers visited Plateau and Kano states, as well as a camp for the internally displaced from Yelwa in Lafia, capital of Nasarawa State. The information in this report is based on their interviews with eye-witnesses and survivors of the violence in these and other locations. Human Rights Watch also spoke with many other individuals and organizations including Christian and Muslim leaders at state and federal level, officials of the Kano and Plateau state governments, representatives of the police, local government representatives, traditional and community leaders, and non-governmental organizations.

Internal displacement

Each of the major attacks in Plateau State resulted in large movements of population. After the February 24, 2004 attack, almost all Christians moved out of Yelwa, and the town became a no-go zone for Christians. After the May 2004 attack, the number of displaced was even higher: tens of thousands of Muslims moved out of their homes in Yelwa and the surrounding area. Of a population of around 32,000, only around 1,000 people were left in the town of Yelwa following the May 2004 massacre. It was an indication of the extent of Muslims' fears that most of them felt safer fleeing to neighboring Nasarawa and Bauchi states, rather than to other parts of Plateau State. Likewise, those who were injured in the May attack sought treatment in hospitals in those two states, rather than in the Plateau state capital Jos. For several days after the attack, the roads leading out of Yelwa were patrolled by predominantly Christian armed youths, making it extremely difficult for Muslims to move freely.

By June 2004, an estimated 40,000 to 60,000 people from Plateau State were internally displaced, either within the state or in neighboring states. The majority of these had fled as a result of the May 2-3 attack in Yelwa, but some had fled from violence in other locations. Several camps were set up for the internally displaced in Nasarawa and Bauchi states. The National Emergency Management Agency (NEMA), a governmental body with structures at both federal and state level, provided some assistance, mostly in the form of distribution of relief materials and resettlement of those wishing to return. However, as in other conflicts in Nigeria, the federal government stated that it would not provide compensation to those affected by the violence. National and international non-governmental organizations, including the Nigerian Red Cross, Médecins Sans Frontières, and some Islamic relief organizations, as well as United Nations agencies, also provided medical and logistical assistance and other immediate relief in the camps for the displaced.

2. výňatky z rozhodnutí australského soudu

(c) 1998 Reed International Books Australia Pty Limited trading as Butterworths

FEDERAL COURT UNREPORTED JUDGMENTS OKERE v MINISTER FOR
IMMIGRATION AND MULTICULTURAL AFFAIRS
NG 154 of 1998
FEDERAL COURT OF AUSTRALIA NEW SOUTH WALES DISTRICT REGISTRY
1998 AUST FEDCT LEXIS 750; BC9804826

Review Tribunal - whether fear of persecution for reason of race, religion or membership of a particular social group - whether the Refugees Convention precludes persons who have a wellfounded fear of persecution for reason of what they have done as individuals - whether wellfounded fear of persecution may be motivated directly or indirectly by reason of religion

BACKGROUND FACTS

The applicant, Mr Okere, is a national of Nigeria. He is a Roman Catholic, belonging to the Igbo ethnic group. He is a single man in his thirties. He worked as a teacher in Nigeria between 1984 and 1988. From 1988 to July 1995 the applicant resided in the Philippines where he attained a university degree.

Mr Okere arrived in Australia on 9 July 1995. On 30 August 1995 he applied to the Department of Immigration and Ethnic Affairs for a protection visa. On 23 October 1996 the application was refused, and on 12 November 1996 the Mr Okere applied for a review of the delegate's decision by the Refugee Review Tribunal ("the RRT"). On 4 February 1998 the RRT affirmed the decision of the delegate to refuse Mr Okere's application for a protection visa. On 4 March 1998, Mr Okere filed in this Court an application for a review of the decision of the RRT. The RRT accepted the facts as asserted by the applicant. Those facts are conveniently summarised in the following passages from the reasons for decision of the RRT: "... the Applicant claimed that he left Nigeria to escape clan violence which had claimed most of his relatives; and also to avoid being forced to head a satanic sect to which he and his family are opposed. He claims that one week after his arrival in Australia by his step father, who had sent him overseas to study in order to avoid the sect, was poisoned by the sect in order to force the Applicant to return home. He claimed that the Nigerian government would not be able to protect him; aminy other things the government is controlled by Muslims who want to see Christians killing themselves.

.....

He drew my attention to the poor human rights record of the Nigerian government, which he argued, demonstrates their lack of concern. He said that he would not be able to avoid the problem by relocating to another part of Nigeria. He said that people travel around and word of his whereabouts would get back to his village. In addition he would have difficulty obtaining work as a teacher in other parts of Nigeria because he speaks his local dialect and would face discrimination."

THE REASONS OF THE RRT

The RRT identified the issue for its determination as whether the harm faced by the applicant should he return to Nigeria would be harm "directed at the Applicant for reason of one of the grounds enumerated in the [Refugees] Convention". In considering whether the harm feared by the applicant was on the basis of race or religion the RRT concluded that the applicant faces harm "because of what he has done as an individual ... not for reason of his race or religion".

The RRT
stated that:

"While the Applicant may not have been in a position where the sect members would wish to harm him were it not for his own religious beliefs which preclude his involvement with idol

worship, this is a bare causal connection not sufficient to establish that the persecution feared by the Applicant would be for reason of his religion"

The RRT also considered whether Mr Okere's application could succeed on the basis of his membership of a particular social group, within the meaning of the Refugees Convention. The RRT concluded that:

"In this case, on the basis of the available evidence, I am unable to identify any group to which the Applicant could be said to belong, which is united by its common non-belief in traditional religion, which is set apart from society by this common element, and which faces persecution as a group. There is no evidence before the Tribunal of any commonality between people who may not accept traditional beliefs, or who may refuse to be involved in traditional religious practices for any number of reasons. There is no evidence that such a group stands apart in Nigerian society; nor does the evidence support a finding that such a group faces persecution of itself; rather the evidence suggests that any such group could only be identified once an individual member was singled out for persecution. In these circumstances, the group could only be identified by the fact that its members face persecution. Moreover, I am satisfied that it is not because of what the Applicant is or believes, but because of what he, as an individual, has done, that he is at risk of harm. Accordingly, the Convention does not provide protection against that harm ..."

.....
Article 1A(2) of the Refugees Convention is to be construed as excluding from the protection afforded by the Refugees Convention persons who have a well-founded fear of persecution which is motivated not directly for reason, for example, of their religion, but only "indirectly" for reason of their religion. According to this contention, for example, persons who have a well-founded fear of persecution for reason of their refusal to work on the Sabbath could not be found to have a well-founded fear of persecution for reason of their religion; the persecution feared by them would be related to their refusal to work and not to their religion. Professor Hathaway in his book

The Law of Refugee Status at p148 expresses the view that "indirect prevention of religious practice is sufficient to establish a claim to refugee status". He refers to the decision of the Immigration Appeal Board (Canada) in Tomasz v Gozdalski (decision M87-1027X, 23 April, 1987) in which it was held that the compulsory scheduling by organs of the State of meetings for communist propaganda on Sunday mornings when good Roman Catholics would attend mass, could amount to religious persecution of a deeply religious person.

History supports the view that religious persecution often takes "indirect" forms. To take only one well known example, few would question that Sir Thomas More was executed for reason of his religion albeit that his attainder was based on his refusal to take the Succession Oath in a form which acknowledged Henry VIII as head of the Church of England.

3. Cases and Comments

Horvath v. Secretary of State for the Home Department

Tento materiál má 28 stran. Naleznete v něm důležité informace vztahující se k uprchlickému právu. Zejména ke koncepci pronásledování. Přečtěte si alespoň str. 1-10. Na IS je umístěn zvlášť pod názvem – dokument k argumentačnímu semináři – Horvath.