

## THE HIGH COURT

## JUDICIAL REVIEW

[2013 No. 874 J.R.]

BETWEEN

M. R.

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

**JUDGMENT Ms. Justice Faherty delivered on the 22nd day of August, 2016**

1. This is a telescoped hearing where the applicant seeks, *inter alia*, relief by way of order of *mandamus* directing the Minister for Justice and Equality to investigate the alleged sex trafficking of the applicant into this jurisdiction and in addition to grant the applicant a temporary residence permission until such time as any investigation of, and any prosecution of, human trafficking is completed. Other ancillary reliefs are also sought.

2. The grounds upon which the reliefs are sought are:

- (a) The applicant alleges that he was the victim of sex trafficking to the State and of sexual assault;
- (b) No or no lawful or no proper investigation of the alleged assault and trafficking has occurred. The applicant has been provided with no protection. Neither has any arrest, charge of prosecution ensued;
- (c) The applicant through the office of his legal representatives has repeatedly requested investigations into the trafficking of the applicant. His legal representatives' submissions have not been answered. They have not been provided with any report of any investigation. An interview with the applicant which purported to be an investigation took place without notice to the applicant or his legal representatives;
- (d) The respondent has failed and refused to provide the applicant with the medical, psychological and material assistance requisite to the recovery of a suspected victim of trafficking and relating also to any lawful and proper investigation of the allegations of assault and trafficking;
- (e) The respondent had failed and omitted to grant the applicant a permission to remain in the State and has sought to remove the applicant from the State without carrying out any or any lawful investigation into the allegations of assault and trafficking.

**Background and procedural history**

3. The applicant was born in 1987 in Morocco. On 21st July, 2006, he arrived in this State on a tourist visa. The visa was obtained with the assistance of a named third party, hereinafter referred to as the applicant's sponsor, an Irish national. Following his arrival in the State, the applicant lived with the sponsor until 4th August, 2006.

4. The applicant claimed asylum on 9th August 2006. He completed an asylum questionnaire on 11th August 2006 and on 15th September 2006 he underwent a s.11 interview which was conducted by an authorised officer of the Refugee Applications Commissioner. Before the Commissioner, the applicant's claim for refugee status was on the basis of fear of persecution in Morocco because his father had allegedly been accused of spying by the Moroccan authorities and the applicant claimed that he would be arrested, imprisonment or killed by the Government or its agents if returned to Morocco.

5. The applicant was denied refugee status on credibility grounds, on the basis, *inter alia*, that available country of origin information did not appear to support the central basis of his claim. Moreover, the applicant had indicated during the s.11 interview that he travelled to Ireland by ship but it was determined that information on file showed that the applicant was sponsored to come into the State and that he arrived a means of a flight that was purchased by the sponsor. It was further determined that contrary to what the applicant had stated at interview, the available records showed that he had been issued with a Moroccan passport and identity card. When these matters were put to the applicant he denied that he travelled to the State on his own documentation or that he was sponsored and continued to assert that he fled Morocco for the reasons set out by him in the course of the s. 11 interview. It would transpire that the applicant's travel documents were passed to ORAC by the Gardai after they were provided with same following a complaint made by the sponsor on 9th August, 2006.

6. In the course of his appeal submissions to the Refugee Appeals Tribunal, (hereinafter the Tribunal) at which time he was legally represented by the Refugee Legal Service, the applicant reiterated his claim of persecution by reason of his father having been falsely accused by the Moroccan intelligence services of spying and his family's arrest as a result. The Tribunal was also advised that the applicant had been befriended in Morocco by a named Irish national (the sponsor) who suggested that that applicant come to Ireland for a visit. The Tribunal was advised all the arrangements for the applicant to travel to the State and stay at the sponsor's house had been made by the sponsor. The applicant alleged criminal misconduct on the part of the sponsor in that the latter tried to force him to have sex and that when he refused the sponsor had called a named Garda to his house and ultimately the applicant was told to leave the house and the sponsor had threatened to report the applicant if he said anything to the Irish authorities. The reason given by the applicant for the non disclosure all of the circumstances to ORAC was that he feared revenge by his sponsor. Additionally, the Tribunal was advised that the passport and other documentation referred to by the Commissioner were genuine documents, contrary to the applicant's earlier assertions. The material submitted to the Tribunal included a signed statement by the applicant which contained specifics of the applicant's alleged claim of how he ended up in the State, including the name of his sponsor.

7. The applicant's appeal was unsuccessful and his claim was rejected on credibility grounds, *inter alia*, on the basis that he failed to give a true account at the s.11 interview of the assistance he received to come to Ireland, or of his actual travel to Ireland and that he had made statements and provided information in support of his application which was false and misleading. It was found by the Tribunal that the applicant's "lack of candour in relation to issues which could be independently checked casts serious doubt on the remainder of the applicant's claim which cannot be independently verified." It concluded that "credibility concerns arise in relation to the applicant's claim and the applicant adduced manifestly false evidence in support of his application and therefore he cannot be given the benefit of the doubt."

The Tribunal referred to the sexual assault allegations, as follows:

"While the applicant claims that he was sexually assaulted in Ireland this is a criminal matter to be reported to the Gardaí and does not amount to persecution for a convention reason. Country of origin information suggests that if the applicant was to return to Morocco state protection would be available from any prospective traffickers."

The Tribunal's decision was not challenged.

8. A proposal to deport letter was issued by the Minister on 28th December 2006, following which the applicant's legal representatives submitted an application for leave to remain pursuant to s. 3(6) of the Immigration Act, 1999 on 11 January, 2007. They filed an application for subsidiary protection, on behalf of the applicant pursuant to S.I. 518 of 2006 on 18th January, 2007. The general thrust of both applications was that the applicant's life would be put at risk and he would be exposed to human rights abuses by the authorities on account of his imputed political opinion if returned to Morocco. In his subsidiary protection application, the applicant made reference, *inter alia*, to an attempted sexual assault on him by his sponsor and threats issued by the sponsor.

9. On 28th January 2009, the applicant married a Polish national. Thereafter, the couple made an application for residence in the State on behalf of the applicant. (2nd February 2009). The application for a residence permit was refused in a decision dated 14th July 2009. It is unclear how long the marriage lasted but as of 2013 the applicant's legal representatives were advising the Minister that the couple were estranged.

10. The subsidiary protection decision issued on 20th July 2009 and rejected the applicant's claim on the basis that doubts surrounded his credibility which did not warrant the benefit of the doubt being given to him pursuant to Regulation 5(3) of the 2006 Regulations. The decision did not refer to the allegation made by the applicant against his sponsor. A decision refusing the application for leave to remain issued on 28th July, 2009. The consideration of file dated 17th July, 2007 stated that *refoulement* was not found to be an issue in the case. The Deportation Order is dated 21st July, 2007. In the letter of 28th July, the Minister notified the applicant that he was required to present himself at the Garda National Immigration Bureau (GNIB) on 18th August, 2009 to make arrangements for his removal from the State.

11. By August, 2009, the applicant had new legal representation and on 7th August a request was made by them for the deportation file.

12. On some date in 2009, the applicant travelled to France. He was the subject of a take-back request from the French authorities on 16th August, 2009 under the Dublin II Regulation. He was transferred back to Ireland on 28th October, 2009.

13. It appears that in December 2010, the applicant was arrested and detained in Cloverhill prison under the provisions for the Immigration Act, 1999 for failure to present on 6th December, 2010. However, the Moroccan authorities would not issue a travel document in respect of him and he was released from detention on 8th February 2011.

14. By January, 2011, the applicant had instructed his present solicitors. They wrote to the Minister on 14th January, 2011 seeking a revocation of the Deportation Order pending their receipt of the full file from the applicant's previous solicitors and for the purpose of their making representations with regard to the harm to the applicant if returned to Morocco, and with regard to his EU Treaty rights application.

15. Following his release from Cloverhill prison the applicant presented at the GNIB in February 2011 and in March 2011 but failed to present on 19th April 2011. He presented again on 10th May, 2011 and on 9th June, 2011 but failed to present on 7th July, 2011 and was classed as an evader since that date.

16. On some date in 2011, the applicant travelled to the United Kingdom. On 16th September 2011, the State received a take-back request from the UK authorities pursuant to the Dublin II Regulation and he was duly returned to this jurisdiction on 12th October 2011. Upon his return, he was arrested and detained in Cloverhill Prison. He was scheduled for removal from the State on 2nd November, 2011.

17. On 21st October 2011, a request was again made to revoke the Deportation Order pursuant to s. 3(11) of 1999 Act based on a changed human rights situation in Morocco and the applicant's asserted EU Treaty rights. This request was declined on 1st November 2011.

18. Consequent on his detention in connection with the execution of the Deportation Order, the applicant sought his release pursuant to the provisions of Article 40 of the Constitution in the High Court and the Supreme Court, unsuccessfully. The decision of the Supreme Court in the matter is dated 5th December 2011.

19. It is not disputed but that it was in the course of the *habeas corpus* proceedings that the applicant's present solicitor learned for the first time of the applicant's allegations of criminal misconduct of a sexual nature against his sponsor.

The applicant's solicitor's affidavit sworn on of 21st November, 2013 for the purposes of these proceedings states that he raised in correspondence with the Minister "the alleged sexual assault on the applicant and [he] submitted that the matter constituted trafficking" and that he called on the Garda Commissioner to investigate the allegation of sexual assault, trafficking and related matters".

20. The letter of 9th November 2011 to the Minister, with reference to the application to revoke the Deportation Order and the applicant's EU Treaty rights, stated, *inter alia*, as follows:

"We did not know – in October 2011; and until the recent swearing of an affidavit by the State – of the applicant's allegations of his being trafficked into Ireland; and/or of his continuing fear of his sponsor. We furthermore did not have

sight of his Refugee Appeals Tribunal determination which shows that his credibility was undermined by a passport and other documentation that was provided in what he alleges was an attempt to entrap him at the Interview by a sponsor against whom the applicant alleges offences which remain un-investigated by the police. We advised the Minister that we encountered difficulties in obtaining coherent instructions in virtue of the disoriented mental state of the applicant but we were not made aware of his status as a trafficked person until the recent court proceedings; and or about the possible connection between his irrational behaviour and his experience of being trafficked and abused ..".

The Minister's attention was drawn to the "Administrative Immigration Arrangements for the protection of victims of human trafficking" and request was made for a "recovery and reflection period for the applicant to enable proper investigation of offences" as provided for in the guidelines.

In view of the fact that the applicant's allegations of trafficking remained un-investigated, the applicant's solicitors called on the Minister to "forthwith" release the applicant and to provide him with assistance as a trafficked person and called upon the Minister "to investigate (the applicant's claims) of historic indictable offences and continuing offences of *inter alia* trafficking and assault."

21. On 19th November 2011, the applicant's solicitors wrote to the Commissioner of An Garda Siochana (enclosing a copy of the 9th November letter to the Minister) in the following terms:

"We write in relation to [the applicant] trafficked for the purposes of sexual exploitation into Ireland who is currently in custody in Cloverhill Prison pursuant to a Deportation Order. We enclose our unanswered S3(11) and EU Treaty rights review applications dated 9th November 2011 addressed to the Minister.

We note, with concern, that there has been no garda investigation to date into (the applicant's) very serious allegations of his being sex trafficked into Ireland in the long interim since the occurrence of these offences and/or the making of his allegation. We now hereby call on the Commissioner of An Garda Siochana to formally investigate [the applicant's] claims of historic indictable offences of sexual assault committed against him, and continuing offences involved in *inter alia* his being sex trafficked and put in fear in Ireland. In this regard, we enclose herewith three letters from the alleged sex trafficker dated 9th August 2006 and 28th April 2006 and 5th July 2007(?); and a manuscript statement signed by [the applicant] containing these very serious but un-investigated allegations...

The above said applications are properly contingent on *inter alia* [the applicant's] status as a trafficked person as protected by the UN Convention Against Transnational organised Crime.....Article 6 mandates implementation of measures providing for 'medical, psychological material assistance' which are required in the case; and which are currently governed by administrative procedures which have not been observed by Ireland in [the applicant's] case.

Without prejudice to the foregoing, we hereby also request such garda investigation into this sex trafficking into Ireland in order to allow the preparation of a Section 17(7) application...based on [the applicant's] vulnerability as a sex trafficked person. Proper consideration of such 17(7) application or other said applications...cannot be adequately effected in advance of, or without being informed by, such garda investigation. "

The Garda Commissioner was also asked to "investigate [the applicant's] claims of Garda collusion in such sex trafficking, the garda collusion into his entrapment before The Office of the Refugee Applications Commissioner as principally engineered by his sex trafficker; and the subsequent garda cover-up and non-investigation of the said sex trafficking." This correspondence was copied to the Repatriation Unit in the Minister's department.

22. The Office of the Garda Commissioner replied to that request by letter dated 21st November 2011, acknowledging the correspondence, stating that it had been passed to the "Deputy Commissioner Operations" and indicating that there would be further communication in due course.

23. On 18th November, 2011, the Repatriation Unit of the Irish Naturalisation and Immigration Unit (INIS) in the Minister's Department replied to the letter of 9th November 2011 in the following terms:

"In relation to the allegations of attempted sexual assault by your client (against the person who sponsored his visa) in his appeal to the Refugee Appeal Tribunal in October 2006, I have been informed by the Garda National Immigration Bureau that they have no record of [the applicant] ever making a complaint to An Garda Siochana in this respect. While you claim that the alleged offences "... remain un-investigated by the police ..", you will appreciate that where a person such as your client never makes any complaint to the Gardaí, it is not possible for them to investigate such a claim. As over 5 years have passed since the alleged incidents took place, it is clear that your client could and should have reported the matter to An Garda Siochana in the intervening period."

The letter went on to state that Administrative arrangements for the victims of suspected trafficking which were put in place in June 2008 did not apply to the applicant as same were put in place after the alleged events. After reference to the EU Treaty right application it concluded by stating the applicant was the subject of a valid Deportation Order and that his removal was a matter for the Garda National Immigration Bureau (GNIB).

24. On 5th December, 2011, Detective Inspector Philip Ryan of GNIB replied to the applicant's solicitor's letter of 9th November 2011, as follows:

"....I have instructed your [client's] release from Cloverhill Prison. I have temporarily postponed the enforcement of the Deportation Order pending receipt of any complaint your client wishes to make to An Garda Siochana in relation to Human Trafficking.

As a matter of urgency Detective Sergeant Eamon Cowzer of the Garda National Immigration Bureau should be contacted on 01-669120 to make an appointment.

25. In a letter of 16th January, 2012, the applicant's solicitors advised the Minister in the following terms:

"We write in relation to the above named who was trafficked into Ireland from Morocco.

We were advised that on the Friday, 13th January 2012 our said client visited the Garda National Immigration Bureau at Burgh Quay. We were advised that he was verbally abused by Gardaí at that venue. We are instructed that the Gardaí

caused him such upset that he started to howl.

We were further instructed that the gardaí had consistently sought to elicit information from him about his being trafficked in a manner which is entirely unprofessional, conflicted and without the assistance of any professionally trained doctors or nurses or experts. It is our instructions that An Garda Síochána originally colluded in his trafficking. Our client has been referred to the Rotunda Unit by SPIRASI.

After upsetting our client in this fashion, the gardaí then brought our client to Fitzgibbon St. Garda Station where he was charged with public order offences. At Fitzgibbon street garda station, we are advised that he was further pressured to make a statement about the circumstances of his being trafficked into Ireland by untrained psychologist members of the gardaí. When a medical doctor was called to the Station, the client was able to furnish a statement to the doctor".

26. After setting out other complaints relating to the accommodation in which the applicant was housed, the applicant's solicitor called on the Minister "to house [the applicant] without any delay", failing which the applicant's solicitor had instructions to seek the assistance of the courts. The call to re-house the applicant was reiterated on 17th January, 2012.

27. It appears that no correspondence was sent directly by the applicant solicitors to GNIB at this time.

28. This correspondence was acknowledged by the Repatriation Unit of the Minister's Department on 17th January 2012 which advised that the correspondence had been passed to the GNIB and to the Refugee Integration Accommodation. The letter also stated that the enforcement of the Deportation Order remained an operational matter for the GNIB.

29. In January, 2012, the applicant was referred to Ruhama by his solicitor and an assessment of the applicant was carried out on 20th January 2012 and 6th February 2012. The Ruhama report recites the applicant's allegations against his sponsor.

30. On 22nd December, 2011, 3rd February, 2012 and 1st March, 2012, the applicant's solicitors wrote to the Ministerial Decisions Unit of the respondent's department requesting a copy of the s.11 ORAC interview in 2006. The February letter advised that it was sought for transmission to the Garda Commissioner "for the purpose of the investigation of the offences against [the applicant]". The record was furnished on 5th March, 2012.

31. On 15th March, 2012, the applicant's solicitors wrote to INIS requesting, *inter alia*, the date upon which the applicant was next to present to the GNIB offices. The letter advised that the applicant "suffers mental trauma" as a result of his treatment by the GNIB. It also advised that the applicant was before the District Court in the near future in relation to alleged public order matters at GNIB and that he was due to attend a "Counsellor in relation to his being the victim of sexual trafficking".

32. The Repatriation Unit replied by letter of 21st March, 2012 noting the contents of that correspondence and advised that the applicant had "no presentation date at the moment as he's classed as an evader". The applicant was requested to present at GNIB "immediately".

33. On 25th March, 2012, the applicant's solicitor wrote to the Repatriation Unit in response to the letter of 21st March, 2012. They advised the Unit that the applicant had in fact reported on 16th March, 2012 but claimed that the applicant was "insulted" by the Gardaí at the GNIB station, following which he reported his mistreatment to Pearse Street Garda Station but had no progress about that investigation. The letter stated that the applicant "has not resorted to flight or evasion at any stage" and that "[t]he difficulty appears to be that [the applicant] does not consider that he is being treated with respect by the GNIB". The letter called on the GNIB to advise "an appropriate date and time .... and the identity of a trained professional to whom [the applicant] should report".

34. The applicant's solicitor also wrote to the Minister on 25th March, 2012, under the heading "Section 3(11) application to revoke deportation order", making complaint, *inter alia*, about the manner in which identification documents had been put to the applicant in the course of the s. 11 interview in 2006 which the applicant's solicitor stated "were provided by the person who sex trafficked [the applicant] into Ireland". The letter stated that the identification documents "were transmitted without question - notwithstanding [the applicant's] serious allegations against the trafficker - by the gardaí to the authorised officer - and bypassing [the applicant]". The Minister was advised that it was "wholly inappropriate that the sex trafficker, the authorised officer and the gardaí should conspire in this concerted way to manipulate the real fear of the sexual abused [applicant] who was trafficked for such purpose into Ireland and was escaping from it". The letter advised that "on the basis of said new context and documentation and the evidence of the concert of self interests ranged against [the applicant]" the applicant should be allowed to re-enter the asylum process and or the deportation order should be revoked. A response to this letter was received on 27th March, 2012 advising that the contents had been noted and that "once an applicant is classed as an evader" he/she must present to GNIB "immediately".

35. The report of a consultant psychiatrist dated 21st April, 2012 procured for the purposes of a fitness to plead assessment in respect of charges brought against the applicant in the District Court recites, *inter alia*, the applicant's account of having been brought to Ireland by the sponsor and the attempted sexual assault. The report found the applicant to be "an angry young man with a pronounced sense of grievance but there was no evidence of psychiatric illness" and advised that "he be considered fit to plead".

36. The available record as before the court does not indicate what, if any, interaction there was between the applicant's legal representatives and the applicant between May 2012 and November 2012. However, on 4th December, 2012, the applicant's solicitors wrote to the Repatriation Unit referring to INIS' "undertaking not to deport [the applicant] pending a determination and investigation of his being trafficked into Ireland contrary to the Palermo Protocol". The letter went on to state that an attempt to deport the applicant was "in clear breach of the undertaking not to deport [the applicant] until the criminal investigation of his trafficking is completed".

37. A letter from the Repatriation Unit dated 7th December, 2012 advised that the applicant was to present immediately to GNIB and that the application for revocation "will not be considered until [the applicant] presents to [GNIB]".

38. On 6th March 2013, with reference to the revocation application of 9th November, 2011 and INIS' response thereto of 18th November, 2011 the applicant's solicitor wrote to INIS in, *inter alia*, the following terms:

"We... refer to the letter... dated 18th November 2011 which does not deal with our said application in any detail. We note that in relation to the allegations of trafficking that we furnished a further letter dated 25th March 2012. It is clear that the issues in our letter of 25th March 2012 are not addressed in the determination of the allegations of trafficking contained in the said letter ...

We respectfully submit that the Applicant is a victim of sexual exploitation and that he is accordingly in need of appropriate treatment and counselling. The Applicant has instead been compelled to give evidence to untrained members of the gardaí without proper care and or medical assistance notwithstanding his psychological frailty and physical injuries the lasting impact these have had upon him including the propensity to self harm. The manifest failure of the Irish State to professionally deal with his medically vouched sexual injuries and psychological trauma and or to comply with the Palermo protocol has been wholly and irrationally ignored by [INIS]. The Applicant has been recently admitted to hospital following self harm ... Moreover, it is the case that [INIS] says that our client has never made a complaint to the gardaí. In fact he has made several complaints to the gardaí both directly and through this office. It is the applicant's case that the gardaí took no notice of his direct complaint in... at the outset in virtue of the garda collusion with the sex trafficker."

39. The letter goes on to state that contrary to the contents of the letter of 18th November 2011, "it is very clear that [the applicant] has provided such a statement". The court takes this to be a reference to the applicant's manuscript statement to the RAT in 2006. The applicant's solicitors called on the Minister "to carry out the necessary investigations which have been called for in our said letter of the 25th March 2012 in advance of the making of a determination on his Section 3.11 and s. 17.7 applications. Please note that these matters of garda collusion on matters which are within the possession and our power of procurement of the Minister for Justice." The letter went on to make reference to the need to revisit the subsidiary protection and leave to remain decision and asserted EU Treaty rights on the part of the applicant.

40. This letter was responded to on 11th March 2013 to the effect that the applicant was an evader and was required to present to GNIB before any revocation application would be entertained.

41. Further correspondence was sent to INIS on 25th and 27th June 2013 by the applicant's solicitors with reference to an attempt to remove the applicant from the State on 21st June, 2013 wherein notice was given of the applicant's fragile mental condition and his threat of suicide and the fact that he had not received any medical attention for his "profound psychological and/or psychiatric disturbance from the State".

42. In correspondence of 2nd, 14th, 15th and 29th July 2013, the Minister was called upon to house the applicant. In 14th July, 2013 correspondence, the Minister was advised that the applicant "has repeatedly self harmed....His requests for a police investigation into how he was trafficked into Ireland have moreover been ignored."

43. The within proceedings were instituted on 22 November, 2013. On 21st and 29th January, 2014 and 11th February, 2014 the applicant sought an interlocutory injunction restraining his removal pending the outcome of a criminal investigation into the circumstances of his entry into the State. This application was refused by order of MacEochaidh J. on 11th February, 2014. An appeal was lodged on 19th February, 2014.

44. In the intended statement of opposition, the respondent contends, *inter alia*, that the application for leave "is misconceived and/or frivolous or vexatious being unstateable and/or bound to fail in the absence of a complaint to the appropriate prosecuting authorities of the state to initiate the alleged or any impugned criminal investigation and/or appropriate cooperation of the Applicant and ought to be dismissed." It is further pleaded that "insofar as any issue was raised by the Applicant to an Garda Síochána in respect of alleged sex trafficking or sexual assault, such matters were duly investigated by an Garda Síochána...any further action... was inhibited by the inaction of the Applicant himself."

45. It is also pleaded that the investigation to establish whether reasonable grounds exist for believing a person might be the suspected victim of human trafficking is a matter for an Garda Síochána and not the Respondent.

46. In response to the claims advanced on behalf of the applicant in the within proceedings, the respondent relies, *inter alia*, on the affidavit sworn by Detective Chief Superintendent John O'Driscoll of GNIB on 28th January, 2014. Detective Chief Superintendent O'Driscoll avers that "the purpose of [his] affidavit is to confirm ...that an investigation of the Applicant's allegations took place but in circumstances where the would be injured party did not cooperate such investigation was concluded on the available evidence".

47. At para. 4 he avers as follows:

"I say that no complaint was made by the Applicant to the Gardaí of being a victim of human trafficking in any time in the five years since his arrival up to the conclusion of the applicant's Art. 40 proceedings ... The Applicant's solicitor was not aware of any allegation of the applicant being a victim of human trafficking. As is confirmed in the letter of 9th November, 2011.. [the applicant's solicitor] had no knowledge of such allegations other than through the information put before the court by the State for the purposes of the said Art. 40 proceedings".

After reference to the 2008 Act and the Guidelines in respect thereof, namely the "Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking, Detective Chief Superintendent O'Driscoll goes on to state that he "made the determination that [he] did not have reasonable grounds for believing that the Applicant was a victim of trafficking in human beings consequent upon a full investigation of the applicant's allegation led by Detective Sergeant Eamon Cowzer, an experienced part of the Garda Team in [GNIB]".

48. At para. 8, he avers that "all information available on the Applicant" was examined, including:

- A complaint made by the sponsor in August 2006 against the Applicant to [GNIB]... regarding the applicant's refusal to return to his home state of Morocco in accordance with the terms of his visa at the conclusion of the holiday;
- The applicant's falsehoods regarding his arrival in the State as given to ORAC;
- Continued denials of his identification documentation in interview before ORAC;
- The allegation of trafficking first made to the Refugee Appeals Tribunal .. but not the Gardaí;
- The refusal of residency on grounds of EU Treaty rights;
- The Deportation Order dated 13th August, 2009;
- The transfer back under the Dublin Regulation from France on the 28th October, 2009 (in which, according to the comments section of the request, the French authority stated that the applicant claimed, *inter alia*, he went to Ireland to

study), and from the UK on the 12th October, 2011 where the UK authorities had informed INIS, *inter alia*, that they had found the applicant very un-cooperative and aggressive throughout the process in the UK;

- The applicant's two arrests consequent upon the Deportation Order on 17th December, 2010 and 12th October, 2011.
- The applicant's involvement in a number of incidents in 2006 and 2007 while being accommodated in RIA accommodation wherein the applicant had allegedly been threatening or abusive to staff or other residents or members of the public, including sexual harassment and a threat to kill, which gave rise to a complaint to the Gardaí;
- The applicant's convictions for public order offences, intoxication and possession of an article with intent to cause injury. The sponsor's (against whom the applicant made such allegations) convictions under the Road Traffic Acts (S. 49).

49. At para. 9, Detective Chief Superintendent O'Driscoll avers that interviews with the applicant with or under the guidance of Detective Sergeant Cowzer took place or were attempted on:

- 5th December 2011 in Cloverhill Prison, prior to the applicant's release – "Applicant refused";
- Letter of D/I Ryan dated 5th December 2011 .. inviting the applicant and/or his solicitor to make an appointment – "no appointment was ever made".
- "Arrangements in place to facilitate interview on a number of dates on which the applicant was required, in normal course, to present at GNIB, on 8th September, 2009, 27th April, 2011, 21st July, 2011, 28th February, 2012, 21st June, 2013, and 4th July 2013, but Applicant failed to present on those dates";
- 12th January 2012 – "Applicant terminated interview";
- 13th January 2012 – "Applicant attended at offices of [GNIB] but became aggressive (engaging in behaviour leading to arrest and charge with public order offences)";
- 17th January 2012 – interview at offices of GNIB – "Applicant was confrontational and avoided dealing with issue at hand, becoming aggressive, albeit he made allegation that his sponsor attempted to have sex with him and that he felt pressurised to share his sponsor's bed but he refused to elaborate or provide detail of such allegations. He stated that there was only one bedroom in his sponsor's house. The Applicant was confrontational and aggressive, engaging in behaviour as a diversion making it impossible to obtain a statement of complaint from him. The interview was terminated at the Applicant's request".

50. The affidavit goes on to aver that "to date, despite several attempts, GNIB have been unable to take a statement of complaint from the Applicant."

51. He avers that "the Applicant's sponsor...voluntarily met with Detective Sergeant, by arrangement, ...where he was interviewed and made a fulsome statement."

52. He further avers:

"I say that the conclusion of Detective Sergeant Cowzer noted that despite every effort to elicit details of any instance of sexual activities in which the applicant alleged he had been forced to participate, the Applicant refused other than stating he felt pressurised to share [the sponsor's] bed but refused to elaborate or provide details despite assurances of sensitivity and reassurance. Detective Sergeant Cowzer encountered significant credibility issues in respect of the applicant but none such in respect of [the sponsor] who had engaged voluntarily and fulsomely with the Garda authorities. Detective Sergeant Cowzer concluded the Applicant was making the complaint only to thwart the deportation process and believed the Applicant took advantage of [the sponsor's] generosity and perhaps naivety. He stated that in his experience he had never encountered the type of behaviour and the extent of un-cooperation in the making of a complaint from a victim of a crime as has been displayed by the Applicant. Detective Sergeant stated that he had made every effort to reassure the applicant and gain his trust. Detective Sergeant Cowzer believed that the applicant did not wish to complete the making of a statement as then it could be investigated.

I say that the investigation was reviewed by Detective Inspector Ryan who supported the conclusions of Detective Sergeant Cowzer and referred to me for determination in respect of whether or not the Applicant was a victim of trafficking, as outlined above. I say that, having considered the outcome of the investigation and in particular the inactivity of the Applicant to make any proper formal complaint (either at all for several years or when afforded multiple opportunities in 2011/2012) and the conclusions of Detective Sergeant Cowzer who I know to be well-experienced in the appropriate handling of an investigation of sensitive matters. I determined that reasonable grounds for believing the Applicant was a victim of trafficking human beings were not established.

I therefore can confirm with this Honourable Court insofar as the Applicant has made allegations as outlined in within proceedings and is seeking any order from this Honourable Court to investigate such allegations, an investigation has taken place and has been concluded in circumstances where no further progress can occur in the absence of the Applicant making a fulsome and credible statement of complaint."

53. In the course of the interlocutory injunction proceedings, application was made on behalf of the applicant to cross examine Detective Chief Superintendent O'Driscoll which was refused by MacEochaidh J. on the basis that same should normally happen only where there was a conflict of facts.

#### **The applicant's submissions**

54. Counsel for the applicant submits that the purpose of the proceedings is to seek a lawful investigation into the applicant's allegation that he was trafficked into the State by an Irish national for the purpose of sexual exploitation and that the applicant seeks ancillary reliefs arising from his being a victim of trafficking. It is submitted that the Minister for Justice and Equality is the named respondent in circumstances where contrary to the arguments advanced by the respondent, the Minister is the correct respondent for the purposes of the within proceedings. In this regard, counsel points to the provisions of the "Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking" in operation since the commencement of the Criminal Law (Human Trafficking Act 2008) on 7th June 2008.

55. It is submitted that prior to the filing of affidavits in the within proceedings, the extent of official statement on the applicant's allegations consisted of scant replies to the applicant's current solicitors. Counsel contends that the premise in these replies, and repeated in the affidavits relied on by the respondent, that no investigation could take place where there was no complaint, is refuted by the integrated history of complaint as outlined in the applicant's solicitor's correspondence between November 2011 and mid July, 2013 and by the respondent's own averments on affidavit that an investigation has been carried out.

56. In particular, counsel contends that the affidavit evidence upon which the respondent asserts that a Garda investigation has been carried out exhibits no documentary evidence, such as a statement from the applicant or any forensic examination. It is further submitted that the respondent's contention that the applicant was un-cooperative and/or became aggressive when interviewed showed a number of common features: there was no medical or legal third party present at the interviews; the officials involved in the interviews or attempted interviews were the same Gardaí who had incarcerated the applicant in order to execute the Deportation Order.

57. Counsel also submits that no records were made available in respect of any of the instances/incidents referred to in Detective Chief Superintendent O'Driscoll's affidavit. With respect to the central dates which it is suggested that there were lawful investigations, namely the 13th, 14th and 17th January 2012, these coincided not only with the applicant being charged with a public order offence, but also with his being summarily evicted from his direct provision hostel and with his being made homeless.

58. It is further submitted that there was no investigation into the sponsor's assertion that his bringing the applicant into the State was a benevolent act; nor was there any investigation into the sponsor's previous dealings over a number of years with young persons in Morocco, as alleged by the applicant. Furthermore, Detective Chief Superintendent O'Driscoll's affidavit makes reference to the applicant having committed serious offences of sexual harassment and a threat to kill but provides no evidence of any resulting prosecution. It is submitted that the affidavit of Detective Chief Superintendent O'Driscoll is largely hearsay, being the recycled opinion of another Garda, Detective Sergeant Cowzer. Moreover, the conclusion arrived at, namely that the applicant had taken advantage of the sponsor's "generosity and perhaps naivety" ignored the fact that by his own account, the sponsor had been involved in what he described as "family sponsorship" in Morocco since 1999. Additionally, there is no averment in the affidavit that the applicant's allegation that he had been forced to share sponsor's bed was ever put to the sponsor.

59. Furthermore, it is noteworthy that in Detective Chief Superintendent O'Driscoll's affidavit there is no reference to the named Garda who called to the sponsor's house at the sponsor's behest on 6th August 2006 and who, the applicant alleges, colluded with the sponsor, having been interviewed. Nor is there any reference in the said affidavit as to whether to the sponsor's house had been examined.

60. It is further submitted that it is not the case that there were no complaint from the applicant. The respondent had access to the statement which accompanied the applicant's notice of appeal to the Tribunal, which had been submitted by the applicant's solicitor to the respondent more than once.

61. Insofar as the respondent makes the claim that the applicant was unwilling to cooperate in an investigation that is not the case. As documented in the applicant's solicitors' letter of 25th March 2012 the applicant sought details of an appropriate date and time and identity of a trained professional to whom the applicant should report.

62. Counsel contends that the respondent's intent to deport the applicant superseded the investigation into human trafficking which should have occurred. In this regard, Counsel relies on the judgment of O'Malley J. in *P. v. Chief Superintendent of Garda National Immigration Bureau* [2015] IEHC 222.

63. It is further submitted that the court should take context from the undisputed original arrangements made by the applicant's sponsor with regard to bringing him into the State which, it is submitted, accords with the definition of trafficking under the 2008 Act.

### **The respondent's submissions**

64. It is submitted that the applicant seeks an order against the Minister directing her to carry out an investigation into the alleged sex trafficking of the applicant in circumstances where the Minister had no role in any investigation of crime – same being the purview of the Gardaí and the Director of Public Prosecutions. Moreover, while the applicant has called for a criminal investigation into the circumstances of his arrival in the State, he has not identified to the Court who it is should carry out this investigation.

65. The question to be determined is what is it the applicant wants investigated which has not already been afforded to him and which, as can be seen from the affidavit of Detective Chief Superintendent O'Driscoll, has been frustrated by the applicant himself. The single biggest issue in the within proceedings is the applicant's failure to bring about a formal complaint regarding the alleged assault and allegation of trafficking. As a result, the relevant authorities were unable to take any further steps other than those taken.

66. Most significantly in this case, the applicant has not filed any replying affidavit to counteract the averments of Detective Chief Superintendent O'Driscoll. The only affidavit sworn by the applicant in the within proceedings is a one paragraph affidavit sworn on 22nd November 2013 verifying the statement of grounds. There is no affidavit sworn by him to say that he has read the affidavit sworn by his solicitor on 21st November, 2013 and that its contents are true. It is submitted that the applicant was obliged to put the facts before the Court or, at a minimum, that he should have confirmed his solicitor's affidavit.

67. At all relevant times, the applicant had an opportunity to file a replying affidavit to that sworn by Detective Chief Superintendent O'Driscoll. When invited to do so in the course of the interlocutory proceedings the applicant declined. While the applicant complains that many of the averments in Detective Chief Superintendent O'Driscoll's affidavit are hearsay, it remains the position that there is no affidavit on file that contradicts what Detective Chief Superintendent O'Driscoll asserts. Thus, there are no facts in issue in the within proceedings. It is submitted that the facts insofar as they relate to the applicant's interaction in the investigative process cannot be put in issue by the applicant's solicitor's narrative in his affidavit.

68. The only statement made by the applicant comprises a handwritten statement which accompanied his appeal to the Refugee Appeals Tribunal in November 2006. His complaint of criminal misconduct was not made to the Gardaí in 2006 nor indeed to the Refugee Applications Commissioner. The Tribunal, although it rejected the applicant's asylum claim on credibility grounds, stated that the applicant could report the alleged sexual assault to the Gardaí as it was a criminal matter. Thus, it was not only MacMenamin J. in the High Court in November 2011 who suggested that the applicant's complaints should be investigated.

69. It is further of note that the applicant never advised his present solicitors that he was a victim of human trafficking or of sexual assault. His solicitor only became aware of the applicant's allegations through information put by the respondent to the court in

November 2011 in the context of the Article 40 proceedings.

70. At all relevant times, it was within the applicant's power to bring about what he now seeks the High Court to order, had he filed a formal complaint with the Gardaí.

71. Following the applicant's release from Cloverhill in December 2011, the GNIB wrote to his solicitor on 5th December 2011 for the purposes of the applicant making an appointment with the Gardaí and a named contact and telephone number was provided in this regard. No such appointment was made.

72. The applicant had numerous opportunities to make his complaint but availed of none of them. Notwithstanding the applicant's failure to file a formal complaint, an investigation was carried out. Specifically, the applicant's sponsor was requested to come in for interview which he did voluntarily. The seriousness with which GNIB took the initial assertions of the applicant is clearly evident in the affidavit of Detective Chief Superintendent O'Driscoll. Despite the voluminous documentation filed with the Court for the interlocutory application for an injunction, there was no document to show that any complaint was ever made by the applicant, either after having been invited to do so or at any other time. The "singular failure" of the applicant to make any credible complaint regarding alleged sex trafficking, despite opportunity, was of particular import MacEochaidh J. for the purposes of his consideration of whether an arguable case existed for an interlocutory injunction, ultimately refused by the learned Judge. Counsel for the respondent urges on this Court the findings of MacEochaidh J. that it was not up to the applicant to launch proceedings to seek the court to compel an investigation when there was a failure on the part of the applicant to make a complaint. It is submitted that injunctive relief was refused not only on the basis of the applicant's failure to make a formal complaint but because he failed to persuade the court that there was a stateable cause of action against the respondent to ground substantial relief.

73. Despite such omissions at the time of the injunction hearing and their clearly expressed importance in the eyes of MacEochaidh J., thereafter the applicant has refused or failed or neglected to make any credible complaint to the State's investigating authorities. It is submitted that it is the failure of the applicant himself which prevents the very investigation he urges this Court to direct.

74. Counsel further submits that that the applicant's own actions as well as his inaction are telling. In 2009, he told the French authorities that he went to Ireland to study and made no mention of being trafficked to Ireland. Furthermore, the UK authorities' experience of the applicant as been aggressive and uncooperative is mirrored in this jurisdiction, as is evident from the contents of Detective Chief Superintendent O'Driscoll's affidavit.

75. Insofar as the applicant's solicitor in his affidavit of 21st November, 2013 makes complaint that he got no notice from the Gardaí that they were going to interview the applicant, it was open to him to have made an appointment for the applicant following receipt of the letter of 5th December, 2011. In any event, the Gardaí who sought to interview the applicant were specifically trained for such purposes. Furthermore, it was not the case that the applicant was being considered otherwise than as a putative complainant – hence there was no need for his solicitor to have been in attendance.

76. Insofar as the applicant seeks to rely on the decision of O'Malley J. in *P. v. Chief Superintendent of Garda National Immigration Bureau & Ors*, counsel contends that that case can be distinguished from the applicant's circumstances for many reasons. There the context was that of an applicant accused of a criminal offence herself and matters pertaining to any prosecution thereof. The interaction between an investigation of a criminal offence and an investigation of an assertion of human trafficking by State authorities underlies the Judgment of O'Malley J. in the context of EU Directive 2011/36/EU, which does not arise in the instance case. EU Directive 2011/36/EU was not in force in the State at the time of the alleged inaction of the State in the present case and thus does not apply to the administrative arrangements when the applicant's complaint that he was a victim of human trafficking was being investigated. Moreover, the facts in *P v. Chief Superintendent of Garda National Immigration Bureau & Ors* could not be more different to the instant case. There, the trafficking allegation was actively pursued on behalf of the applicant with the investigating authorities and she co-operated in the Garda investigation.

77. In the instant case, it is the applicant himself who has frustrated any investigation of his allegation of human trafficking. It is only upon a conclusion that there are reasonable grounds for such position that any ancillary obligations of the respondent arise. It is submitted that where the applicant has actively frustrated the appropriate State authority in carrying out the necessary investigation in order to establish whether there are reasonable grounds to believe he might be a suspected victim of human trafficking, he can have no complaint concerning any outcome thereto.

78. The kernel of the issue in the present proceedings is GNIB's inability to obtain a statement of complaint from the applicant. While the applicant wants a criminal investigation, this requires a credible formal complaint. In the absence of any such complaint, Detective Chief Superintendent O'Driscoll had no option but to conclude that the applicant's objective was to thwart deportation process and that the applicant took advantage of the sponsor's "generosity and perhaps naivety".

79. Counsel submits that for those assertions, and the assertion that the applicant's level of un-cooperation was unprecedented, to go unchallenged by the applicant by way of replying affidavit is extraordinary, in circumstances where the applicant now seeks an order against the State directing an investigation, and where the respondent has stated that same has been conducted as far as it could have been.

80. It is further submitted that it is significant that the applicant has not challenged the determination that there was no trafficking.

### **Considerations**

81. Essentially, it is the applicant's contention in the context of the within proceedings that no proper investigation was ever undertaken by the respondent into the applicant's claim of having been trafficked into the jurisdiction by a named third party-the applicant's sponsor- and that he was the victim of a sexual assault or an attempted sexual assault by that individual. It goes with saying that the allegations made by the applicant are of a most serious nature.

82. Sections 2 and 4 of the Criminal Law (Human Trafficking) Act 2008 make it a criminal offence to traffic an adult person for the purposes of exploitation of that person. The penalties for trafficking include life imprisonment, thus reflecting the seriousness with which the State views the trafficking of human beings. As stated by O'Malley J. in *P v. The Chief Superintendent of the Garda National Immigration Bureau & Ors*, "the trafficking of a human person involves a breach of that person's rights under the Constitution, under the European Convention on Human Rights and under EU law."

83. The State is thus obliged to have a mechanism in place for the identification of victims of trafficking. The arrangements which exist are as follows: On 7th June, 2008, the same day as the Criminal Law Human Trafficking Act, 2008 came into force, the Department of Justice and Law Reform issued a notice entitled "Administrative Immigration Arrangements for the Protection of Victims



of Human Trafficking”.

84. They apply to:

“a foreign national who is identified as a suspected victim of human trafficking, that is, where there are reasonable grounds for believing that he or she is a victim of an offence under sections 2 or 4 of the Criminal Law (Human Trafficking) Act 2008...Whether there are reasonable grounds for that belief in any particular case is determined by a member of the Garda Síochána not below the rank of Superintendent at the Office of the Garda National Immigration Bureau (GNIB)...”

85. The guidelines provide that a person who has been so identified as a suspected victim of human trafficking shall be granted a permission to remain lawfully in the State for a period of 60 days (a ‘recovery and reflection period’). The purpose of the recovery and reflection period is to allow the person time to recover and to escape the influence of the alleged perpetrators of the trafficking and to take an informed decision as to whether to assist the Gardai in relation to any investigation or prosecution arising in relation to the alleged trafficking. There is provision for the Minister to issue a notice to a person who has been granted a recovery and reflection period confirming permission to be in the State for 60 days. There is also provision in the guidelines for the granting of temporary residence permission and for the Minister to assist in voluntary repatriation to the person’s country of origin if the person so wishes.

86. As can be seen from the foregoing, the respondent has obligations to consider the immigration status of a person suspected of being a victim of human trafficking. However, these arise consequent on the person having been so identified by a member of the Garda Síochána not below the rank of Superintendent at the Office of the Garda National Immigration Bureau.

87. The mandatory relief sought in within proceedings is, *inter alia*, an order that the Minister “investigate the alleged sex trafficking of the Applicant”. In the course of his Judgment on 11th February, 2014 refusing the application for an interlocutory injunction, MacEochaidh J. stated as follows:

“In these proceedings, the applicant requests this court to direct the Minister for Justice to carry out an investigation into the alleged criminal wrongdoing of a sexual nature. The Minister for Justice has no role in investigating crime in the State, therefore no cause of action or legal complaint in respect of this matter has been made out.”

88. Insofar as the applicant seeks an order directing the Minister to investigate matters of a criminal nature, I concur with my learned colleague that the Minister has no such function. An Garda Síochána is the body charged with the investigation of crime in the State and it is for the Director of Public Prosecutions to ultimately decide on a prosecution. As already set out, the task of identifying whether a person is suspected of being a victim of human trafficking is to be determined by a member of An Garda Síochána.

89. As far as can be ascertained from the papers, apart from the allegation made to the Refugee Appeals Tribunal in 2006 and the reference in the subsidiary protection application in January 2007 to a sexual assault on the applicant, the question of whether he could have been brought into the State for the purposes of sexual exploitation was next raised in the course of the Art. 40 proceedings in October, 2011, when the applicant’s present solicitors had sight of, *inter alia*, the applicant’s appeal papers to the Refugee Appeals Tribunal. The learned MacMenamin J. in the course of his Art. 40 Judgment opined that “if there was any substance in any of the allegations which have been made in the course of the hearing herein relating to the circumstances in which the applicant was brought into the State by this named person they should, even now, be investigated.”

90. As can be seen from the correspondence set out above, in November, 2011 the applicant’s solicitors wrote to the Minister and the Garda Commissioner in connection with the applicant’s trafficking and sexual assault allegations. At the time the applicant was incarcerated in Cloverhill prison in connection with a failure to report under the Immigration Act, 1999.

91. Notwithstanding the applicant’s counsel’s submission in the course of the within proceedings that he did not know why the Deportation Order was paused in December 2011, I am satisfied that the release of the applicant in December 2011 was effected for the purposes of the investigation which was being sought on his behalf by his solicitors through the correspondence which issued to the Minister and the Garda Commissioner on 9th and 19th November 2011 respectively. Furthermore, the release may well have been prompted on foot of the views expressed by the learned MacMenamin J. in the course of his judgment on the *habeas corpus* application where he stated (without expressing any view on the substance of the applicant’s allegations), that the allegations made by the applicant of sexual misconduct on the part of his sponsor should be investigated.

92. According to Detective Chief Superintendent O’Driscoll’s affidavit, an attempt was made to interview the applicant on 5th December, 2011, before he left Cloverhill but he refused to be interviewed. On the same date, the applicant’s solicitors were provided with a name of a Detective Sergeant in GNIB and a telephone number to make an appointment in connection with any complaint the applicant wished to make in connection with human trafficking. As far as the Court can make out, neither the applicant nor his solicitors initiated any contact with the Gardai in the immediate aftermath of that correspondence to make such an appointment. However, it is common case that on a number of occasions thereafter, in particular 12th and 13th January 2012 and 17th January, 2012, the applicant attended at GNIB. These attendances appear to have been in accordance with obligations on him to report to GNIB under the Immigration Act 1999. According to Det. Chief Superintendent O’ Driscoll, on those dates attempts were made to interview the applicant in relation to his allegations, which proved unsuccessful for the reasons set out in the affidavit. The Court has had sight of the applicant’s solicitor’s correspondence to the Minister, in particular that of 16th January, 2012 and 6th March, 2013, wherein he makes complaint about the circumstances in which the applicant was interviewed. At a minimum therefore, the applicant’s solicitor was aware that an investigation was underway with regard to the applicant’s allegations.

93. While the applicant’s solicitor was writing in 2012 and 2013 to the Minister on the applicant’s instructions and making complaint about the circumstances in which the applicant was interviewed, in particular the complaint about the lack of appropriate personnel, it is noteworthy that no approach appears to have been made by the applicant’s solicitor to GNIB directly in the immediate aftermath of the interviews which took place in January, 2012 to relay such complaints or concerns the applicant had or to make arrangements to attend with him at GNIB. Counsel for the applicant points to the applicant’s solicitor’s request of 25th March, 2012 that GNIB advise “an appropriate date and time .... and the identity of a trained professional to whom [the applicant] should report”. However, that entreaty was addressed to the respondent and not to the Gardai. Since 5th December, 2011, the applicant’s solicitor had the name and telephone number of the individual within GNIB to whom the applicant could report the alleged trafficking and sexual assault and with whom the applicant’s solicitor could correspond. Save for the letter of 19th November, 2011 calling for an investigation, no enquiry appears to have been made by the applicant’s legal representatives of the Gardai as to the progress of the investigation as to whether the applicant was a suspected victim of trafficking. As the applicant’s legal representatives had quoted the applicable guidelines in correspondence to the Minister, it must be taken that they knew that the task of determining whether the applicant was a suspected victim of trafficking fell to the Gardai, as provided for in the guidelines.

94. The fact remains that the uncontroverted evidence that is before this Court is that the applicant frustrated the attempts to interview him in connection with his complaints of trafficking and sexual assault, save for the limited assertions made by the applicant as referred to in Detective Chief Superintendent O'Driscoll's affidavit.

95. Counsel for the applicant submits that it is noteworthy that a great many averments in Detective Chief Superintendent O'Driscoll's affidavit are hearsay, as no documentary record of any attempted interview of the applicant is exhibited, nor has any other record or report connected with the investigation been exhibited. While I note that a written report (duly redacted or otherwise) of the investigation is not before the Court, the fact remains that the applicant has not sworn an affidavit in the within proceedings refuting what Detective Chief Superintendent O'Driscoll has averred to in the context of the attempts made to interview him in connection with the trafficking and sexual assault allegations. The applicant's counsel submits that in the course of the interlocutory injunction proceedings the applicant sought leave of the court to cross-examine Detective Chief Superintendent O'Driscoll but was not permitted to do. While that was the case, in my view that did not prevent the applicant from swearing his own affidavit, even after the failed injunction application, and taking issue, if he wished to do so, with the contents of Detective Chief Superintendent O'Driscoll's affidavit.

96. Moreover, insofar as the applicant argues that it was open to the respondent to seek to cross-examine the applicant in the course of these proceedings, it remains the case that there is no underlying affidavit sworn by the applicant such as might have warranted an application by the respondent to cross-examine him. That is an issue in this case –there is nothing essentially put on affidavit by the applicant himself to counteract the allegation that he frustrated attempts to interview him on a number of occasions.

97. Counsel for the applicant points to the applicant's sworn affidavit of 22nd November, 2013 which he says is in accordance with the rules of the Superior Courts. However, counsel for the respondent makes the point, and I think it is well made, that that affidavit does not verify the applicant's solicitor's sworn affidavit of 21st November, 2013, which was the very least that might have been expected in the absence of any affidavit sworn by the applicant himself outlining his account of the attempts which were undoubtedly made to interview him in connection with his claim of being trafficked and sexually assaulted.

98. Detective Chief Superintendent O'Driscoll ultimately determined that the applicant was not a suspected victim of trafficking. The Court has not been advised when this determination was made, as no date is specifically referred to in this regard, although reference is made in the affidavit to the applicant having been afforded "multiple opportunities in 2011/2012" to make a statement. I note also that the outcome of the investigation and the reasons therefor (assuming the investigation was concluded before the initiation of these proceedings) does not appear to have been advised to the applicant's solicitor by the GNIB at any stage prior to the initiation of the within proceedings. However, as I have already observed, no enquiry appears to have been made of the GNIB by the applicant's legal representatives at any time to ascertain if a determination had in fact been made on the applicant's status.

99. At the end of the day, what is before the Court by way of factual matrix is that an investigation was conducted by GNIB to the extent set out in the affidavit of Detective Chief Superintendent O'Driscoll and that it concluded "in circumstances where no further progress can occur in the absence of the applicant making a fulsome and credible statement of complaint." Thus, the investigation appears to have been stalled by the failure of the applicant to co-operate.

100. Accepting for the purposes of these proceedings that the applicant's solicitors only became aware of the outcome of the investigation at the time of the interlocutory injunction application, I note no attempt has been made to challenge the determination that the applicant was not a suspected victim of trafficking.

### **Summary**

101. In summary, the Court finds that insofar as the within proceedings request a mandatory order against the respondent to investigate the alleged sex trafficking of the applicant, the proceedings are misconceived as the Minister for Justice and Equality has no function in the investigation of crime in the State. Thus, I find that the challenges in grounds 5b and 5c of the statement of grounds have not been made out. I find also that the challenge in grounds 5d and 5e are not made out since the obligations on the respondent in this regard arise consequent on a determination that there are reasonable grounds for believing a person is a victim of an offence under sections 2 or 4 of the Criminal Justice (Human Trafficking) Act 2008. The respondent in the course of the within proceedings has put before the Court the affidavit of Detective Chief Superintendent O'Driscoll of the GNIB who avers that he determined that reasonable grounds for believing that the applicant was a victim of human trafficking in human beings were not established. That notwithstanding, as referred to by counsel for the respondent the averment in the affidavit that "no further progress can occur in the absence of a fulsome and credible statement of complaint from the applicant" appears to leave it open to the applicant to resume engagement with the Gardai in relation to his complaints.

102. For the reasons set out herein, the reliefs sought in the Notice of Motion are denied.