

The UK's Rwanda Policy: The Final Frontier in Asylum Policy and Constitutional Identity?

Judgment of UK Supreme Court (UKSC) of 15 November 2023 in Case AAA (*and others*) v SSHD¹

1. Substantial grounds existed for believing that asylum seekers sent to Rwanda as part the UK's asylum offshoring policy would be at real risk of refoulement to another country.
2. The EU Procedures Directive was not 'retained law' so it ceased to apply in the UK after Brexit. The 'principle of legality' method of statutory interpretation only applies when interpreting fundamental or constitutional rights, which was not the case here.

Stephen Terrett

University of Warsaw, Poland

s.terrett@uw.edu.pl

ORCID: 0000-0002-1149-1939

<https://doi.org/10.26881/gsp.2026.2.18>

Commentary

Various applicants challenged a decision by the UK's Secretary of State for the Home Department (SSHD) to send them to Rwanda for their asylum applications to be processed and, if granted refugee status, to be resettled in Rwanda. The Rwanda policy is an apt subject for this special edition's focus on frontiers. The claimants crossed frontiers to enter the UK in 'small boats' and the policy redrew the frontiers of asylum law by 'outsourcing' asylum processing to Rwanda, a state with a poor human rights record. The judgment discusses the frontier between domestic law and retained EU law in post-Brexit Britain, raising questions about the border between politics and law, the executive and the judiciary. Such issues are particularly complex in the UK, a country with no written constitution, but they may be prescient of problems elsewhere, where politicians view the judiciary as illegitimately encroaching into the political arena and judges see politicians as overstepping constitutional boundaries and trespassing

¹ [2023] UKSC 42.

into areas which threaten the rule of law. This commentary is necessarily brief, but hopefully demonstrates the huge importance of the issue discussed herein.

References to a small boats crisis began in 2018, as the UK lifeguard intercepted a growing number of people crossing the Channel in inflatable boats, dinghies or kayaks, seeking to enter the UK without permission. Such crossings are extremely dangerous, as the Channel has busy shipping lanes, and the small boats are overcrowded and often lack radar or GPS, making them virtually invisible to other vessels. Hundreds have died attempting such crossings, including many children.²

Since 2018, over 162,000 'boat people' have arrived to the UK.³ Pakistanis, Syrians and Iranians are the prevalent nationalities, but others come from Afghanistan, Iraq, Albania and Vietnam.⁴ Official statistics indicate that 99% of them have claimed asylum.⁵ The growth in asylum claims from 2018 has caused significant backlogs which have resulted in refugee housing centres becoming overcrowded and alternative accommodation being used. By early 2025, many asylum seekers were accommodated in hotels,⁶ which enraged anti-immigration groups and led to violent protests in which one such hotel was set on fire. This took place in the years surrounding Brexit, against a backdrop of increasingly nationalist, populist politics.

In April 2022, Prime Minister Boris Johnson announced a *Migration and Economic Development Partnership* (MEDP) in which Rwanda agreed to shelter and process the asylum claims of boat people, and to allow successful applicants to remain in Rwanda. Unsuccessful claimants would be returned to a place where they had a right to reside, generally their home country. Rwanda made non-binding declarations that it would respect the rules of the *1951 UN Refugee Convention* (UNRC),⁷ including the prohibition on refoulement – i.e. returning refugees, directly or indirectly, to countries where their lives or freedom would be threatened. In exchange, the UK agreed to provide financial support to Rwanda.

The UK's new Immigration Rules⁸ gave the SSHD discretion to deem asylum claims inadmissible if the applicants had, or could have, received sufficient protection in

² The Missing Migrants Project website lists 1,486 migrants who have gone missing and hundreds who have died on migration routes in Europe since the 1990s. For details, see: <https://missingmigrants.iom.int/region/europe> [accessed: 26.04.2026].

³ For the latest official statistics, published by the UK government, see: <https://www.gov.uk/government/publications/migrants-detected-crossing-the-english-channel-in-small-boats> [accessed: 26.04.2026].

⁴ For the latest official statistics, published by the UK government, see: <https://www.gov.uk/government/collections/irregular-migration-to-the-uk-statistics> [accessed: 26.04.2026].

⁵ For the latest official statistics, published by the UK government, see: <https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-june-2024> [accessed: 26.04.2026].

⁶ The Migration Observatory at the University of Oxford has produced a helpful summary of the accommodation of asylum seekers in the UK, available from: <https://migrationobservatory.ox.ac.uk/resources/briefings/asylum-accommodation-in-the-uk> [accessed: 26.04.2026].

⁷ *1951 UN Convention Relating to the Status of Refugees*, as amended by the 1967 Protocol; see: <https://www.unhcr.org/media/1951-refugee-convention-and-1967-protocol-relating-status-refugees> [accessed: 26.04.2026].

⁸ *UK Immigration Rules*, paras. 345A–345D, in force prior to 28 June 2022.

a “safe country” before arriving in the UK. Such applicants could be returned to that safe country (generally assumed to be France), or sent on to a “safe third country” (generally assumed to be Rwanda). Subsequently, the *Illegal Migration Act 2023* rendered asylum claims by boat people inadmissible *ab initio*,⁹ including alleged victims of human rights abuses, slavery or human trafficking,¹⁰ and obliged the SSHD to deport them and ignore any ECtHR measures that might hinder deportation.¹¹

‘Taking back control’ of borders was central to the Leave campaign during Brexit, so the small boats crisis fitted neatly into this political narrative. When PM Johnson resigned, having breached his own government’s covid-19 restrictions,¹² his successors (Liz Truss and Rishi Sunak) continued to support the Rwanda policy. ‘Stop the boats’ became PM Sunak’s core pledge.

In May 2022, an Iraqi national (NSK) arrived to the UK by small boat and was arrested. His asylum claim was deemed inadmissible pursuant to the *Illegal Migration Act 2023* and he was scheduled to be deported to Rwanda. The High Court considered Rwanda to be a “safe country” and therefore rejected his application for a suspensory injunction. However, the ECtHR issued an interim measure which suspended his removal until a wider challenge to the Rwanda policy was heard.¹³

In September 2022, the High Court rejected that wider challenge, but ruled that NSK and others could not yet be deported due to the existence of procedural irregularities in their cases. In June 2023, the Court of Appeal ruled that the Rwanda policy was unlawful. The UKSC appeal addressed the question whether the lower courts had properly addressed if Rwanda is a “safe third country.” This would not be the case if substantial grounds existed to believe that asylum seekers would be exposed to a real risk of refoulement by Rwanda.¹⁴

The UKSC noted that the 1951 UNRC has 146 signatories, including the UK, and that, although it lacks any supranational enforcement mechanism, the UNHCR supervises its application by national courts.¹⁵ Signatory states’ autonomy over asylum is limited by UNRC rules requiring access to courts, due process¹⁶ and compliance with minimum

⁹ *IMA 2023*, s. 1.

¹⁰ The High Court of Northern Ireland ruled that parts of the *IMA 2023* violated the Windsor Framework (the revised N. Ireland Protocol forming part of the UK-EU Withdrawal Agreement) and Articles 3, 4, and 8 ECHR. It issued a declaration of incompatibility under the *Human Rights Act 1998*. In February 2025, an appeal against this was suspended by the N. Ireland Appeal court because the new government had proposed legislation to repeal the *IMA 2023*. The *Border Security, Asylum and Immigration Act 2025*, which received Royal Assent on 2 December 2025, repealed the *Safety of Rwanda Act 2024*, removing the legal framework that declared Rwanda a safe country and restricted court challenges. This rendered the Rwanda scheme inoperative.

¹¹ *IMA 2023*, s. 55.

¹² For a brief summary of the events leading to PM Johnson’s resignation, see: <https://www.bbc.com/news/uk-politics-65863730> [accessed: 26.04.2026].

¹³ *N.S.K. v the United Kingdom* (application no. 28774/22).

¹⁴ *Soering v United Kingdom* (1989) 11 EHRR; *MSS v Belgium and Greece* (2011) 53 EHRR 2; *Ilias v Hungary* (2019) 71 EHRR 6.

¹⁵ Article 35.

¹⁶ Articles 16, 32.

standards of treatment,¹⁷ including non-discrimination¹⁸ and non-refoulement.¹⁹ The latter rule is also enshrined in the UN 1984 *Convention against Torture* (UNCAT) and the 1966 UN *International Covenant on Civil and Political Rights* (ICCPR), which both have 173 signatories, including the UK. A ECtHR decision that Article 3 ECHR precludes refoulement²⁰ forms part of binding UK law. Refoulement is also prohibited by the UK's *Immigration Act 1971*, the *Immigration Appeals Act 1993*, the *Nationality, Immigration and Asylum Act 2002* and the *Asylum and Immigration (Treatment of Claimants etc) Act 2004*.

By listing the range of international and national law measures containing the non-refoulement rule, the UKSC implicitly stressed that its judgment was not based solely on the ECHR, thereby laying the intellectual foundations for protecting non-refoulement even if the UK leaves the ECHR. This also explains the UKSC's comment that non-refoulement "may" also form part of customary international law (CIL), as CIL would continue to bind the UK, and all other states, even in the absence of UK legislation on the topic.

The UKSC upheld the Court of Appeal's criticisms of the High Court's finding that Rwanda was "safe." The High Court had been too dismissive of a credible UNHCR report from June 2022²¹ which showed that Rwanda had regularly engaged in refoulement, in breach of assurances it gave Israel during an earlier asylum outsourcing scheme which the UN Committee Against Torture had condemned and the Israeli Supreme Court had declared unlawful.²² Rwanda's asylum system was structurally deficient. Between 2019–2022, only 152 asylum applications were decided; others were rejected without explanation. In 2020–2022, it rejected 100% of claims made by nationals from Afghanistan, Syria and Yemen, while UK statistics in this period showed success rates of 74%, 98% and 40% respectively. Access to legal representation and translators was limited. No appeals had ever been sent to the Rwandan High Court. The judiciary's independence from government was questionable. Moreover, the UK had criticised Rwanda's poor general human rights record, including "extrajudicial killings, deaths in custody, enforced disappearances and torture"²³ at a UN Human Rights Council in 2021. Accordingly, substantial grounds existed for concluding that Rwanda was not a "safe third country" and until systemic deficiencies were remedied, which could take years, the Rwanda policy would be unlawful.

This conclusion is entirely justified, especially following the ECtHR ruling in *Othman (Abu Qatada) v UK*²⁴ and the UKSC ruling in *Zabolotnyi v Mateszalka DC*.²⁵ Compared to

¹⁷ Articles 17–24.

¹⁸ Article 3.

¹⁹ Article 33.

²⁰ *Soering*, supra n. 14.

²¹ The Report is available at: <https://www.unhcr.org/uk/media/unhcr-analysis-legality-and-appropriateness-transfer-asylum-seekers-under-uk-rwanda> [accessed: 26.04.2026].

²² *Sagitta v Minister of Interior Administrative*, Appeal 8101/15.

²³ Supra n. 1, para. 76.

²⁴ Application 8139/09 [187].

²⁵ [2021] UKSC 14 [46].

the *Begum*²⁶ case, the more robust review of political assessments adopted is laudable, especially outside the content of national security. The UKSC's equivocality on the CIL status of non-refoulement is understandable because the applicants had not argued this point and the jurisprudence is inconsistent.²⁷ It is even more understandable that the UKSC refrained from commenting on whether non-refoulement is a non-derogable *jus cogens* rule, as some have suggested.²⁸

The UKSC also discussed the frontier between EU law which ceased to apply after Brexit and 'retained EU law' which continues to apply. Hardline Brexiters are dismayed that much EU law still applies in the UK, albeit having been issued with a metaphorical UK passport and deemed to be 'retained' (now known as 'assimilated') domestic law.

If Articles 25 and Article 27 of the *Procedures Directive*²⁹ were retained EU law, the applicants could only be sent to a country with which they had a "connection," which excluded Rwanda. After a detailed analysis of whether the *Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020* disapplied EU asylum law or merely EU free movement rights, the UKSC ruled that it also disapplied the *Procedures Directive*.

The UKSC refused to use the 'principle of legality'³⁰ to interpret these Articles because it only applies when interpreting fundamental or constitutional rights. The UKSC denied that these Articles enjoyed such status. Given the sensitivity and gravity of this case, it could have explained this conclusion more fully. Read together, these Articles regulate whether an asylum seekers can be sent to a safe third country. Article 27(1), defines a safe country as one which respects non-refoulement and other fundamental rights, such as the prohibition of removal in violation of the right to freedom from torture and cruel, inhuman or degrading treatment. This seems clearly linked to the exercise of fundamental rights. However, the applicants' pleadings focused not on Article 27(1), but on Article 27(2)(a), which requires a connection between the asylum seeker and the relevant third country. Accordingly, the UKSC's targeted conclusion that Articles 25 and 27(2)(a) do not concern fundamental rights is perhaps best understood as a surgical dissection of the claim as pleaded, rather than something undermining the UKSC's earlier recognition of non-refoulement as "a core principle of international law, to which the [UK] has repeatedly committed itself"³¹ and possibly CIL.

Overall, the ECHR played only a marginal, non-decisive role in the UKSC's reasoning in this case. It was not decided, nor even argued, that Art 3 ECHR would be infringed

²⁶ *Begum v SIAC* [2021] UKSC 7 [134]. See: P. Devyani, "A Paeon to Judicial (Self) Restraint: The UK Supreme Court Shamima Begum Decision," *VerfBlog*, 3 March 2023.

²⁷ S. Atkins, K. Walsh, "R (AAA) v SSHD and the Implications of Customary International Law for the UK," *Legal Studies* 2024, vol. 44, no. 2, n. 25.

²⁸ C. Costello, M. Foster, "Non-refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test" [in:] *Jus Cogens: Quo Vadis*, eds. M. Heijer, H. van der Wilt, series: Netherlands Yearbook of International Law, vol. 46, The Hague 2016.

²⁹ Directive 2005/85/EC on minimum standards on procedures for granting and withdrawing refugee status.

³⁰ See *Simms v SSHD* [2000] 2 AC 115 [131F]: "Fundamental rights cannot be overridden by general or ambiguous words" (Lord Hoffmann).

³¹ *Supra* n. 1 [26].

by sending asylum seekers to a country with which they have no connection.³² Nonetheless, some politicians used the judgment to justify repeated calls for the UK to leave the ECHR. Former PM Liz Truss said, in typically understated fashion, "We've got to leave the ECHR, abolish the Supreme Court and abolish the Human Rights Act."³³ The Conservative Deputy Chair said the government should ignore the UKSC's ruling and send the claimants to Rwanda anyway. Perhaps wishing to display political courage, instead of retreating from the policy, PM Sunak went on the attack.

The *Safety of Rwanda (Asylum and Immigration) Act 2024* declared "the judgement of Parliament that... Rwanda is a safe country" and that "the Parliament of the [UK] is sovereign, and the validity of an Act is unaffected by international law,"³⁴ including the ECHR, the 1951 UNRC, the ICCPR, UNCAT, the 2005 Human Trafficking Convention, customary international law and "any other international law, or convention or rule of international law, whatsoever, including any order, judgment, decision or measure of the [ECtHR]." Every decision-maker, including Ministers, immigration officers and courts were obliged to "conclusively treat the Republic of Rwanda as a safe country" and refuse to hear claims that Rwanda was unsafe due to performing non-refoulement or unfairly processing claims. The 2024 Act could be challenged under the UK's *Human Rights Act 1998*, but even if was deemed to be incompatible with the ECHR, it would continue to be valid and enforced.³⁵

The 2024 Act would inevitably have been challenged before the UKSC at some stage, but political events overtook this, as PM Sunak lost the 2024 election and PM Keir Starmer declared the Rwanda policy "dead and buried." During 19-months, the policy purportedly cost the UK £700 million. Senior politicians who defended it (including 3 PMs and 4 SSHDs) paid the ultimate political price, but no one was actually sent to Rwanda.

The Rwanda case foreshadows problems regarding asylum outsourcing schemes. Israel's policy of sending asylum seekers to Rwanda and Uganda was declared unlawful by its Supreme Court, yet Denmark and the Netherlands consider doing the same. Australia outsources asylum processing to Nauru and Papua New Guinea. Italy has created migrant processing centres in Albania. 15 EU Member States, supported by Ursula von der Leyen, have suggested creating 'hubs' outside the EU to house unsuccessful asylum seekers, only 20% of whom are currently deported. The tension between managing growing immigration while protecting human rights will surely generate future litigation regarding aspects of the 1951 UNRC, the ECHR and EU law which the UKSC did not explore in this case.

The UKSC did not discuss the constitutionality of the *Safety of Rwanda Act 2024*, which sought to abuse Parliament's sovereignty by forcing courts to accept untruths as truth and to refrain from hearing cases with clear human rights implications. Until

³² *Ibid.* [16].

³³ For details of the interview in which this was said, see: <https://www.thesun.co.uk/news/politics/27327797> [accessed: 26.04.2026].

³⁴ *SRA 2024*, s. 1(4).

³⁵ *Human Rights Act 1998*, s. 4(6).

now, Dicey's classical view that Parliament's laws are unchallengeable has only been hypothetically tested by statements such as those of Lord Carnwath that the rule of law is "an essential counterpart to the power of Parliament to make law" and that "it is ultimately for the courts, not the legislature, to determine the limits set by the rule of law to the power to exclude review"³⁶ or Lady Hale's view that courts "will treat with particular suspicion (and might even reject) any attempt to subvert the rule of law by removing governmental action affecting the rights of the individual from all judicial scrutiny."³⁷ The 2024 Act offered a realistic opportunity to see how the UK courts would, without a written constitution, view legislation that egregiously infringed the rule of law. Even those who wished that the UKSC would strike-down or disapply the Act disagreed on whether this would cross a constitutional Rubicon and cause constitutional chaos.³⁸

Ultimately, the UK's 'political constitution' resolved this issue, in an election, before judicial intervention was required. Perhaps this is best, as frontiers are best left unexplored. The Rwanda case will represent the final frontier of its kind provided that future governments refrain from abusing the concept of Parliamentary sovereignty so outrageously.

Literature

Atkins S., Walsh K., "R (AAA) v SSHD and the Implications of Customary International Law for the UK," *Legal Studies* 2024, vol. 44, no. 2, pp. 391–397.

Costello C., Foster M., "Non-refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test" [in:] *Jus Cogens: Quo Vadis*, eds. M. Heijer, H. van der Wilt, series: Netherlands Yearbook of International Law, vol. 46, The Hague 2016, pp. 273–327.

Crummey C., "The Safety of Rwanda (Asylum and Immigration) Bill and the Judicial 'Disapplication' of Statutes," *UK Constitutional Law Association Blog*, 26 March 2024.

Devyani P., "A Paean to Judicial (Self) Restraint: The UK Supreme Court Shamima Begum Decision," *VerfBlog*, 3 March 2023.

Tucker A., "The Rwanda Policy, Legal Fiction(s), and Parliament's Legislative Authority," *UK Constitutional Law Association Blog*, 22 November 2023.

³⁶ *R (Privacy International) v IPT* [2019] UKSC 22.

³⁷ *R (Jackson) v Attorney General* [2005] UKHL 56.

³⁸ Cf. C. Crummey, "The Safety of Rwanda (Asylum and Immigration) Bill and the Judicial 'Disapplication' of Statutes," *UK Constitutional Law Association Blog*, 26 March 2024 and A. Tucker, "The Rwanda Policy, Legal Fiction(s), and Parliament's Legislative Authority," *UK Constitutional Law Association Blog*, 22 November 2023.

Summary

Stephen Terrett

The UK's Rwanda Policy: The Final Frontier in Asylum Policy and Constitutional Identity?

The UK Supreme Court (UKSC) declared unlawful a UK immigration policy to send asylum seekers to Rwanda for processing and resettlement. Against a backdrop of Brexit and rising nationalist politics, the policy raised fundamental questions about the boundaries between domestic and international law and the challenges of balancing immigration control with human rights. After the UKSC ruled that Rwanda's asylum system was too dysfunctional for it to be a "safe third country," the government responded by adopting the Safety of Rwanda Act 2024, which obliged courts to deem Rwanda "safe" and barred appeals challenging that designation. The case involves growing tensions over asylum outsourcing and an ongoing constitutional debate on how courts can protect the rule of law in the absence of a written constitution and in the light of the Parliamentary sovereignty principle.

Keywords: immigration, asylum, refugees, Rwanda, non-refoulement, human rights, rule of law, UN Refugee Convention, safe third country, retained EU law.

Streszczenie

Stephen Terrett

Polityka Wielkiej Brytanii wobec Rwandy – ostateczna granica w polityce azylowej i tożsamości konstytucyjnej?

Sąd Najwyższy Wielkiej Brytanii uznał za niezgodną z prawem brytyjską politykę imigracyjną, która zakładała wysyłanie do Rwandy osób ubiegających się o azyl i przybywających na terytorium Wielkiej Brytanii bez zezwolenia w celu rozpatrzenia ich wniosków azylowych i osiedlenia się w tym kraju. Na tle brexitu i wzrostu tendencji nacjonalistycznych polityka ta rodziła fundamentalne pytania o granice między prawem krajowym a międzynarodowym oraz o wyzwania związane z równoważeniem kontroli imigracyjnej i ochrony praw człowieka. Po tym, jak Sąd orzekł, że system azylowy Rwandy jest na tyle dysfunkcyjny, iż państwo to nie może być uznane za „bezpieczny kraj trzeci”, rząd brytyjski zareagował przyjęciem ustawy o bezpieczeństwie Rwandy z 2024 r., która zobowiązała sądy do uznania tego państwa za „bezpieczne” oraz wyłączyła możliwość wnoszenia środków odwoławczych kwestionujących tę kwalifikację. Sprawa ta łączy zatem rosnące globalne napięcia wokół outsourcingu procedur azylowych z trwającą w Wielkiej Brytanii debatą konstytucyjną na temat roli sądów w ochronie praworządności w przypadku braku jednolitej konstytucji pisanej oraz w świetle zasady suwerenności parlamentu.

Słowa kluczowe: imigracja, azyl, uchodźcy, Rwanda, zasada non-refoulement, prawa człowieka, praworządność, Konwencja o uchodźcach, bezpieczny kraj trzeci, zachowane prawo UE.