

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 983 J.R.]

BETWEEN

A.L. (ALGERIA)

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE AND EQUALITY, THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 24th day of September, 2018

1. The applicant is a native of Algeria born in 1990. He left that country in 2010 on a UK student visa and came to Ireland from there. On 30th April, 2014 he sought asylum. His application was rejected due to his failure to attend for a s. 11 interview under the Refugee Act 1996. On 27th August, 2014 he applied for subsidiary protection. That was refused on 3rd December, 2015 on the grounds of his lack of credibility.

2. He then appealed to the Refugee Appeals Tribunal and in a decision dated 28th November, 2016, the tribunal dismissed the appeal in a decision authored by Mr. Mark Byrne B.L. That was notified to the applicant on 1st December, 2016. Judicial review papers were filed on 19th December, 2016 and the leave application formally opened on the following day.

3. It was not until August, 2017 that the applicant told the Department of Justice and Equality about the present proceedings and leave was not granted until 9th October, 2017. In the meantime, a proposal to make a deportation order had been made and that order was made in December, 2017, and is not challenged either in these proceedings or otherwise.

4. The applicant now seeks *certiorari* of the decision of the tribunal affirming the rejection of the subsidiary protection application.

5. I have received helpful submissions from Mr. Mark de Blacam S.C. (with Mr. Garry O'Halloran B.L.) for the applicant and from Ms. Emma Doyle B.L. for the respondents.

Ground 1 - incorrect test

6. As set out in the applicant's written submissions, this is no longer being pursued.

Ground 2 - failure to have regard to the applicant being from the North-East of Algeria (where country information supported there being local difficulties)

7. This ground is related to an element of ground 3 and I will deal with both together later in this judgment.

Ground 3 - preferential regard to country information and failure to have regard to information that the applicant would be considered absent without leave and subject to military law

8. Mr. de Blacam in submissions did not particularly pursue the complaint against the finding that the applicant would not be subject to harm by virtue of being a failed asylum seeker. That seems a sensible approach given the fact that the applicant on his own account left Algeria lawfully on a U.K. student visa. Therefore, the finding that he did not leave irregularly and would not be subject to harm on that account seems entirely logical: see paras. 6.8 and 6.9 of the tribunal decision.

9. The second leg of the complaint under this ground related to the treatment of risk having regard to geographical factors, which is related to ground 2 and I will deal with both of those together later.

Ground 4 - the tribunal's failure to address shortcomings in the decision of the Commissioner

10. The complaint made under this heading is that the tribunal "*wrongly failed to address the inadequacies in the Commissioner's decision*". Unfortunately, this submission fundamentally misunderstands the nature of the process before the tribunal. The tribunal is not engaged in judicial review and it is neither necessary nor appropriate for the tribunal to give its views on how the Commissioner handled any given application. The tribunal is simply coming to its own view on the evidence, and that is what this tribunal member did.

Ground 5 - Failure to apply the appropriate standard of care suitable to a hearing on the papers

11. Reliance is placed on the decision of Clark J. in *V.M. (Kenya) v. Refugee Appeals Tribunal* [2013] IEHC 24 [2018] 6 JIC 0506 (Unreported, High Court, 29th December, 2013) regarding the high standard of care needed for a decision made on the papers as opposed to after an oral hearing, but such a complaint is not really an independent ground for relief: see para. 25 of *V.M.* where a substantive error was found in the decision. Rather it was a reinforcing element where there was another error in that particular decision. In any event, it is hardly a complaint that carries huge weight in a situation where, as here, the applicant waived the right to an oral hearing.

Application of the test regarding risk arising from internal armed conflict

12. Article 2(c) of European Union (Subsidiary Protection) Regulations 2013 (S.I. 426 of 2013) defines the qualification criteria for subsidiary protection as including a situation where there is a "*serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict*". I discussed this test in *E.H.G.A. (Venezuela) v. International Protection Appeals Tribunal* [2018] IEHC 396 [2018] 6 JIC 0506 (Unreported, High Court, 5th June, 2018) at paras. 6 and 7, relying on Hailbronner and Thym, *EU Asylum and Immigration Law*, 2nd ed. (C.H. Beck/Hart/Nomos, 2016) at pp. 1238-1239. CJEU jurisprudence establishes that a situation of internal armed conflict includes conflict between a state and one or more armed groups.

13. The country information in the present case is not entirely consistent. The State Department Report 2016, quoted at paras. 6.4 and 6.5 of the decision, refers to armed conflict in a number of areas particularly Kabylie, which is to the east of Algiers,

Tamanrasset, which is in the south of the country and somewhat removed from any area of concern to us here, and Timimoun, which is part of Adrar province, also towards the south of the country.

14. However, the U.K. Home Office travel advice 2016 takes a somewhat broader view. First of all, it refers to armed conflict between the State and a number of groups: firstly, Al-Qaeda in the Islamic Maghreb (AQ-IM), Islamic State (Daesh) affiliates, and Al-Mourabitoun. The U.K. Home Office says that these conflicts occur "*across Algeria*" but particularly in the south central, north-east and border areas.

15. We turn then to that part of the decision that applies the test set out in art. 2(c) of the 2013 regulations. The tribunal member, at para. 6.10, refers in the context of this discussion only to the country information cited at para. 6.5, that is part only of the US State Department Report. The broader areas referred to in para. 6.4 are not referred to nor, more crucially, are the statements at para. 6.6 of the decision itself, which referred to difficulties across Algeria. The tribunal member goes on at para. 6.13 to refer to "*the fact that the conflict in Algeria is confined to the parts of the country described at 6.10*". That contradicts country information that is cited in the decision itself.

16. The tribunal member goes on at para. 6.14 to reject the idea that there are "*factors peculiar to the appellant's circumstances*" which potentially could be an independent ground for the decision having regard to the definition underlying qualification for subsidiary protection. However, the tribunal member does not introduce this proposition by words equivalent to "*even if I am wrong*". Rather, he says "*furthermore*" there are no such factors. It is not possible to say confidently that geographical considerations were entirely excluded from the tribunal member's thinking here. It might have been otherwise if the tribunal member had specifically said that there were no factors personal to an applicant even if the armed conflict was to be taken as in existence throughout Algeria or in the applicant's home area.

17. Mr. de Blacam also had a fall-back argument arising out of para. 6.7 of the decision where the tribunal member draws a distinction between the applicant's home area and the "*north east*" of the country. On the map of Algeria that has been produced, the applicant's home area is, at first sight anyway, very much in the north-east of the country. While Ms. Doyle valiantly and creatively attempted to interpret the decision as meaning that the tribunal member had rationally concluded that this was not the case, it is hard to work out what the tribunal member in fact meant by the distinction between the applicant's home area and the north-east of the country. Again, had there been an explicit finding in that regard or some sort of reason apparent for such a finding, matters might have been different, but as the tribunal decision stands at the moment it is very hard to see what was meant by that statement. Thus, even if I am wrong about there being a difficulty arising from the tribunal's failure to take into account the U.K. Home Office Report, I must in any event conclude that the decision is infirm on the foregoing basis. One can conceptualise the problem as one either of irrationality or of failure to disclose a reason for the implicit finding that the applicant's home area is not in the north-east. But either way, that finding is infirm.

18. Having said all of that, I should say by way of postscript that it seems to me, and I stand to be corrected, that there does not in reality appear to be anything much to support the notion that the applicant is at individual risk, still less that such difficulties as may exist in Algeria amount to a situation of indiscriminate violence. But my saying so does not amount to very much because the nature of the process is that we have to hear conclusions on these matters from the tribunal rather than the court. The tribunal member did not even go on to discuss the question of whether, if there was an armed conflict, there was a situation of indiscriminate violence. Again, had the tribunal member said if he was wrong about the absence of an armed conflict, the violence was not such as to be indiscriminate, things might have been different, but there is no such finding in the decision.

19. Having regard to the foregoing there will be in principle an order of *certiorari* directed to the decision but I will hear from the parties as to the form of the order.

Postscript – Order

20. Having heard from the parties, the orders will be as follows:

- (i). there will be an order of *certiorari* removing for the purpose of being quashed the decision in its entirety and remitting it back to the tribunal for reconsideration by another tribunal member; and
- (ii). under the heading of further and other relief there will be a stay on the enforcement of the deportation order until such time as the tribunal decides on the application as so remitted.