THE HIGH COURT

[2024] IEHC 73

[Record No. 2023/275JR]

BETWEEN:

T.U. (NIGERIA)

APPLICANT

AND

INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND

THE MINISTER FOR JUSTICE

RESPONDENTS

JUDGMENT of Mr Justice Barr delivered on the 12th day of February 2024

Introduction.

1. The applicant seeks *certiorari* of a decision of the first respondent (hereinafter 'the Tribunal') dated 21 February 2023, in which he was refused international protection, on the following grounds:

(i) that when the applicant showed the Tribunal the marks and scarring to his body, which he alleged had been caused by beatings at the hands of state actors when he attended various demonstrations, the Tribunal should have adjourned the hearing, in pursuance of its duty to cooperate with the applicant's application, to enable the

applicant to provide a medical report dealing with these injuries and whether they were consistent with having been caused by beatings, as alleged by the applicant;

(ii) that the Tribunal member had failed to adequately consider the country of origin information (hereinafter 'COI'), when reaching the determination that the applicant did not have a well-founded fear of persecution, or serious harm if returned to his country of origin.

Background.

2. The applicant was born in Q2 of 1980. He had been employed as an accountant in his country of origin. He arrived in the State on 5 March 2022, at which time he claimed international protection.

3. The applicant's narrative is that he was at all material times a member of the Indigenous People of Biafra (hereinafter 'IPOB') political group. That group was a prescribed organisation in Nigeria.

4. The applicant's narrative was that he had attended many IPOB demonstrations in the years 2018, 2019, 2020 and 2021. At that time he was living in Lagos. He stated that he had been beaten by the state's security force (DSS) and other state actors, while attending at these demonstrations.

5. In February 2021, the applicant stated that he moved to stay at his father's property, which was in a different part of the country. While there, he hosted some meetings at the property for IPOB.

6. On 6 January 2022, the applicant stated that two friends of his, who were also IPOB members, came to the property to have a meeting with him. After some time, he left the two friends at the property, while he went into the city. On his return, he was told by neighbours, that while he was away, the police/DSS had arrived at the compound. He was told that the

DSS had been looking for him, as the neighbours had seen them looking around the compound and calling out his name. He was told that one of his friends had been shot in the leg during an altercation with the DSS. Both men had been taken into custody. The applicant stated that he saw bloodstains on the ground at the property.

7. The applicant stated that due to his involvement with IPOB, he feared for his safety. He stated that the event on 6 January 2022, brought matters to a head. He was very frightened because the DSS were looking for him. He decided to flee the country. He stayed in Ghana for a number of weeks and then travelled to Ireland by ship, arriving in the State on 5 March 2022.

8. As part of his application, the applicant submitted two affidavits sworn on 22 July 2022, from his brother and sister, who averred that on 30 June 2022, the DSS had come back to his father's compound looking for the applicant.

9. The applicant's case was that having been a member of IPOB; and having been involved in demonstrations organised by them over a number of years, at which he had experienced violence at the hands of state actors; and having regard to the fact that the DSS were looking for him on 6 January 2022 and again on 30 June 2022; and having regard to the COI, which stated that members of IPOB were likely to experience persecution or harm at the hands of state organisations; he had a well-founded fear that if returned to Nigeria he would experience persecution and/or serious harm.

The Application for International Protection.

10. In the course of the application process, the applicant was interviewed in the ordinary way. While he gave detailed information in relation to the demonstrations that he had attended and had stated that people attending such demonstrations had been regularly beaten

by members of the security forces, he had not explicitly stated that he had been beaten on any such occasions.

11. However, in his written submissions before the IPAT hearing, it had been submitted on his behalf that he had "experienced violence" when attending such demonstrations. At the hearing before the Tribunal on 18 November 2022, the applicant stated that he had scars and/or marks on his legs, left shoulder and hands, which had been sustained as a result of attacks on him in 2019, 2020 and 2021, by the security forces, when he had been attending rallies and demonstrations organised by IPOB. He stated that he had not gone to hospital for treatment of his wounds. He had treated the wounds himself, according to traditional practices. He stated that he had not mentioned the scars in his interviews with immigration officials, due to the fact that his cousin, with whom he was particularly friendly, had died just prior to the interview and he was extremely upset and depressed at the time of that interview.

12. In support of his assertion that he had suffered from depression, the applicant had submitted a medical report from his GP, Dr Halpin, who had confirmed that he had been diagnosed as suffering from anxiety and depression, for which he required medication.

13. In the course of the hearing before the Tribunal, the applicant had rolled up the legs of his trousers to display marks on his legs, which he alleged had been caused as a result of beatings that he had sustained at the hands of the security forces, when attending rallies or demonstrations organised by IPOB. The decision of the Tribunal noted that the applicant claimed that he had scars on his left shoulder and on his hands. However, it is not clear whether these were demonstrated to the Tribunal.

14. In her decision dated 21 February 2023, the Tribunal member rejected the applicant's assertion that the scarring or marks to his body had been caused by injuries sustained by him at the hands of the security forces, when attending IPOB rallies or demonstrations. She reached that conclusion on the following basis: there was no evidence that he had received

any medical treatment for his alleged wounds in Nigeria; he had not mentioned that he had been beaten and had sustained wounds when interviewed in the course of his application for international protection; he had not mentioned the beatings or wounds to his GP and as a result there was no mention thereof in the report that had been furnished by Dr Halpin. In these circumstances, the Tribunal member was not persuaded that the applicant had been beaten by the security forces while attending IPOB demonstrations, as alleged by him.

15. The Tribunal member made a number of findings that were in favour of the applicant. She accepted that the applicant was a member of IPOB when he was in Nigeria; that he had taken part in demonstrations organised by IPOB in that country; that he had hosted meetings of IPOB at his father's property; and that he suffered from depression and anxiety, as set out in Dr Halpin's report.

16. The Tribunal member did not accept the applicant's claim that the security forces had been searching for him in the manner alleged by him on 30 June 2022. She did not accept the affidavits that had been sworn by the applicant's brother and sister, on the basis that they had been almost identical in their wording. In addition, she noted that the event, which was said to have occurred on 30 June 2022, was not mentioned by the applicant in his s.35 interview, which had taken place almost a month later, on 22 July 2022.

17. Having regard to those findings of fact, and having considered the accepted facts in the context of the COI that had been submitted, the Tribunal member was not satisfied that the applicant had suffered persecution or harm in the manner described by him, nor that he had a well-founded fear of suffering persecution or serious harm if returned to Nigeria. Accordingly, his application for international protection was refused.

Submissions on behalf of the Applicant.

18. It was submitted that it was well established at law, that the Tribunal had a shared duty of cooperation with the applicant, when considering an application for international protection: see Art. 4(1) of the Qualification Directive 2004/83/EC; *MM v Minister for Justice, Equality and Law Reform* (Case C-277/11); *X v IPAT* (Case C-756/21).

19. It was submitted that in the present case, the fact of the applicant having suffered violence when attending demonstrations in the Lagos area, had been raised in the written submissions that had been filed on his behalf before the Tribunal. At the hearing, the applicant had rolled up the legs of his trousers and had shown the marks on his legs. He had stated that there was scarring on his shoulder and hands. He had alleged that the scarring and marks on his body had been caused by state actors, when he had been beaten at various demonstrations.

20. It was submitted that the Tribunal had erred in finding that his narrative, that he had been beaten by state actors due to his attendance at IPOB rallies and demonstrations, was not credible, due to the fact that the wounds were not mentioned in the report furnished by his GP, was irrational, because that report was only dealing with his mental health.

21. It was submitted that as this was an extremely important element in the applicant's narrative, and if the applicant could establish by medical evidence that his wounds were consistent with being assaulted, that would go a long way to proving past persecution in the manner alleged by the applicant, and would also constitute significant evidence of a well-founded fear of future harm if returned to Nigeria. It was submitted that the aetiology of the scarring and marks, was an important issue, on which the Tribunal should have allowed the applicant to obtain a further medical report.

22. It was submitted that the Tribunal had power under s.23(2) of the International Protection Act 2015, to require the applicant to be examined and a report to be furnished, on

any aspect concerning his health. It was submitted that the Tribunal ought to have exercised this power in the circumstances of this case.

23. It was submitted that because this important issue relating to the scarring and marks on the applicant's body had not been further investigated, the hearing of his application had been deficient and the ultimate decision based on the absence of evidence in this regard, was therefore deficient and ought to be set aside.

24. In relation to the point on the consideration of COI, it was submitted that either the Tribunal member had failed to consider the voluminous COI that had been put before her, which was to the effect that people who are involved in organising IPOB rallies or meetings, would be likely to face persecution or harm at the harms of state actors.

25. In the alternative, it was submitted that, having found that the applicant had attended IPOB rallies and had hosted meetings at his father's property, the Tribunal member had acted irrationally in holding that in these circumstances, he did not have a well-founded fear of persecution, or serious harm if returned to Nigeria.

Submissions on behalf of the Respondents.

26. In relation to the scarring point, it was submitted that it was not up to the Tribunal to make the case for the applicant. The burden of proof rested on the applicant to establish why he should be entitled to international protection: see *BB v Minister for Justice* [2022] IEHC 536.

27. It was submitted that insofar as there was any shared duty on the first respondent to cooperate with the applicant, it had been established that even with a shared duty, the primary duty to verify factors personal to an applicant, rested on the applicant. The State, through the Tribunal, may have a duty to verify factors relating to general country situations: see *AAL (Nigeria) v IPAT* [2018] IEHC 792.

28. It was submitted that in relation to the personal aspects of his narrative, such as the existence and cause of the scarring and marks on his body, the onus rested on the applicant to provide evidence that such had been caused in the manner described by him. It was submitted that while s.23 of the 2015 Act gave the Tribunal power to obtain a medical report in relation to aspects of the applicant's health, that was a permissive section, it did not imply a mandatory obligation on the Tribunal to obtain further medical evidence in any particular circumstances.

29. It was submitted that the Tribunal member had been entitled to reach the conclusion that she had done, rejecting the applicant's assertion that he had been attacked by state actors at IPOB demonstrations, because no evidence had been placed before the Tribunal as to how any such injuries had occurred; nor had they been mentioned in the applicant's interviews; nor had they been mentioned in his GP's medical report. It was submitted that in these circumstances, the negative finding that had been reached by the Tribunal member was supported by the evidence before her.

30. In relation to the assertion that the Tribunal member had not considered the COI that was before her, it was submitted that that was untenable for two reasons: first, it was settled at law that where a decisionmaker stated that they had considered certain matters, it was to be presumed that they had done so, until the contrary was proven: see *GK v Minister for Justice* [2002] 2 IR 418; *GI v Minister for Justice* [2015] IEHC 682; *MM v IPAT* [2017] IEHC 93.

31. Secondly, the Tribunal member had not only stated that she had had regard to the COI, but she had quoted extensively from it. It was submitted that in these circumstances, there was uncredible basis to argue that the Tribunal member had failed to have regard to COI. Insofar as it was submitted that the Tribunal member had acted irrationally in making a finding that the applicant did not have a well-founded fear of persecution or serious harm if returned to Nigeria, that finding was open to the Tribunal member, because she had found

that there was no evidence that the applicant had suffered past persecution or harm at the hands of state actors, prior to his departure from Nigeria.

32. It was submitted that the findings made by the Tribunal member in a comprehensive and exhaustive ruling on the application, were not open to challenge.

Conclusions.

33. At the hearing of this application, the challenge to the decision of the Tribunal, effectively came down to the following two issues:

(i) should the Tribunal member have adjourned the hearing to enable a medical report to be obtained in relation to the scarring on the applicant's body?

(ii) did the Tribunal member properly consider the COI before her; and, if she did, where her conclusions on the absence of the applicant having a well-founded fear of future persecution or serious harm, irrational, having regard to the content of the COI that was before her?

34. In looking at the first issue, it is important to note that s.23(2) of the 2015 Act, gives the Tribunal the following power:

> *Where, in the performance by the Tribunal of its functions under this Act in relation to an applicant, a question arises regarding the physical or psychological health of the applicant, the Tribunal may require the applicant to be examined, and a report in relation to the health of the applicant furnished, by a nominated registered medical practitioner chosen by the applicant.*

35. In this case, a large part of the applicant's story was that he had experienced violence at the hands of the DSS, or other state actors, when he had attended demonstrations or rallies organised by IPOB in Lagos in the years 2019, 2020 and 2021.

36. That much had been pleaded in his submissions before the IPAT hearing. What he clearly had not told his lawyers, or the immigration officials, was that he had scarring or marks on his legs, shoulder and hands, which he alleged had been caused by these beatings.

37. That evidence only emerged for the first time during the hearing before the Tribunal, when the applicant apparently rolled up the legs of his trousers, to show the Tribunal member the scarring or marks on his legs. As noted earlier, it is not clear whether the scarring to his left shoulder and hands was also demonstrated to the Tribunal member.

38. In her decision, the Tribunal member did not accept the applicant's narrative that he had been beaten when he attended IPOB demonstrations or rallies, because he did not have any evidence of medical treatment received for these injuries; he had not mentioned the scars at his interviews; and the medical report from Dr Halpin was silent in this regard.

39. That there is a duty on the Tribunal to cooperate with an applicant in the presentation of his application for international protection, is made clear in s.28(2) of the 2015 Act, which provides that when hearing an appeal, the Tribunal shall in cooperation with the applicant, assess the relevant elements of the application. The duty of the Member States when considering such applications, to "cooperate actively" with the applicant in order to determine and supplement the relevant elements of the application, has been clearly set out the Qualification Directive (2004/83/EC) and in the decision of the CJEU in *MM v Minister for Justice Equality and Law Reform* (Case C-277/11). This shared duty was recognised in Irish law in *SHI v IPAT* [2019] IEHC 269.

40. In *X v IPAT* (Case C-756/21), the CJEU made it clear that this duty of cooperation extended to the obtaining of a medico-legal report, where such a report was deemed relevant or necessary by the deciding officer. The court stated as follows at paras. 57 and 58:

> "*57. The individual assessment thus required may therefore include, inter alia, the use of a medico-legal report, if such a report proves necessary or relevant in order to assess,*

with the vigilance and care required, the applicant's genuine need for international protection, provided that the modalities of such use comply, inter alia, with the fundamental rights guaranteed by the Charter.

58. It follows that the competent authority has a margin of discretion as to the necessity and relevance of such a report and that, where it deems such a report necessary or relevant, it is required to cooperate with the applicant in order to obtain that report, within the limits set out in the preceding paragraph."

41. In the *X* case, the CJEU concluded that the obligation on IPAT to obtain a medico-legal report on the applicant's mental health, would arise where there was evidence of mental health problems resulting potentially from a traumatic event which occurred in the applicant's county of origin. The CJEU gave its conclusion on this question at para. 61:

"*In the light of the foregoing considerations, the answer to the first and sixth questions is that Article 4(1) of Directive 2004/83 must be interpreted as meaning that the duty of cooperation laid down in that provision requires the determining authority to obtain (i) up-to-date information concerning all the relevant facts as regards the general situation prevailing in the country of origin of an applicant for asylum and international protection and (ii) a medico-legal report on his or her mental health, where there is evidence of mental health problems resulting potentially from a traumatic event which occurred in that country of origin and the use of such a report is necessary or relevant in order to assess the applicant's genuine need for international protection, provided that the modalities of the use of such a report comply, inter alia, with the fundamental rights guaranteed by the Charter.*"

42. This duty of cooperation is also recognised in the guidelines issued by the first respondent for tribunal chairpersons when dealing with applications before them. Under the heading "Basic Principles", the guidelines note that in the UNHCR handbook, it is stated that

while the burden of proof rests on the applicant, in some cases it may be for the examiner to use all the means at his disposal to produce the necessary evidence in order to adequately assess the application. The guidelines go on to note that international protection decision making therefore, requires a more engaged role of the decisionmaker in the examination process.

43. It is against that legal background, that one must consider the conduct of the hearing before the Tribunal on 18 November 2022. It is fair to say that the production of physical evidence of the marks/scarring to his body, by the applicant, at the hearing before the Tribunal, may have constituted significant evidence in support of his narrative. If it could be established that on the balance of probabilities, the scarring or marks on his body, had been caused by beatings, that would have constituted strong supporting evidence of his overall narrative.

44. In addition, the existence of past instances of serious harm, would be relevant to the consideration of the well-foundedness of his fear of suffering serious harm if returned to Nigeria: see s.28(6) of the 2015 Act.

45. In the course of argument at the bar, Mr Hamilton BL, very correctly conceded that, had an application for an adjournment been sought on behalf of the applicant for the purpose of obtaining a further medical report and had that been refused by the Tribunal member and had she gone on to make the negative findings that she did; he would have been in a much more difficult position in standing over the decision that had been reached by the Tribunal member in this case. However, he pointed out that that had not happened, due to the fact that no application for an adjournment for the purpose of obtaining further medical evidence, had been made to the Tribunal member.

46. I do not think that the necessity or appropriateness of obtaining a further medical report, should depend on the happenstance of an application in that regard having been made

by or on behalf of the applicant. In other words, the further medical report does not become irrelevant, merely because it was not asked for by the applicant.

47. One has to remember that this applicant was not only a vulnerable person due to his status as a person seeking international protection, but he was additionally vulnerable due to the fact that he suffered from depression and anxiety, as documented in the medical report furnished by Dr Halpin, which was accepted by the Tribunal.

48. In these circumstances, the court is satisfied that, having regard to the importance of the physical evidence proffered by the applicant for the first time at the hearing before the Tribunal, and having regard to the duty of the Tribunal to cooperate with the applicant in enabling him to put his case as fully as possible before the Tribunal; the Tribunal ought to have at least offered the applicant the opportunity to either obtain his own medical report, or it could have offered that the Tribunal would obtain a medical report in the nature of a Spirasi report on the marks and scarring on the applicant's body.

49. That would only have required a short adjournment of the hearing for a number of weeks, to enable such a report to be obtained. The court is satisfied that basic fairness and compliance with its duty to cooperate in the application, required the Tribunal member to offer that opportunity to the applicant, in light of the new evidence produced at hearing. As that was not done, the decision must be set aside on this ground.

50. The remaining ground of challenge to the decision, can be dealt with briefly. The court does not accept that the Tribunal member failed to have regard to the COI that was before her. The court accepts the submission made by counsel on behalf of the respondents, that where a decisionmaker states in the decision that he or she has had regard to certain matters, it is to be presumed that he or she did so, until the contrary is proven to be a fact by the person challenging the decision. This has been highlighted by a number of cases: see *GI v Minister for Justice* [2015] IEHC 682 and *GK v Minister for* Justice [2002] 2 IR 418.

Furthermore, in this case, not only did the Tribunal member state that she had had regard to the COI, but she quoted extensively from it. Accordingly, the court finds that the Tribunal member did have regard to the COI that was before her.

51. Insofar as it was alleged that her finding of a lack of a well-founded fear of persecution or serious harm, was irrational, having regard to the content of the COI; that ignores the fact that in this case, the Tribunal member had explicitly found that the applicant had not established that he had suffered any persecution or harm at the hands of state actors due to his membership of IPOB. In these circumstances, it was not inconsistent or irrational for her to find that there was a lack of a well-founded fear of future persecution or harm, notwithstanding the content of the COI. Accordingly, the court refuses the reliefs sought on the basis of this ground.

52. Having regard to the findings of the court on the scarring issue, the order of the court will be to set aside the decision of the first respondent dated 21 February 2023; the matter will be remitted back to the first respondent to have the appeal reheard before a different tribunal member.

53. As this judgment is being delivered electronically, the parties shall have two weeks within which to furnish brief written submissions on the terms of the final order and on costs and on any other matters that may arise.

54. The matter will be listed for mention at 10.30 hours on 7th March 2024 for the purpose of making final orders.