***Poshteh v. Royal Borough of Kensington and Chelsea* [2017] UKSC 36**

EMBARGOED BY ORDER OF THE SUPREME COURT UNTIL 10 AM ON 10 MAY 2017

Ms Poshteh loses her appeal but *"highly restrictive approach adopted in Puhlhofer … no longer necessary or appropriate."*

Lords Neuberger, Lord Clarke, Lord Reed, Lord Carnwath and Lord Hughes

Today, the Appellant, Ms Poshteh, lost her appeal to the Supreme Court. Lord Carnwath, giving the only judgment of the Court, decided to uphold the reviewing officer's decision that the property Ms Poshteh was offered was suitable for her and that it was reasonable for her to accept it.

Understandably, Ms Poshteh is devastated by the decision of the Supreme Court. It is common ground that she suffers from post-traumatic stress disorder, depression and anxiety as a result of the torture she suffered whilst a political prisoner in Iran. The reviewing officer also accepted that as a result of her PTSD the Appellant suffered an involuntary reaction when she visited the property in the form of a panic attack and that this was why she subsequently refused it. Nevertheless, he concluded that the property was suitable for Ms Poshteh because it was not "objectively … reminiscent" of a prison cell, despite a prominent round window in the living room (see the photo attached). The medical evidence submitted by Ms Poshteh as to the psychiatric effects of being reminded of her experiences in Iran fell to be discounted for the same reason. The Supreme Court has confirmed that these reasons were adequate and the decision therefore lawful.

Ms Poshteh has said this about the decision:

> "I have waited many years for an end to my case. I don't understand the decision and I am scared for my future. If I don't have help from the council with finding a home, I will struggle to look after my son. I am too upset to think clearly and to say any more today."

In the course of his judgment Lord Carnwath agreed with the Appellant that "recourse to the highly restrictive approach adopted 30 years ago in the *Puhlhofer* case (*R v Hillingdon London Borough Council, Ex p Puhlhofer* [1986] AC 484) is no longer necessary or appropriate."

The Court also decided to affirm the ratio of its decision in *Ali v. Birmingham City Council* [2010] 2 AC 39, namely that a decision made pursuant to the homelessness provisions contained in Part VII of the Housing Act 1996 is not a determination of a "civil right" for the purposes of Article 6 ECHR, despite the European Court of Human Right (ECtHR) having reached the contrary view in *Ali v. United Kingdom* (2016) 63 EHRR 20.

As regards the applicability of Article 6, the Supreme Court concluded that a decision of a chamber of the ECtHR was not a sufficient reason to depart from its unanimous conclusion in *Ali v. Birmingham City Council*. The Appellant is therefore considering applying for her case to be decided by a Grand Chamber of the ECtHR.

Martin Westgate QC and Jamie Burton of Doughty Street Chambers were instructed by Hansen Palomares Solicitors.

Note to editors

Persons who are homeless, eligible for assistance (i.e. they have leave to remain in the UK), have a priority need (i.e. they are "vulnerable" as a result of mental or physical ill-health or because they have dependent children) and are not "homeless intentionally" (i.e. they are homeless through no fault of their own) are entitled to be offered accommodation by their local housing authority (s.193 Housing Act 1996).

Offered accommodation must be suitable (s.206). In order to be suitable the accommodation must be suitable in terms of size and arrangement, having regard to the applicant's individual circumstances, including their mental and physical health. It is also necessary for it to be reasonable for the applicant to accept the property, to be judged on what the applicant knew about the property at the time it was offered: see *Slater v. Lewisham LBC* [2006] EWCA Civ 394 mentioned in the judgment at [5]:

> "In judging whether it was unreasonable to refuse such an offer, the decision-maker must have regard to all the personal characteristics of the applicant, her needs, her hopes and her fears and then taking account of those individual aspects, the subjective factors, ask whether it is reasonable, an objective test, for the applicant to accept. The test is whether a right-thinking local housing authority would conclude that it was reasonable that *this applicant* should have accepted the offer of *this* accommodation."

Local authorities are entitled to operate a "one offer" policy whereby applicants who refuse one offer of suitable accommodation will not be made another offer of accommodation even if it means they will remain homeless (s.193(5)-(7)).

The Appellant, Ms Poshteh, is a refugee and the sole carer of her son. She was a political prisoner in Iran and subjected to torture before she escaped to the UK. As a result she suffers from PTSD and depression with associated anxiety and panic attacks.

Ms Poshteh was accepted as being a genuine refugee and given leave to remain in the UK. She was also accepted by the Respondent local authority (RBKC) as being unintentionally homeless, eligible for assistance and in priority need for accommodation. She was let temporary accommodation for her and her son.

In 2012 the RBKC attempted to move Ms Poshteh to alternative permanent accommodation. She was very happy to be offered the accommodation but when she visited it a prominent round window in the living room reminded Ms Poshteh of the window in the Iranian prison cell where she was tortured. She had a panic attack as a result.

Ms Poshteh refused the property because it reminded her of the torture she suffered in Iran and exacerbated her PTSD. She was worried that she would not be able to look after her son if she had to live there. Ms Poshteh's treating physicians confirmed that if exposed to inciting stressors, like a room which reminded her of a prison cell, her mental health would deteriorate.

RBKC's officer accepted that Ms Poshteh has PTSD and was genuine in her account of what happened when she viewed the property. He also accepted that properties that reminded the Appellant of her time in prison would be unsuitable for her. However, he concluded that as the living room in the property did not *objectively* resemble a prison cell it

was suitable for Ms Poshteh and reasonable for her accept it. Therefore as she had refused the property, which was long ago relet to another homeless family, RBKC no longer had any obligation to assist her in finding accommodation.

Ms Poshteh appealed unsuccessfully on the basis that it was not the objective nature of the property that mattered, but what the actual effect of the property would be on her if she lived there. Unfortunately, her mental illness meant she could not avoid being reminded by the property of her experiences in Iran, even if other people did not consider the resemblance to be as she experienced it.

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