[2019] IEHC 587

THE HIGH COURT

2018 No. 883JR

Between:

B

Applicant

– and –

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

AND THE MINISTER FOR JUSTICE AND EQUALITY

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 29th July, 2019.

1. By decision of 27.09.2018 (the 'Impugned Decision'), the IPAT found that Mr B, a national of Bahrain, is not entitled to subsidiary protection and affirmed the decision of the International Protection Officer that Mr B should be given neither a refugee declaration nor a subsidiary protection declaration. (Mr B's application was based on alleged brutality and harassment that he claims to have suffered at the hands of Bahraini officials). Following on the Impugned Decision, Mr B has brought the within proceedings. Four legal questions/issues arise to be resolved in the within application and are considered hereafter.

2. (1) Did the IPAT act in breach of constitutional justice by failing to put to Mr B the IPAT's views that Mr B's account of his arrest and release from detention in 2011 was not supported by country information?
3. Yes. By way of explanation to this answer, it is useful to commence with a quote from Mr B's grounding affidavit in which, after referring to certain paragraphs of the IPAT decision, he continues as follows:

> "*The Tribunal never put to me or my solicitor the Tribunal's views that my account of my arrest and release from detention in 2011 was not supported by country information….Had these views been put to us, relevant representations and submissions could have been made in response. For example, the Tribunal could have been referred to the fact that the IPO had found…that my account in this regard was consistent with country information, particularly that referring to events in 2011. The Tribunal could have been referred to COI dealing with the unrest in Bahrain in 2011 when Shia Muslims like me were arbitrarily arrested and detained, such as the US Department of State* 2011 Country Report on Human Rights Practices – Bahrain, 24 May 2012".

4. The IPAT's central answer to this complaint is, in essence, per its written submissions, "*that the applicant was given an opportunity to describe the situation in Bahrain in his own words during his oral hearing before the* [IPAT]".

5. Support for the proposition that applicants are entitled to an opportunity to answer a matter that is likely to be important to the determination of the Refugee Appeals Tribunal (the predecessor of the IPAT) is to be found in M*oyosola v. Refugee Applications Commissioner* [2005] IEHC 218, para.27, where Clarke J., as he then was, observes, *inter alia*, as follows:

> *"27. In* Nguedjdo v. Refugee Appeals Commissioner *(Unreported, High Court,* ex tempore *judgment of White J. 23rd July, 2003) this Court made an order granting leave to seek an order of certiorari quashing the decision of the RAC in that case on the basis that same was made in breach of constitutional and natural justice by virtue of the failure to give the applicant concerned the opportunity to deal with matters which would appear to have been crucial to the determination in the case then under consideration. In applying that principle to a decision of the Refugee Appeals Tribunal in* Idiakheua v.The Minister for Justice Equality and Law Reform and Another (*Unreported judgment of Clarke J. 10th May, 2005), I said the following:-*
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> > *'It seems to me that an inquisitorial body is under an obligation to bring to the attention of any person whose rights may be affected by a decision of such a body any matter of substance or importance which that inquisitorial body may regard as having the potential to affect its judgment. In that regard an inquisitorial body may, in many cases, be in a different position to a body which is simply required to adjudicate upon the contending positions of two competing parties in an adversarial process. In the latter case the adjudicator simply decides the issues on the basis of the case made whether by evidence or argument by the competing parties. However the principles which have been developed by the courts since the decision of the Supreme Court in* Re Haughey [1971] I.R. 217 *are equally applicable, in principle, to inquisitorial bodies. The precise way in which those principles may be applied may, of course, differ. However the substantial obligation to afford a party's whose rights may be affected, an opportunity to know the case against them remains. In those circumstances it seems to me that whatever process or procedures may be engaged in by an inquisitorial body, they must be such as afford any person who may be affected by the decision of such body a reasonable opportunity to know the matters which may be likely to affect the judgment of that body against their interest. In the course of argument in this case it was suggested on behalf of the RAT that it would be inappropriate for the Tribunal either to direct the line of questioning which should be adopted on behalf of the Commissioner or to engage in questioning itself (on the grounds that such questioning might give rise to an appearance of bias). I am afraid I cannot agree.*
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> > *If a matter is likely to be important to the determination of the RAT than that matter must be fairly put to the applicant so that the applicant will have an opportunity to answer it. If that means the matter being put by the Tribunal itself then an obligation so to do rests upon the Tribunal. Even if, subsequent to a hearing, while the Tribunal member is considering his or her determination an issue which was not raised, or raised to any significant extent, at the hearing appears to the Tribunal member to be of significant importance to the determination of the Tribunal then there remains an obligation on the part of the Tribunal to bring that matter to the attention of the applicant so as to afford the applicant an opportunity to deal with it. This remains the case whether the issue is one concerning facts given in evidence by the applicant, questions concerning country of origin information which might be addressed either by the applicant or by the applicants advisors or, indeed, legal issues which might be likely only to be addressed by the applicant's advisors'.*

28. While Idiakheua *was also a leave application so that only issue was as to whether the applicant had satisfied the court that there were substantial grounds for any of the propositions relied upon, I am satisfied that the above represents an appropriate principle by reference to which the procedures of inquisitorial bodies should be judged so as to determine whether such bodies have complied with the principles of constitutional justice in cases where an obligation to act in accordance with those principles applies."*

6. Here what was not put to Mr B was that a US State Department Country Report of 2017 would be used by the IPAT to gauge the credibility of Mr B's account of arrest and release from detention in 2011. As US State Department country reports are fairly contemporary reports on the position pertaining in a particular country, a 2017 Report, in truth, would have a quite loose connection to what was happening 'on the ground' in Bahrain in 2011. This disconnect between the report consulted and the period in issue can only have been exacerbated by the fact that 2011 was a particularly unsettled year in the recent history of Bahrain as 2011 was the year of its 'Pearl Uprising', inspired in part by the 'Arab Spring' of that year. Gauging the 2011 position by reference to a 2017 Report, especially in the particular context of the unsettled state of Bahrain in 2011, was a sufficiently unorthodox approach for the IPAT to adopt as to afford something of a classic example of the type of instance in which, pursuant to *Moyosola*, Mr B's express attention ought to have been drawn to how the IPAT intended to proceed in this regard and submissions invited. For the IPAT not to have proceeded so regrettably yielded a breach of the principles of constitutional justice with which the IPAT is required to comply.

7. (2) Did the IPAT materially err in law and in fact by failing to assess credibility in the context of relevant country information, and in particular, by measuring the plausibility of Mr B's account of his arrest and release from detention in 2011 by reference to 2017, rather than 2011 country information?
8. Yes. This question has largely been answered in the context of Question (1). The IPAT materially erred in law and fact by failing to assess credibility in the context of relevant COI, specifically by gauging the plausibility of Mr B's account of events in 2011 by reference to COI concerning 2017 and not COI concerning the position as of 2011. The IPAT contends in this regard that the COI is but one piece of evidence in the mix of evidence. However, it is clearly important evidence and it is clearly important that the IPAT should have regard to correct evidence when undertaking analysis of each particular issue presenting in an appeal.

9. (3) Did the IPAT err in law by failing to conduct a rational analysis of the psychiatric report of Dr PB of 03.08.2018 that supported Mr B's claim and, in particular, by finding difficulties with the report because it did not use the scale at para.187 of the Istanbul Protocol?
10. Yes. The IPAT erred in law by finding fault with the the said psychiatric report that it did not use the scale identified at para.187 of the *UNHCHR Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Istanbul Protocol). Why? Because that scale relates to physical symptoms only *("lesion[s] and…the overall pattern of lesions*") whereas the psychiatric report is concerned with psychological, *i.e*. non-physical, symptoms.

11. (4) Given that, as a national of Syria and not Bahrain, events in Bahrain are irrelevant to the asylum claim being brought by Mr B's wife in Germany, did the IPAT err in law by suggesting that it was not credible that she would not rely on events in Bahrain in her asylum claim?
12. Yes, though the court does not see that this error impacted on the Impugned Decision. The impugned reference appears in para.4.18 of the Impugned Decision where the IPAT states that it was concerned about the reference in Mr B's papers to the fact that "*his wife does not appear to be relying on the events in Bahrain for her asylum claim at all*". But that this should be so is, with respect, unsurprising. Whether Mrs B qualifies for international protection will be assessed by the German authorities by reference to Syria, Mrs B's country of nationality. The IPAT contended at the hearing of the within application that the quoted observation was essentially by way of "*peripheral*" remark. If what is meant by this is that the remark had no impact on the Impugned Decision, this is accepted by the court.

Conclusion
13. The court notes that Mr B is someone in respect of whom a number of unchallenged adverse findings have been made by the IPAT concerning his credibility. Nonetheless the various errors considered above are so material to the Impugned Decision as to yield the result that the Impugned Decision cannot be allowed stand as a matter of law. The court will grant the order of *certiorari* sought and remit this matter to the IPAT for fresh consideration.