**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2019 No. 81 J.R.]**

**BETWEEN**

**W.A.L. (NIGERIA)**

**APPLICANT**

**AND**

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Richard Humphreys delivered on the 26th day of July, 2019**

1. The applicant is a 35 year old national of Nigeria. He left that country and applied for asylum in Italy on 19th August, 2011. It is suggested that he was paid €500 by the Italian authorities to leave. He then came to Ireland on 26th July, 2013 and, after a period of unlawful residence, applied for asylum on 7th October, 2015.

2. On 27th November, 2015, he married an Irish citizen and applied for residence on that basis. That was refused. Apparently he is now separated. On 30th March, 2016 the Refugee Applications Commissioner decided to transfer his application to another EU member state under the Dublin III Regulation, 604/2013. He appealed that decision but it was affirmed by the International Protection Appeals Tribunal on 10th January, 2017.

3. He then brought a first set of judicial review proceedings [2017 No. 72 J.R.] challenging the tribunal decision. Those proceedings were compromised and the applicant was admitted to the international protection process. His protection application was rejected by the International Protection Office on 4th May, 2018. On 31st May, 2018 he appealed to the tribunal which dismissed the appeal on 15th January, 2019.

**Procedural history**

4. The statement of grounds was filed on 8th February, 2019, the primary relief sought being *certiorari* of the tribunal decision. On 15th February, 2019 leave to seek judicial review was granted. A statement of opposition was filed on 24th June, 2019 and I have now received helpful submissions from Mr. Eamonn Dornan B.L. for the applicant and from Mr. David Dodd B.L. for the respondents.

**Ground 1: alleged failure to uphold the claim under art. 15(c) of the Qualification Directive**

5. Ground 1 alleges that "*The Impugned Decision is rendered invalid, contrary to Article 15 of Council Directive 2004/83/EC of 29 April 2004 (the "Qualification Directive") due to the failure of the First Named Respondent to give proper regard, in light of Country of Origin Information ("COI"), to the real risk of serious harm to the Applicant due to the internal armed conflict in Borno State: (i) The Tribunal Member found that* "there is an internal conflict in Borno state." *The Tribunal considered a recent Amnesty International report which referred to 65 attacks, causing 411 civilian deaths and the displacement of 1.7 million people from the three north-eastern Nigerian states, which includes Borno State. The Tribunal erred in failing to find that these objective facts, and the additional COI submitted, leads to a determination that the level of indiscriminate violence in Borno State rises to an Art. 15(c) risk of serious harm".*

6. The complaint made here is that the tribunal erred in failing to find that the applicant's evidence leads to a determination of risk contrary to art. 14(c) of the Qualification Directive 2004/83. That is of course a direct challenge to a factual finding of the tribunal. It does not contend that the tribunal's finding was irrational.

7. The ground as pleaded misunderstands the process of judicial review. It is important for the court to respect the principle of separation of powers and not to extravagantly trespass on the legislative, executive or administrative domain: see *e.g. Sinnott v. Minister for Education* [2001] IESC 63 [2001] 2 I.R. 505, *T.D. v. Minister for Education* [2001] IESC 101 [2001] 4 I.R. 259. The court on judicial review does not substitute its own judgment for that of the decision-maker as to the merits of an application: see Michael Fordham, *Judicial Review Handbook*, 6th Ed. (Oxford, 2012) at para. 15.5, *Lennon v. DJ Clifford* [1992] 1 I.R. 382, *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3 [2010] 2 I.R. 701. Lady Hale put the matter memorably, in *R. (Cart) v. Upper Tribunal* [2011] UKSC 28 [2012] 1 AC 663 at para. 47 by saying that "*It is not difficult to dress up an argument as a point of law when in truth it is no more than an attack upon… the factual conclusions*" (see also *Fordham* para. 15.1 and *M.A. (Somalia) v. Secretary of State for the Home Department* [2010] UKSC 49 at para. 45).

8. The statement of grounds at ground 1 does not plead a basis in which the court can interfere, but if I am wrong about that, such a basis has not been made out. It is not alleged that an incorrect test was adopted. The tribunal referred to the country information on which the applicant now relies. I discussed art. 15(c) in *A.J.A. (Nigeria) v. International Protection Appeals Tribunal* [2018] IEHC 671 [2018] 11 JIC 1403 (Unreported, High Court, 14th November, 2018) at para. 13, noting that the upshot of the judgment of the CJEU in C-465/07 *Elgafaji v. Staatssecretaris van Justitie* (17th February, 2009) was that the provision applies either if there is evidence of an individualised threat to an applicant or if the degree of indiscriminate violence is exceptionally assessed at such a high level as to apply to a civilian solely on the grounds of their presence in the country.

9. As regards the first leg of that test, the problem for the applicant is that Mr. Dornan more or less accepts, and certainly the applicant has not averred to the contrary, that the art. 15(c) case that was put before the tribunal was made under the heading of the level of violence in itself rather than the applicant's personal circumstances. That precludes the applicant from making that point to the court, but if I am wrong about that I turn to the merits of the issue raised.

10. Mr. Dornan says that the evidence of the individualised threat is firstly, the applicant's injuries and secondly, the allegation that he suffered extreme post-traumatic stress disorder. As regards the injuries, the tribunal did not accept that they were caused in the manner claimed by the applicant so that cannot be a basis for the individual claim under this heading, and the same applies to the applicant's claim of post-traumatic stress disorder. Insofar as the applicant can be taken as arguing, on the basis of para. 37 of his written submissions, that the post-traumatic stress disorder in effect makes the applicant a vulnerable person such that his return to

Nigeria would contravene art. 15(c), that has not been pleaded, but even if it had been, the applicant has not established that the medical information put forward on his behalf was not considered: see *G.K. v. Minister for Justice and Equality* [2002] 2 I.R. 418 [2002] 1 I.L.R.M. 401 *per* Hardiman J. In fact, the tribunal member having rejected the level of violence argument at para. 7.9 went on at para. 7.10 to consider the applicant's personal circumstances and held that he had not accepted any material facts in the claim "*which would put him sufficiently at risk to qualify in this regard"*. That is a lawful approach. The word "*sufficiently*" implies that such features of the applicant's personal circumstances as could arguably put him at a higher risk in a situation of disorder, such as his mental condition, are not sufficient as to qualify him for the exceptional provisions of art. 15(c).

11. It is worth emphasising that those are exceptional provisions. I noted in *M.Z. (Pakistan) v. International Protection Appeals Tribunal* [2019] IEHC 125 [2019] 2 JIC 1510 (Unreported, High Court, 15th February, 2019) at para. 19 that there was only one country, Syria, which was recognised by a majority of EU member states as being one where art. 15(c) applies throughout its territory. In respect of only two other countries, Iraq and Somalia, did a majority of EU member states recognise indiscriminate violence in at least a part of the country. So in relation to all other countries there was no recognition of the applicability of the provision by a majority of member states: see European Asylum Support Office, "The Implementation of Article 15(c) QD in EU Member States" (July, 2015). That EASO report has an illuminating table at p. 7 showing a list of countries which are recognised by any member state as falling under art. 15(c), and that shows that not even a single EU member state recognises art. 15(c) as applying in Nigeria, even to a part of that country, let alone the whole of it. The tribunal here came to the same conclusion, namely that the level of violence was not so extreme as to engage art. 15(c) merely by the applicant's presence. That can hardly be said to be unlawful.

12. It is also worth making the point that tribunal members are not novices and have experience of evidence in relation to different country conditions: see *A.J.A.* at para. 15 and, by analogy, *G.O.B. v. Minister for Justice, Equality and Law Reform* [2008] IEHC 229 (Unreported, High Court, 3rd June, 2008) *per* Birmingham J., as he then was. It is also perhaps worth making the overall point that the assessment of the weight to be attached to particular evidence is a matter for the decision-maker rather than the court: see *A.J.A. (Nigeria) v. International Protection Appeals Tribunal* at paras. 7 and 10, *J.U.O. (Nigeria) v. International Protection Appeals Tribunal* [2018] IEHC 710 [2018] 12 JIC 0406 (Unreported, High Court, 4th December, 2018) at para. 6.

**Ground 2: alleged failure to give proper probative weight to medico-legal documentation**
13. Ground 2 alleges that "*The First Named Respondent erred in failing to give proper probative weight to the medico-legal documentation furnished by the Applicant, which raises a rebuttable presumption that he had suffered serious harm in the past*", and then sets out a series of micro-criticisms of the wording of the tribunal decision under this heading.

14. The very terms of the ground indicate an attempt to invite the court to disagree with the factual findings of the tribunal member who saw and heard the applicant. Furthermore, the ground embodies a fundamental conceptual misunderstanding, namely that a medical report consistent with an applicant's account creates a rebuttable presumption in favour of the applicant. It does no such thing.

15. The various contradictions in the applicant's account are set out in the tribunal member's decision and it is unnecessary to rehearse those here. The conclusion that the applicant's account was not credible was one which was lawfully open to the tribunal. It is certainly not the law that if you come forward with a medical report you are entitled to succeed or even that there is a rebuttable presumption that you are entitled to succeed. It is not that difficult to get a medical report which says that injuries are consistent with one's story, even on occasion highly consistent, but that in and of itself does not prove the account unless the report says, as this one does not, that the injuries are diagnostic of that account. I made the point in *M.Z. (Pakistan) v. IPAT* [2019] IEHC 125 [2019] 2 JIC 1510 (Unreported, High Court, 15th February, 2019), at para. 15, that a tribunal member is not obliged to find for an applicant simply because the applicant presents a medical report. That would delegate the grant of international protection to such favourable medical advisers as an applicant could lay hold of.

16. It is open to a decision-maker to hold that such support, if any, as is given to the applicant's account by a medical report is outweighed by other factors; and that in effect is what happened here. The point was made by Ouseley J. in *H.E. (DRC)* [2004] UK IAT 00321 that "*rather than offering significant separate support for the claim, a conclusion as to mere consistency generally only has the effect of not negating the claim*". If courts were to go down the road of saying that the applicant has a favourable medical report, therefore he presumptively must win, they would be taking a major wrong turning in the law. It is not for the court to second-guess the analysis and weighing of all of the evidence of the member of the tribunal, who saw and heard the applicant. For an applicant to disturb such a finding he or she must show unreasonableness in the sense of *Keegan v. Stardust Compensation Tribunal* [1996] I.R. 642, *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 and *Meadows v. Minister for Justice, Equality and Law Reform* [2010] 2 I.R. 701, or some other cognisable legal wrong. The applicant has not done so here.

**Order**
17. Accordingly, the application is dismissed.