[2019] IEHC 767

THE HIGH COURT

[2019 No. 204 JR]

IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000, AS AMENDED

BETWEEN

B

APPLICANT

– AND –

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Mr Justice Max Barrett delivered 14th day of November, 2019.

1. Perhaps the best way to detail the facts in this case is to provide a timeline of key events:

30.03.2013. Mr B, then a restauranteur, quits Albania, allegedly due to the threat to him from a criminal gang which, on Mr B's account, was engaged in a form of extortion against him. The statement grounding the *ex parte* application states, *inter alia*, that *"[o]n one occasion* [Mr B]*…refused to give them* [the gang] *money and they beat him with a chair, causing cuts on his head which required stitches".*

12.04.2013. Mr B arrives in Ireland, applies for refugee status and, sometime later in 2013, quits Ireland for the United Kingdom.

04.12.2017. Mr B is deported by the United Kingdom to Ireland. Mr B is allowed to re-enter the international protection process.

31.05.2018. Mr B's application is rejected by the International Protection Office ('IPO').

05.09.2018. Legal Aid Board commences appeal for Mr B.

07.12.2018. Legal Aid Board makes various submissions to the International Protection Appeals Tribunal ('IPAT'), including a request that the IPAT await an expected SPIRASI Medico-Legal Report ('SPIRASI report'). It is explained that Mr B has two scars on his head, allegedly due to his being beaten with a chair.

10.12.2018. At the appeal hearing, Mr B's solicitor requests that the IPAT wait to receive the expected SPIRASI report. The IPAT initially indicates that it will give until the first week of January, 2019 for the SPIRASI report. When Mr B's solicitor indicates that the report is unlikely to be ready by then, the IPAT states that there should be an update by the first week of January.

28.12.2018. Mr B's solicitor emails IPAT and indicates that she will be on leave until 10th January, 2019 and that an *"update with regard to SPIRASI report will be provided to the IPAT immediately on my return".*

02.01.2019. IPAT replies that the IPAT *"look[s] forward to receiving the SPIRASI report in January*", i.e. sometime up to and including 31st January.

11.02.2019. No update having been provided, the IPAT makes a negative decision (the 'Impugned Decision') concerning Mr B's appeal, stating, *inter alia*:

> *"The Appellant's legal representative notified the Tribunal that the Appellant was advised upon receipt of the Section 39 report from the IPO to attend his GP and request referral to SPIRASI in relation to the two scars on his head as a result of the alleged assault with a chair….However, as the Appellant had difficulties renewing his medical card he was unable to produce a SPIRASI Medico Legal Report by the date of the appeal hearing on 10 December 2018. The Tribunal afforded the Appellant a number of weeks to submit this Medico Legal Report but advised the Appellant that it would be of limited probative value, as while the report may confirm the existence of two scars on the Appellant's head, this report could not say and is incapable of saying who caused these injuries and in what circumstances the Appellant sustained these injuries. This Medico Legal Report has not been forthcoming at the date of this decision, some months after the appeal hearing".*

2. A number of points might usefully be made arising from the above:

(i) There was a fundamental misunderstanding on the part of the IPAT in its letter of 11.02.2019. At the hearing on 10.12.2018, it was agreed that an update would be provided by the first week in January. In her e-mail of 28.12.2018, Mr B's solicitor indicated that because of her leave arrangements the update would be provided later in January. However, the IPAT indicated in its reply letter of 02.01.2019 that it was looking forward to receiving the SPIRASI report sometime in January. But that was not what it had been agreed/indicated would be provided. All that was due was an update on when the SPIRASI report would be made available.

(ii) As to the above-quoted text from the Impugned Decision:

(a) Re. "*The Tribunal afforded the Appellant a number of weeks to submit this Medico Legal Report*", this is not correct; what was agreed was that an update would be provided with the initial time for this update being the first week in January.

(b) Re. "*The Tribunal afforded the Appellant a number of weeks to submit this Medico Legal Report but advised the Appellant that it would be of limited probative value, as while the report may confirm the existence of two scars on the Appellant's head, this report could not say and is incapable of saying who caused these injuries and in what circumstances the Appellant sustained these injuries",* (I) just as the trial judge in *Zambra v. District Judge Mary Collins* [2012] IEHC 565 was held to have pre-empted certain evidence that might have been given by Ms Zambra, it seems to the court that, in an analogous manner, what the IPAT was doing in the just-quoted text was pre-empting evidence that was proposed to be submitted, and dismissing the potential probative value of that evidence without ever having seen it; (II) consistent with *L.H.C. (A Minor) v Refugee Appeals Tribunal* [2014] IEHC 75

there was no doubt as to what new evidence was to be provided (the SPIRASI report once prepared) and why; and (III) the said dismissal seems to be in breach of the IPAT's own guidelines on medico-legal reports (The International Protection Appeals Tribunal, 'Guideline No. 2017/6: Medico-Legal Reports' (2017)) which state, *inter alia*, as follows:

> *"[3.1] The value of expert medical evidence in refugee status determination is recognised internationally. In its case-law, the European Court of Human Rights has ruled that expert medical evidence can be of value in determining both (i) whether past instances of persecution occurred, and (ii) potential risk should an individual be returned to their country of origin….*
> *[3.2] In order for the Appeal to be considered in a timely manner, the Appellant should endeavour to obtain a Medico-Legal Report at the earliest possible date….*
> *[4.2] The Medico-Legal Report may report on the consistency of psychological findings with the alleged report of Torture….*
> *[6.3] A finding that the lesions are 'highly consistent' with, 'typical of' or 'diagnostic of' the Appellant's asserted history will usually satisfy the required standard of proof that the lesion was caused by the trauma described.*
> *[6.4] While the primary role of the Medico-Legal Report is to substantiate claims of ill-treatment by reporting on the consistency of injuries presented with the Appellant's asserted history, the Medico-Legal Report may also have a role as part of the credibility assessment.*
> *[6.5] A finding of 'consistency' in accordance with the Istanbul Protocol may have evidential value, and such a finding, as opposed to a finding of 'highly consistent', 'typical of' or diagnostic of', should not be rejected as having no evidential value."*

(c) Re. "*[T]his report could not say and is incapable of saying who caused these injuries and in what circumstances the Appellant sustained these injuries*", this is undoubtedly true but, with respect, what of it? If this was a basis for rejecting a SPIRASI report, then no SPIRASI report would ever be sought or furnished because the expert opinion is necessarily volunteered by reference to what the expert is told for the simple reason that s/he was not present at the moment(s) of the alleged torture. A SPIRASI report serves the functions described in point (b) above. There is no suggestion that the SPIRASI report, which was to have been provided in respect of Mr B, would be anything less than an entirely professional report from a known and reputable source.

(d) Re. "*This Medico Legal Report has not been forthcoming at the date of this decision, some months after the appeal hearing"*, ignoring for a moment that the letter of 11.02.2019 suffered from the fundamental misunderstanding indicated at (i) above (and this cannot be ignored), that letter indicated sometime up to and including 31st January, 2019 as the date by which the SPIRASI report was expected. So even taking the IPAT's case at its height

and ignoring the misunderstanding referred to at (i) (and it cannot be ignored), there had not been a delay of "*months*", there had been a delay of about 11 calendar days or about seven working days. So this is most definitely not a case of endless indulgence.

Without prejudice to the foregoing, it is perhaps worth noting also that the IPAT hearing was on 10.12.2018 and the IPAT decision was on 11.02.2019, with a good chunk of the in-between period being taken up by the end-of-year/New Year festive season, so while to describe the period of 10th December, 2018 to 11th January, 2019 as involving a delay of "some months" is technically true, it does not seem to the court to capture a complete picture of matters.

(e) Mention was made in the recent case of *N v. The International Protection Appeals Tribunal* [2019] IEHC 585, para. 4, of a SPIRASI report being a *"key document*" (see also *A.M.N. v. The Refugee Appeals Tribunal & Anor.* [2012] IEHC 393, para. 7.8), and it would be fair to say that in many cases like the one here presenting, SPIRASI reports are key documents, with tribunal decisions being quashed by reason of the deficient manner in which a SPIRASI report is treated with. It is possible that the SPIRASI report in this case might likewise have proved to be a key document or, alternatively, it may have proved of limited assistance; nobody knows. But what is key is this: on 11.02.2019, any chance of finding out was negated through the IPAT's advance dismissal of the contemplated report, sight unseen.

3. The court does not see that it is a matter of any relevance that, following the making of the Impugned Decision, the previously commissioned SPIRASI report was no longer sought. It can be re-commissioned now.

4. Three further points are raised in the written submissions by Mr B's counsel, though it is accepted in those submissions that the said points are *"perhaps not sufficient on their own to justify the quashing of the Impugned Decision":*

(i) An allegation of irrationality is made in respect of the observation in the Impugned Decision that it was not credible that a person being subjected to extortion by known criminals would give money to those criminals when he had not known them long and they had no legal hold over him.

(ii) There is criticism of the IPAT's observation in the Impugned Decision that Mr B would "*presumably*" have returned to the hospital where he received his stitches to have those stitches removed. This, it is claimed by counsel for Mr B, is unsafe speculation and ought to have been put to Mr B (and he obviously could have gone to a GP or another hospital to have the stitches removed).

(iii) It is contended that the IPAT took an irrational view on the available Country of Origin Information ('COI') that Mr B would have the protection of the police and Albania's independent ombudsman (the 'People's Advocate') against the criminal gang he feared.

5. As to (i), the observation by IPAT is unreasonable and may even be irrational. There is no waiting-time for extortion to commence; and criminals extorting money may well have no legal hold over a victim. As to (i) and (ii), the court respectfully does not see that either of the impugned observations by IPAT (or both combined) was (or were) central to the Impugned Decision; and perfection in all respects is never a standard to which administrative decisions are ever held. As to (iii), the court does not see that this conclusion can properly be described as irrational and does not see that the IPAT seeks to equate the assistance of the ombudsman with that of the Albanian police.

6. The solicitor for Mr B was, unfortunately, at fault in not providing an update to IPAT before end-January of this year. That, however, does not suffice to render the Impugned Decision immune from successful challenge. For the reasons identified above, the court will grant the orders sought at items (a) and (b) of the notice of motion of 30.04.2019. Although it was agreed at the hearing of this application that the court did not need to address the dropped 'extension of time' argument, the court will hear the parties briefly as to whether the order sought at (d) is necessary.