



Wide definition of political persecution in asylum claims

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The question of what amounts to 'political persecution' under the rubric of asylum protection is constantly evolving. Powerful individuals are all too willing to exploit their political connections to attack weaker opponents, often by way of corporate raiding, and often in cases where their victim has never taken direct action against them and does not even espouse opposing political views. Fortunately, the UK courts have shown a willingness to respond to these complex cases.

The 1951 Refugee Convention, of which the UK is a signatory, defines a refugee as any person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to return it."

Customarily, the Convention grounds of 'political opinion' have been applied to those who fear state persecution for their activity in opposition to the state. This can include membership of a banned political party, activism against a regime, or outspoken criticism of policies and methods. Such opinion will not suffice on its own to engage the Convention's protection; the individual must also establish that they have a well-founded fear of persecution as a result.

However, it is worth noting that asylum seekers cannot be asked to conceal their political beliefs in order to evade persecution; a principle deriving from the Supreme Court's decision in *RT (Zimbabwe)* [2012], which followed the ruling in *HJ (Iran)* [2010] that gay refugees cannot be sent home and told to hide their sexuality.

China's crackdown on those speaking out against the Chinese state's response to COVID-19 is an example of political persecution. The international community broadly accepts that President Xi Jinping, under the auspices of the Central Commission for Discipline Inspection, has increased the number of forced disappearances of whistle-blowers and dissidents. Recently an outspoken Chinese property tycoon, Ren Zhiqian, disappeared after Beijing authorities announced he had been placed under investigation the previous week for his comments about the pandemic.

In Saudi Arabia, there has been an increase in political persecution by the state since the rise of Crown Prince Mohammed bin Salman. In November 2019, the international NGO Human Rights Watch reported a campaign of targeted harassment and arrests, focussing on critical clerics, academics and human rights activists. Despite the announcement during 2019 of landmark 'feminist' reforms, women's rights activists continue to be put on trial and imprisoned for their activism.

If an affected individual in either of those situations was seeking humanitarian protection, they would rely on political persecution under the Refugee convention. Those that criticise state methods or

policies, whistle-blow, or promote activism would be considered to hold a qualifying political opinion.

Political opinion may be inferred from people's behaviour, their associations or their personal characteristics. As shown by the EU's Qualification Directive of 2001, this can occur without an individual acting upon their opinion. In 2016, the Court of Appeal confirmed in *MSM (Somalia)* that it does not even matter whether the individual truly holds the opinion; if their persecutor imputes it to them and persecutes them as a result, that will suffice.

In 2018 the Russian former economy minister Alexei Ulyukaev was accused of political corruption by Russia's paramount oligarch and Putin confidante, Igor Sechin. His subsequent arrest was uniquely shocking because he was serving in government at the time – a throwback to Stalin era purges – but his demise nevertheless followed a recognised trend in Russia, where politically powerful individuals accuse weaker opponents of imputed political crimes to ensure judicial punishment. This stems from the attitudes of the 'siloviki', which make up the ruling elite in Russia, headed by Putin. The 'siloviki' originated in Russia's ministries of force, where the overriding lesson was how to use force to become dominant over your opposition.

Individuals may be able to obtain protection from political persecution where they are attacked for ostensibly legitimate reasons, but those reasons in fact hide an ulterior, political motive. This is most likely to succeed in high risk jurisdictions where there is no meaningful distinction between those who wield private power and the state itself; and where former can exploit the corruption of the latter for their own benefit.

In William Browder's statement to the parliamentary intelligence and security committee, Russia was described as a kleptocracy. Browder describes a network of connected and influential people that, with the assistance of the state, are able to extort and persecute targeted individuals. *Horvath* remains the leading authority on assessing cases in which the applicant fears persecution from non-state actors and, in such cases, on the level of protection a state should afford its citizens against such persecution. Lord Lloyd held that the sufficiency of state protection should be measured by 'the availability of a system for the protection of the citizen and a reasonable willingness by the state to operate it'. In jurisdictions such as Russia, victims can face oppression from individuals both within and outside of the state institutions, particularly when it will be of benefit to the state itself.

Since 2000, the UK has granted political asylum to several high-profile Russian businessmen. A number of these high-profile businessmen were persecuted in similar circumstances: they were hit with financial criminal charges, which they successfully argued were politically motivated due to their perceived opposition to the regime. In such cases the state has attempted to extort funds from the victims, using all political means available to it.

A target could have no history of political dissidence or even no imputed political opinion but nevertheless be persecuted by every available means of the state purely due to their wealth and non-participation as a 'political elite' of that regime. In practice, victims of this form of political persecution should try to show that their case fits an established pattern of persecution against people in similar circumstances in their home country. This can be evidenced by reports from government agencies where they are claiming asylum, reports from human rights organisations, or media articles.

The UK courts have shown through case law that they have a sophisticated understanding of the evolution of political persecution. They have done this through varying evidential requirements and their recognition that the persecuted must not be required to modify their conduct. The UK courts have granted asylum due to political persecution in many guises and since 2010 has had the specialist First-Tier Tribunal of the Asylum and Immigration Chamber to deal with these challenging and complex cases.

Article by Partner Matt Ingham and Paralegals Richard Milford and Isaac Ricca-Richardson in the Citizenship & Immigration Department at Payne Hicks Beach. For further information please contact

either Matt Ingham by email, Richard Milford by email or Isaac Ricca-Richardson by email or, alternatively, telephone on 020 7465 4300.
