

## THE HIGH COURT

2018 No. 670 JR

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

Between:

E

Applicant

– and –

CHIEF INTERNATIONAL PROTECTION OFFICER

and MINISTER FOR JUSTICE AND EQUALITY

Respondents

## JUDGMENT of Mr Justice Max Barrett delivered on 14th January, 2019.

1. On 19.09.2012, Mr E sought a declaration that he is a refugee under the Refugee Act 1996. He was later found to be the subject of a purported Eurodac fingerprint match with prints taken in France in 2007. Mr E disputed this match. In a 's.13 report' notified to Mr E on 19.02.2013, ORAC recommended that Mr E not be declared a refugee, referencing the Eurodac match. On 13.11.2013, the RAT affirmed this decision. On 03.02.2014, Mr E applied to ORAC for subsidiary protection. Requests for disclosure of the Eurodac fingerprint data were made and refused, prompting Mr E to bring a judicial review application which failed for prematurity (*E v. Refugee Applications Commissioner and anor* (Unreported, 27th October, 2016, O'Regan J.)). On commencement of the International Protection Act 2015, responsibility for Mr E's application transferred to the first-named respondent (CIPO). On 07.04.2017, CIPO confirmed that contact was being made with France/Eurodac to seek copies of the fingerprint data, albeit that CIPO acknowledged the futility of seeking same in light of Art.27(1) of the then extant Eurodac Regulation (Council Regulation (EU) No.603/2013). CIPO suggested that Mr E might also wish to contact France/Eurodac, but he did not do so, apparently on the basis that as the fingerprint match is (he claims) mistaken, that renders him a non-data subject who simply could never access the fingerprint data.

2. On 09.03.2018, CIPO indicated that it would undertake an investigation with fresh personnel and without reference to the purported Eurodac match. Mr E's lawyers expressed concern about the intended process. Yet on 29.03.2018, Mr E attended for interview with an IPO. CIPO contends that this places Mr E in a like position to Mr Corrigan in *Corrigan v. Irish Land Commission* [1977] IR 317. Does it? In *Corrigan*, Henchy J., at 323, describes what happened there as being as if "*the two...commissioners... formally asked counsel... 'Have you... objection to our sitting...?'...and... been told...no*". In this case Mr E's lawyers clearly had ongoing and well-flagged concerns regarding the process and CIPO could not credibly have understood matters to be otherwise. However, given the findings below, the court does not need to reach a conclusion in this regard. Suffice it to note that, consistent with CIPO's undertakings, there was no reference in any way by the interviewer, at interview, to the Eurodac material.

3. On 11.07.2018 CIPO issued a negative recommendation based on adverse credibility issues separate from the Eurodac issue. Mr E seeks, *inter alia*: (i) a *certiorari* order quashing the said recommendation; and (ii) a *mandamus* order compelling the respondents to disclose all fingerprint data in their possession/procurement concerning the purported fingerprint match. There are three main grounds of contention on which these reliefs are sought, viz. that: CIPO's investigation is tainted by reasonable apprehension of objective bias; CIPO acted in breach of Mr E's legitimate expectation that there would be no reference to Eurodac material and that all such material would be removed from his file; and CIPO's refusal/failure to disclose to Mr E all material referred to at (ii) breaches domestic and/or EU law.

4. *Objective Bias*. Mr E's concern is that the fresh process was done by a person who could not but have had knowledge of the Eurodac issue when considering the incompletely purged file, yielding a perception of objective bias. The court sees matters otherwise. CIPO undertook not to have regard to the Eurodac material in reaching a decision; the fingerprint material was not raised at interview; and there was no analysis of/finding regarding same in the impugned decision. Could it be, in these circumstances, that, to borrow from but one of the various cases on objective bias, "*a reasonable person, should apprehend that his chance of a fair and independent hearing by reason of the actions of the [decision-maker]...would prevent a completely fair and independent hearing of the issues which arise*"? (*Dublin Well Woman Centre Ltd v. Ireland* [1995] 1 ILRM 408, 421). The court's answer to this question is 'no'.

5. *Legitimate Expectation*. In a letter of 28.03.2018, CIPO stated that "*We...confirm...all Eurodac material has been removed from your client's file as has the original record of the interview*". In fact the Eurodac material was removed but the file contained material referring to same. (The subsidiary protection application itself refers to same). The distinction between Eurodac material and material referring to same is a distinction which Mr E's solicitors themselves make and clearly understand in a letter to CIPO of 26.03.2018. So it cannot be claimed that Mr E (through his lawyers) did not understand exactly what was intended to be done by CIPO. Given the foregoing, the court does not see (nor does it see otherwise from the evidence) that Mr E could properly have had a legitimate expectation that there would also be a purge of all material referring to the Eurodac material.

6. *Refusal and/or Failure to Disclose Material*. This complaint ties back to the proposed *mandamus* order. As it happens the relevant material was, under Art.12 of the then extant Eurodac Regulation, required to be deleted in 2017. But regardless of this, "*an order of mandamus can only issue to compel a public body to perform a public duty which it is obliged to perform by law when there has been a wrongful refusal to do so or when a delay in so doing is so excessive as to give rise to the implication that it is tantamount to a refusal*" (*ZMH (Somalia) v. The Minister for Justice* [2012] IEHC 221, para.11). Here there is no public duty that CIPO is so obliged to perform but has wrongfully refused to do, and no such delay as referred to.

7. For the reasons stated, all the reliefs sought by Mr E are respectfully refused. For the sake of completeness, the court notes that there is nothing in the material before it which suggests any breach of the respondents' duty of candour to present.