THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 636 J.R.]

IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED), IN THE MATTER OF THE IMMIGRATION ACT 1999 (AS AMENDED) AND IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000

BETWEEN

B. MJ. L., T. L. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND, B. MJ. L.), L. L. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND, B. MJ. L.) (DEMOGRAPHIC REPUBLIC OF CONGO)

APPLICANTS

AND

MINISTER FOR JUSTICE AND EQUALITY, ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Cross delivered on the 14th day of February, 2012

1. Background

1.1 This is an application for leave for judicial review to take up and quash the decisions of the first named respondent (the Minister) to refuse:-

(a) a grant of refugee status to the applicants;

(b) to refuse a grant of subsidiary protection to the applicants; and

(c) to make deportation orders in respect of the applicants.

There was a further application for an injunction restraining the Minister from deporting the applicants pending determination of proceedings.

1.2 The applicants are a mother and her two daughters. They are nationals of the Democratic Republic of Congo (DRC). The first named applicant was born on 22nd September, 1959, the second on 18th August, 1995 and the third on 23rd March, 2003.They used to reside in Kalamu, Kinshasa, DRC.

1.3 The applicants arrived in the State on 23rd May, 2008 and immediately sought asylum.

1.4 The first named applicant (unless otherwise clear "the applicant") filled out the usual questionnaire to the RAC detailing the reasons for leaving DRC. In essence she stated she joined the UDPS political party in 2004, was involved in canvassing support for the party in her local neighbourhood and that she participated in protest marches organised by the party in 2005, 2006 and 2007, distributing leaflets and carrying banners. She furnished I.D. and party membership documents. She claimed she was arrested on each occasion she marched and was detained for three days in 2005 and one day in 2006. She claimed that after a march on 19th March, 2008, she was imprisoned in Makala Prison in Kinshasa for six weeks and that she was subject to brutality therein until she escaped which was procured through bribery by the good offices of her brother-in-law.

1.5 The applicant then was financed by the same brother-in-law to come to the State *via* France.

1.6 The RAC in his s. 13 report dated 10th November, 2008, recommended that the applicant and her daughters be refused to asylum. He said that the COI reports for 2005 and 2006 showed UDPS members were persecuted and were prone to arbitrary arrest and detention but that the re ports for 2007 and 2008 indicated treatment of UDPS members had improved significantly.

1.7 That decision was not subject to judicial review but the applicant appealed to the Refugee Appeal s Tribunal by notice of appeal dated 10th November, 2008, which was followed by an oral hearing on 6th April, 2009 and a decision was dated 16th May, 2009, which reaffirmed the recommendation of the Commissioner.

1.8 Prior to the decision of the RAT, the applicant furnished more COI documentation consisting of a newspaper article on the events of 19th March, 2008 and also a medical report from SPIRASI.

1.9 The decision of the RAT refers to the various COI documentation including the SPIRASI letter and the newspaper article.

1.10 The RAT reiterated the view of the RAC that the COI information indicates that the treatment of UDPS members was significantly better in 2007 than it had been in 2005/2006 and concluded "while it remains possible that individual UDPS are victims of human rights abuses this would not be l inked to the fact that they are members of that particular party'".

1.11 The RAT then went on to indicate that there were a number of "problematic inconsistencies" with the applicant's account which claimed to undermine her credibility and thus questioned the legitimacy of her claim.

1.12 The decision of the RAT is of potential relevance though it is not itself the subject of any challenge, counsel o n behalf of the applicant has argued that it was based upon irrational considerations and "polluted" the subsequent decisions of the Minister to refuse

to grant asylum, and the later decisions in relation to subsidiary protect ion and deportation.

1.13 By letter of 22nd June, 2009, the Minister refused to grant refugee status to the applicant and invited in the usual way applications for subsidiary protection and leave to remain. This is the first decision in respect of which the applicant seeks leave for judicial review.

1.14 On 9th July, 2009, the applicants sought subsidiary protection and leave to remain. By letter of 13th April, 2011, the applicant was advised that the subsidiary protection application was refused and I shall deal with the basis of that refusal subsequently.

1.15 The applicant further seeks leave for judicial review of the subsidiary protection refusal.

1.16 By letter of 1st June, 2011, the applicant was informed that the Minister had made deportation orders in respect of the applicant and her daughters on 25th May, 2011. The basis of this deportation order will be discussed later.

1.17 The applicant seeks leave to review the deportation order as well.

2. Proceedings
2.1 The applicant sought leave for judicial review dated 21st July, 2011.

2.2 As stated above the relief claimed was by way of an order of *certiorari* in respect of:-

(a) the refusal of the Minister pursuant to s. 17 of the Refugee Act;

(b) the refusal of the applicant's subsidiary protection; and

(c) the deportation order.

2.3 Other declaratory reliefs were sought which apart from a claim for an injunction are not really relevant to these proceedings.

2.4 The applicant did not initially seek any extension of time and this matter will be discussed subsequently where it is relevant.

2.5 The applicant claims that the Minister has no jurisdiction to refuse pursuant to s.17(1) to grant refugee status as the applicant is not a failed asylum seeker and he makes that claim following the decision of Cooke J. on 9th February, 2011 , known as the *Dokie* and *Ajihola* decision in which Cooke J. sought a ruling from the Court of Justice, *inter alia*, as to whether the fact that domestic law has assigned the appeal from the RAC to the RAT is legitimate.

2.6 The applicant then attacks the decision in relation to subsidiary protection on the basis that the power of the Minister to make decisions with relation to subsidiary protection is contingent upon the applicant being a "failed asylum seeker". Accordingly, if the RAT provisions are, in effect, struck down after the Court of Justice decision in the *Dokie* and *Ajihola* case, the applicant will still be an asylum seeker and will not be a failed asylum seeker as there will have been no valid decision to the contrary.

2.7 The applicant also contested the subsidiary protection and deportation decisions on the basis that they were on their merits irrational or unreasonable.

2.8 The respondents in their replies joined issue on all matters including the irrationality etc. of the decisions.

2.9 The respondents contend that the applicant required an extension of time for proceedings commenced by notice of motion dated 21st July, 2011, as s. 5(2)(a) of the Illegal Immigrant (Trafficking) Act 2000, stated that (a) an applicant might not challenge a decision pursuant to s. 17 of the Refugee Act 1996, (s. 5(1)(k) and/or; (b) any deportation order under s. 3(1) of the Immigration Act 1999 (s. 5(1)(c), other than by way of a notice of motion issue within a period of fourteen days from the date of notification and that the challenge to the Minister's decision under s. 17 was over two years and the challenge to the deportation order which was issued by letter dated 1st June, 2011 , did not issue until some five to six weeks after the statutory period has elapsed.

2.10 The applicant swore a supplementary affidavit (241 January, 20 1 2) dealing with the issue of an extension of time but did not seek any order from the court giving liberty to file the same and the respondent objected to this affidavit. I determined at the commencement of the proceedings that the applicant could file this affidavit which purported to explain the five to six week delay in relation to the deportation order decision. The applicant submitted that no extension of time was required in respect of the Minister's s.17 order. The applicant advanced various grounds on this point and the question of extension of time and whether the same is needed and if so whether it should be granted will be discussed subsequently.

2.11 The applicant conceded that if an extension of time were needed in respect of this s. 17 decision that no grounds have been advanced why the court should exercise its discretion in this regard. Given the over two year delay that is not a surprising concession to have been made.

2.12 Accordingly, I propose to analyse this case dealing firstly with s. 17 decision and whether an extension of time is required and, if appropriate, on its merits. Secondly, I will analyse the merits in relation to the subsidiary protection. For various reasons, no extension of time is required in respect of this decision. Thirdly, I will analyse whether an ex tension of time should be granted in relation to the deportation decision, it being conceded that an extension of time is required, and if appropriate to deal with same on the merits. Finally, I will deal with any further matters such as injunctive relief if appropriate.

3. The Section 17 Decision and the Issue of Time
3.1 The proceedings have been commenced by an application dated 21st July, 2011. The refusal of the Minister pursuant to s.17 of the Refugee Act was by letter dated 22nd June. 2009. As stated, there is no application to extend this time and no explanation has been given as to 'Why it ought to be extended. It is contended by the applicant that the statutory time limit of 14 days for challenging such a decision (s. 5 of the Illegal Immigrants (Trafficking) Act) was held by Hogan J. in *D. v. Minister for Justice, Equality and Law Reform* [2011] IEHC 37, not to apply to those cases where the underlying com plaint was that the State had not properly transposed the Procedure Directive into domestic law:-

> "An applicant in this situation may be barred from asserting European Union rights only if national procedural law complies with the principles of equivalence and effectiveness. As I have concluded that s. 5 of the 2000 Act fails these requirements, it follows that this limitation provision may not be pleaded or relied on as against the applicants so far as

the claim based on the Procedures Directive is concerned."

3.2 Following the above decision, Hogan J. went on to conclude in *P.M. (No. 1) v. Minister for Justice, Equality and Law Reform* (Unreported, 28th October, 2011) that the normal provisions of 0. 84, r. 21(1) do not apply in relation to time stating:-

> "Section 5 of the 2000 Act must be regarded as the governing time limit, so that if that time limit i s inapplicable, then it would not be legitimate to resort to other, more general time limits contained in 0. 84, r. 21 (1). Put another way, the Oireachtas clearly intended to replace the general time limit for judicial review applications contained in 0. 84, r.21 (1) with a special time limit applicable to asylum and immigration matters.
>
> ….
>
> On the assumption, therefore, that the Procedures Directive was never properly transposed into national law, it follows that, for the reasons set out in my judgment in *D.*, the special time limits contained ins. 5 of the 2000 Act are inapplicable. Nor do the general time limits contained in 0. 84, r. 21 (1) apply, since the Oireachtas clearly intended that these provisions would be supplanted by the special provisions of s. 5 of the 2000 Act."

3.3 Clarke J. stated in *Re Worldport Ltd* [2005] IEHC 189:-

> 'It is well established that, as a matter of judicial comity, a judge of first instance ought usually follow the decision of another judge of the same court unless there are substantial reasons for believing that the initial judgment was wrong... Amongst the circumstances where it may be appropriate for a court to come to a different view would be where it was clear that the initial decision was not based upon a review of significant relevant authority, where there is a clear error in the judgment or where the judgment sought to be revisited was delivered a sufficiently lengthy period in the past so that the jurisprudence of the court in the relevant area might be said to have advanced in the intervening period. In the absence of such additional circumstances it seems to me that the virtue of consistency requires that a judge of this court should not seek to second guess a recent determination of the court which was clearly arrived at after a thorough review of all of the relevant authorities and which was, as was noted by Kearns J., based on forming a judgment between evenly balanced argument. If each time such a point were to arise again a judge were free to form his or her own view without proper regard to the fact that the point had already been determined, the level of uncertainty that would be introduced would be disproportionate to any perceived advantage in the matter being reconsidered."

3.4 I accept the above decision as correct. Accordingly, though the case of D. is under appeal to the Supreme Court, I will follow it and accept that the fourteen day period is inapplicable to s.17 decisions. Nonetheless, I have come to the view that I must respectfully disagree with the decision of Hogan J. in P.M. to the effect that following his decision in *D.* that in these cases, the statutory fourteen day period was inapplicable that in effect no time limit can be imposed.

3.5 The decision of Hogan J. in P.M. does not refer to any authorities on the issue. In my opinion, the provisions of O.84, r. 21 (1) are applicable, this order provides:-

> 'An application for l eave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose, or six months where the relief sought is *certiorari*, unless the Court considers that there is good reason for extending the period within which the application shall be made."

3.6 Section 5 of the 2000 Act states:-

> "(1) A person shall not question the validity of -
>
> …
>
> (k) a refusal under section 17 (as amended by section ll(l)(p) of the Immigration Act, 1999) of the Refugee Act, 1996 ,
>
> …
>
> otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1 986) (hereafter in this section referred to as 'the Order').
>
> (2) An application for leave to apply for judicial review under the Order in respect of any of the matters referred to in *subsection (1)* shall -
>
> (a) be made within the period of 14 days commencing on the date on which the person was notified of the decision, determination, recommendation, refusal or making of the Order concerned unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made..."

3.7 It should be noted that s.5(1) does not attempt to amend 0. 84, r. 2 1 (1). In point of fact, it requires all applications for judicial review to be made "under" Order 84.

3.8 The section in fact imposes additional requirements and in particular s. 5(2)(a) requires the application to be made within fourteen days from the notice of the decision.

3.9 I believe that it follows that the legislature required challenges to decisions to be brought by judicial review in accordance with 0. 84 but imposed additional requirements (to the disadvantage of prospective applicants).

3.10 In *White v. Dublin City Council* [2004] 1 I.R. 545, 0. 82(3)(B)(a)(i) which imposed a two months limitation period for judicial review in respect of certain planning decisions was considered and was held to be invalid having regard to the provisions of the Constitution o r into the absence of any provisions for an extension of time.

3.11 In *Jerry Beads Construction Limited v. Dublin Corporation* [2005] I EHC 406, the plaintiff, following the Supreme Court decision in

White (above) issued proceedings eleven months after the decision of An Bord Pleamila and it was accepted that the two month time bar no longer applied, however, the court accepted that this fact did not effect the issue of the time limitations imposed by 0. 84, r. 21 (1) of the Rules.

3.12 In *Lennon v. Cork City Council* (2006] I EHC 438, Smyth J. stated:-

> "While in White v. Dublin City Council the Supreme Court held that an absolute eight-week time period provided for by Section 83(38) was unconstitutional, it does not follow that the time limit was retrospectively 'disapplied' or that any right of action barred by the operation of that provision was revived ...
>
> In my judgment the provisions of Order 84 of the Rules of the Superior Courts are applicable, but in any event they must be applied because there is an obligation in all matters of this kind to apply 'promptly' and, in any event within three months from the date on which grounds arose or six months from where *certiorari* is sought, unless the Court is satisfied that there is good reason for extending the period."

3.13 In this case, not alone is the applicant without any excuse in gross breach of the six month period, the applicant is also in breach of the general provision whereby such applications must be brought "promptly".

3.14 I have been advised that the legal authorities were submitted to Hogan J. in the *P.M*. case (above), however, it is clear that there is no reference to any authority in his judgment and that the case of *Jerry Beads Constructions* and indeed the *Lennon* case indicate clear authority supporting the view that the time limitation in 0. 84, r. 21 (I) remains extant notwithstanding the enactment of s. 5(2)(a) of the 2000 Act.

3.15 Accordingly, notwithstanding that the case of *D.* has been appealed to the Supreme Court, I will follow that decision and accept that the fourteen day time limit does not apply to this challenge but hold that the application was brought without explanation over two years after the date and clearly not either promptly or within the six month period which applied.

3.16 Accordingly, I do not have to consider the basis of the applicant's challenge to the refugee declaration decision of22nd June, 2009. Suffice to say, however, that the only challenge being made by the applicant to this is that he has been deprived of a "effective remedy" against the first instant decision as they alleged he had never access to lawful asylum process.

3.17 It is clear that the applicant while fully legally represented applied for subsidiary protection (see below) on the basis that his asylum application had failed and that no challenge was made to the initial decision of the RAT.

3.18 I accept the submission from the respondents that what the applicant is attempting to do is to "collaterally" impugn the validity of the RAT decision by way of an appeal. This is not allowable. No attempt was made by the applicant to quash the Tribunal decision and that following the Minister's decision on 22nd June. 2009, the applicant became "failed asylum seekers".

3.19 Accordingly, even if the applicant was not barred by her failure to act promptly or by the time limit of six months, the applicant has barred herself by her conduct from impugning the Minister's decision. Since her conduct subsequent to that time is entirely inconsistent with the denial of the validity of that decision. The applicant sought to adopt the benefits that might accrue to them from the decision in that they applied for subsidiary protection which is only available to a person who is not a refugee.

4. Subsidiary Protection Application

4.1 By letter dated 13th April, 2011, the applicant was informed that the subsidiary protection application was refused. The time limit for subsidiary protection is six months and the proceedings herein were commenced within that time.

4.2 The basis of the subsidiary protection claim was that the applicant would be subjected to serious harm by way of "torture or inhumane or degrading treatment or punishment". The applicant at the same time sought leave to remain on the basis that deportation to the DRC would breach the principle against refoulement.

4.3 The applicant first objects that the power of the Minister to make a decision in relation to subsidiary protection (and indeed deportation is predicated upon the applicant being a failed asylum seeker) and that because of the alleged failures of the State in their provision of an effective remedy that the applicants were never failed asylum seekers.

4.4 I have, in effect, dealt with that submissions above, however, to repeat in my view the applicant is estopped from making such an argument in relation to the subsidiary protection decision. The applicant sought to obtain a favourable subsidiary protection decision and on the basis that they were failed asylum seekers and cannot now make the entirely contradictory case that they were never failed asylum seekers in the first place.

4.5 The applicant further challenges the decision in relation to subsidiary protection on the basis that the Minister allegedly erred in law and in fact at arriving at the subsidiary protection decision alleging that the same were irrational or unreasonable.

4.6 As has been established in a number of judgments of this Court relating to subsidiary protection, subsidiary protection is a complementary protection which arises in circumstances where a person is unable to qualify for refugee status but will nonetheless face a "real risk of serious harm" on return to the country of origin. It comes after the conclusion of the refugee process where either the same set of facts or possibly entirely new information is put forward.

4.7 Where subsidiary protection applicants put forward the same set of facts, the Minister i s entitled to and must have regard to the asylum decisions and in particular the credibility of those facts during the process and he is not obliged to re-open or reinvestigate the asylum decisions-see *N.F. v. Minister for Justice, Equality and Law Reform* (Unreported, High Court, Charleton J.).

4.8 In *Obuseh v. Minister for Justice, Equality and Law Reform* [2010] -IEHC 93, Clark J. stated :-

> 'The Court finds it difficult to envisage any circumstances where an asylum applicant is found not credible in his/ her claim as to the existence of a well founded fear of persecution will be granted subsidiary protection on the same facts. One has to ask oneself how, if a person's assertion relating to a fear of persecution is not believed, it can logically be possible that he/she might be eligible for protection on the basis of the same story under the Qualification Directive and Protection Regulations. Subsidiary protection is exactly what it says it is- it provides complementary protection to those applicants who do not meet Convention requirements to establish persecution but who nevertheless require protection ...

> If therefore the applicant has been rejected on credibility grounds for refugee status and he wishes to obtain subsidiary protection, he faces the unenviable task of establishing substantial grounds for believing that he will face a risk of serious harm from the death penalty or execution or torture or inhuman or degrading treatment on hi s return to his country of origin within the meaning of Article 15(a) or (b) of the Qualification Directive."

4.9 The Minister in his decision relied upon the decisions adverse to the applicant's credibility referred to in the decision of the Tribunal, which in turn referred to the similar decisions in the RAC.

4.10 The basis of the earlier decisions was that whereas COI information recorded that in 2005 and 2006, the members of the party claimed by the applicant (UDPS) were liable to arbitrary arrest and detention but that reports from 2007 and 2008, indicated the treatment of party members had improved significantly.

4.11 The RAC also made significant ad verse findings in relation to the applicant's credibility indicating firstly that the applicant conveyed a good deal of knowledge with regard to the UDPS but that her knowledge was not commensurate with a "high ranking active role" which the applicant had initially stated in her questionnaire. The RAC also queried the applicant's central claim that she had been involved in a protest march on 19th March, 2008, after which she had been arrested and subjected to torture and analysed that despite the intensive scrutiny that the DRC was under from foreign organisations that there is no record of such a march involving state brutality as stated by the applicant on that date. The RAC also rejected as not being reliable, the leaflet that the applicant had which she said she distributed on that march as such a leaflet emanated from herself.

4.12 The RAT was provided by the applicant with further documentation including the SP JR ASJ letter in relation to her injuries and a newspaper article which referred to the demonstration in March 2008.

4.13 The RAT reiterating the findings of the RAC indicating that the situation in the DRC had improved by 2007 and also held that there were a number of "problematic inconsistencies" with the applicant's account which undermined her credibility and thus questioned the legitimacy of her claim. The RAT indicated that the newspaper report could not be verified in contrast with independent international verifiable documents and indicated that there were many reports as to the ease which articles could be inserted i n newspapers in DRC by journalists to assist asylum applications and pointing out that the applicant was hesitant and unconvincing when asked simple questions in relation to how many others were arrested with her.

4.14 There were a number of other adverse credibility findings not alone in relation to t he applicant 's involvement with the U DPS but also in relation to her spouse and dependents still living in the DRC of whom the applicant did not apparently know the location and was not in touch with since coming to the State and she had not been in touch with any international organisation such as the Red Cross that would help find her family, notwithstanding the fact that her brother-in-law who was a highly successful businessman and who had assisted her in her release and had paid for her travel agents would be somebody who would know the location of her family.

4.15 The RAT concluded that in relation to her family "such a laid back attitude to the welfare of her spouse and family is evidence in support of the belief that the applicant is fabricating".

4.16 The RAT further concluded that the applicant 's account of her escape and "the fortuitous meeting" with her two children at the airport before travelling to the State was "not credible".

4.1 7 The RAT in its decision dealt with the medical report from the SPIRASI which indicated that her injuries were consistent with her story as not removing from the RAT the ultimate decision as to her credibility.

4.18 I have outlined the basis for which the RAC and RAT came to its decisions at far greater length than would be appropriate because there was, as I indicated above, what I described as a collateral attack on them by the applicant in these proceedings. It is not the function of this Court in these proceedings to inquire into the reasonableness/ rationality of the RAC or RAT decision. If it was the function of the court to so enquire, I have no doubt but these decisions were both rational and reasonable.

4.19 In point of fact, the Minister when coming to his conclusion in relation to the subsidiary protection did far more than the mini mum required and dealt with and analysed at some considerable length the various COI information together with updated reports from 2009 and 2010, indicated again that the situation in relation to the UDPS had improved and again accepted that the findings in relation to credibility.

4.20 It was submitted by counsel on behalf of the applicant that the decision in relation to subsidiary protection was made on the basis that State protection was available to the applicants. I do not see that as the basis for the decision at all. The basis of the decision was that the Minister upheld the findings of the RAT in relation to the improved status of members of the U DPS and also found that the applicant's account lacked credibility on a number of grounds as outlined above.

4.21 I do not believe that the applicant has shown substantial, or indeed any grounds for challenging the Minister's decision in relation to subsidiary protection.

5. Deportation

5.1 The proceedings were as stated commenced by notice of motion dated 3rd October, 2011, and relate to a decision to deport dated 25th May, 2011, notified to the applicants by letter dated 1st June, 2011. The applicant did not bring any application to extend the time in respect of this decision originally on the belief that it was also caught by the decision of Hogan J. in the *D.* case (above). The applicant now accepts that the decision was not caught by the above decision and that the time limit of fourteen days imposed by s. 5(2) of the 2000 Act applies. At the commencement of these proceedings, the applicant sought to file an affidavit to explain this delay which is approximately five weeks after the expiration of the two weeks period. As stated above, I gave liberty to the applicant to file the said affidavit.

5.2 The applicant in her affidavit very fairly sets out the basis for the application to extend the time as follows:-

> "I say that I received the decision of the Minister to make a deportation order against me on 6th June, 2011. I was at that time represented by the Refugee Legal Services. I say I was informed by letter of 7th June, 2011. They did not believe they were grounds to challenge the decision of the Minister. I say that I sought a second opinion from Daly Lynch Crowe and Morris Solicitors. I say I attended their offices on 7th June, 2011. I say and believe that those solicitors requested my file from the Refugee Legal Services and lodged an application to the first named respondent for a copy of my file on 8th June, 2011. I say and am advised on 17th June, 2011, the Freedom of Information request was refused. I

say and am advised that those solicitors again wrote to the Refugee Legal Services for a copy of my file. I say and am advised that following receipt of the file, time was taken to consider it. I say I was advised by those solicitors on 15th July, 2011 of their view that there were no grounds for a Judicial Review.

I say that I obtained the contact details of my current solicitors and obtained the earliest appointment with them which was on 18th July, 2011. I say and am advised that advices were sought from counsel and that papers were returned as soon as possible thereafter. I say that it was always m y intention to challenge the Deportation Order and I acted as quickly as possible to take what steps I could do to challenge the order."

5.3 The extension of time sought is, in view of the time limit imposed by the Act is quite a substantial one. In *0'Driscoll & Anor v. Law Society of Ireland & Anor*, McKechnie J. in the Supreme Court (27th July, 2007) reviewed the case law dealing with extension of time under 0. 84, r. 2 1 (1) and said:-

"There is no doubt but that whichever analytical approach is taken, the pursuit of justice is the overriding criteria applicable to all stages of either process. Whether one approaches this task by firstly establishing the presence or absence of inordinate and inexcusable delay, or whether one firstly identifies particular factors such as: the nature of the order being sought; the conduct of the parties;

the impact on third party rights; the existence of prejudice; or other like matters, the dominant achievement remains one of justice. That issue can only be determined in light of the circumstances of each case..."

5.4 In *Muresan v. Minister for Justice* [2003] WJSC - HC, Finlay Geoghegan J. referred to a late amendment to the proceedings and stated:-

"The only explanation given for the delay in the filing and serving of the motion seeking the proposed amendments of 30th June, 2003, was that a new counsel was retained in the case shortly prior to the hearing date of 3151 January, 2003 and the new counsel, Mr. Humphries, considered that these additional reliefs and grounds ought to be included as part of the applicant's claim on the facts presented by the documents then available. No additional documents had been made available over and above those that were made available with the affidavit of Sandra Smith on 27th November, 2002.

I have concluded that a change of counsel in the circumstances of this case is not good and sufficient reason to extend the period. Mr. Pendred, the solicitor for the applicant is an experienced solicitor in refugee matters... It is inevitable that different counsel would take a different view of the same case. It appears to me that if the courts were to permit an extension of the period provided under subs. (2) of s. 5 of the Act of 2000 simply upon the grounds that a new counsel had come into the case and had taken a view that a differing and additional claim or new and distinct grounds should be made this would defeat the legislative intention expressed by in s. 5(2) of the Act of 2000... "

5.5 The applicant submits that the first legal adviser may have been subject to resources problems in advising that no challenge should be made but this is clearly not applicable in the case of the second firm of solicitors who are a firm with a great deal of experience in the asylum courts and with a strong record of judicial review challenges.

5.6 I must accordingly, approach this application to extend the time on the basis that the delay is not a short one given the time limits imposed and that on the face of it a change of legal representation is not good grounds for an extension of time. I am also conscious of the fact that the decisions indicate that before I make a decision on the extension of time, I should look at the substance of the application to see its strength or otherwise.

5.7 In relation to the merits, I am persuaded that the Minister when considering the deportation order was given no new information detailing any change set of circumstances that had not been available previously before the RAC, the RAT and the Minister at the subsidiary protection stage. Accordingly, what was presented to the Minister at deportation stage was the same information as had been discredited on previous occasions. The Minister in his deportation decision again examined the full file and took into account extensive COI as to serious human rights violations in the DRC and the fact that the Government took few significant steps to reform the security forces. The Minister also considered the treatment of failed asylum seekers on return to the DRC based on information furnished by the UN H CR to the effect that a human rights NGO had an office at the airport monitoring the situation in relation to returning failed asylum seekers and that they were not aware of any these persons being detained and/or tortured upon return though there were reports that some failed asylum seekers had to pay money to the police and the Minister then concluded:-

'I consider all the facts of this case according to COI above the situation has improved greatly for members of the UDPS since MONUC's arrival in DRC, the level of general police protection is improving. Country of origin information confirms that there is a functioning police force and judicial system in DR Congo and I am satisfied that State protection is available...

Serious credibility issues arose in RAT in relation to the applicant's claim which should also be taken into account here..."

5.8 Any obligation that the Minister may have since the Meadows decision in relation to proportionality is entirely dependent on the information that he has been given and given the fact that the Minister has been furnished with essentially no new material, I believe that the Minister exceeded what was required of him in that he clearly did examine the full COI:-

"Having considered the country of origin information above, I am of the opinion that repatriating B. MJ. L. and her daughters to DR Congo is not contrary to s.4 of the Criminal Justice (UN Convention Against Torture) Act 2000."

5.9 Accordingly, I am not of the view that the applicant's substantive application has merits and that the applicant has not demonstrated why there should be an extension of time to bring this application in relation to the deportation decision.

6. Injunctive Relief

6.1 I have held that the applicant has not demonstrated substantial grounds 1or leave in relation to his application for judicial review of the subsidiary protection issue. I have held also that the applicant is out of time in respect of the challenge to the s. 17 decision and I have held that the applicant is not entitled to an extension of time and does not have any sustainable case in relation to his challenge to the deportation decision.

6.2 The applicant in these proceedings now says that there is further COI information from more recent dates indicating persecution to members of the UDPS.

6.3 It is well stated that these proceedings are not the appropriate venue to consider any fresh arguments not considered by the RAC, the RAT or the Minister. To do that would be to engage in an appellant process on the merits which clearly this is not.

6.4 Accordingly, the applicant does not have any basis in which to claim an injunction in respect of any of the orders that he seeks to impugn in these proceedings.

6.5 There is, of course, provision under s. 3(11) whereby somebody who claims that they are in possession of new information may apply to re-enter the asylum process. I make no judgment on the merits of such a possible submission as I have not considered any of the information which Mr. O'Halloran, counsel on behalf of the applicant seeks to present before me.

6.6 In *K.I.K. v. Refugee Appeals Tribunal & Ors* (2011) IEHC 444, Cooke J. stated:

> "In the present case, the Court is asked to accept that the applicant does face a risk of irreversible harm if deported, but based only upon the claim he made throughout the deportation process."

6.7 Should the applicant have information that would qualify for consideration under s. 3(II) then, of course, he may avail of that procedure. These proceedings are not, however, the basis for such an application.

7. Conclusion
7.1 For the reasons as stated above, the applicant fails in his application for leave to judicial review in each of the grounds that he has sought and I dismiss this application.

APPROVED: Cross, J