

**THE HIGH COURT
JUDICIAL REVIEW**

2008 126 JR

BETWEEN**M. M. F.****APPLICANT****AND****THE REFUGEE APPEALS TRIBUNAL (BEN GARVEY)****RESPONDENT****AND****BETWEEN**

2008 130 JR

L. L.**APPLICANT****AND****THE REFUGEE APPEALS TRIBUNAL (BEN GARVEY)****RESPONDENT****JUDGMENT OF MS. JUSTICE M.H. CLARK, delivered the 19th day of March, 2010.**

1. The applicants are husband and wife and nationals of the Democratic Republic of the Congo (DRC). They seek leave to apply for judicial review of the decisions of the Refugee Appeals Tribunal, dated the 23rd and 25th October, 2007 respectively, to affirm the earlier recommendations of the Refugee Applications Commissioner that they should not be granted declarations of refugee status.

2. The related cases were heard together on the 2nd March, 2010. Mr. Hugo Hynes S.C. with Mr. James Healy B.L. appeared for the applicants and Mr. Patrick McGrath B.L. for the respondents.

Background

3. The applicants applied for asylum on the 8th September, 2003. Their personal details as provided is that they were married in 2000 and lived in the Matadi area of the DRC where the husband worked as a driver for his wife's brother-in-law NDW. The brother-in law was married to the wife's older sister and was the transport manager for a transportation company owed by family members of President Kabila. Neither husband nor wife or any members of their families were involved in any political party.

4. The applicants recount that in 2000 the transportation company undertook to transport five trucks of goods for the government from the port of Matadi to Kinshasa. En route, one of the five trucks went missing. It subsequently turned out that the trucks were carrying a consignment of arms and it was suspected that the missing truck had been intercepted by rebels. The brother-in-law as transport manager came under suspicion.

5. On the 3rd April, 2000 the applicants, who were unaware of the unfolding drama, were paying a social family visit at the wife's sister's house when soldiers suddenly arrived and took the brother-in-law away. Some of the soldiers remained behind and detained and mistreated the applicants and the other family members. When NDW was returned later that day gunfire broke out as a result of which a family member was killed. NDW's young daughter was shot in the leg. The applicants then escaped. The husband says that they jumped through a window and the wife says that they broke down a door.

6. The applicants went to their own house but when they saw that it too was surrounded by soldiers they fled their town and hitched a lift on a truck which brought them to a small village where they found an abandoned hut in which they lived for three years. They had no contact with their family during that time and were helped by the local villagers. However in 2003 they were discovered and arrested on foot of a warrant by the President's intelligence service. They were both detained in a named prison for two months during which time they both were subjected to regular and repeated rapes, sodomy and other extreme forms of torture and ill-treatment including daily beatings and an electric current being applied to parts of the body including the husband's genitalia. Every night they were taken from their cells to witness prisoners being killed.

7. While the applicants' questionnaires were almost if not completely identical, there were many significant discrepancies between their respective accounts when they were separately interviewed. In particular, the conditions under which the couple was held in the named prison differed in many material respects. Their story was that after two months of imprisonment, they were blindfolded and taken by their jailers on a long journey to the Angolan border where the husband's father was waiting for them with the senior State Prosecutor. They were advised to leave the country as it was unsafe for them to remain. The husband's father, who is a

businessman dealing in salted fish, paid the soldiers \$20,000 to release the applicants and a further \$15,000 to an Angolan Army officer to hide them in his house in Luanda for two months while an agent arranged documents for them. That agent, Madame Victoria, travelled with them to Ireland, holding the passports for them and retaining those documents after they passed through immigration. They were then left on their own and took a taxi to the offices of the Refugee Applications Commissioner.

8. In the meantime NDW had escaped and he too claimed to have travelled to Ireland with the assistance of an agent who arranged documents on his behalf. He applied for asylum, was given the benefit of the doubt at the appeal stage and was granted refugee status. He applied for family reunification and his wife and daughter now reside in the State and are in contact with the applicants in these proceedings, who are family members. The wife gave birth to two children in Ireland in 2004 and 2006 respectively. The first child has Irish citizenship but it is not known whether the couple applied in the requisite period to benefit from her citizenship status under the terms of the IBC05 scheme.

The ORAC stage

9. The applicants attended for separate interviews. The wife was interviewed in August and November 2004 and the husband in November, 2004 and January, 2005. On the 18th June, 2005 negative decisions issued in the wife's case. The s.13 report shows that the Commissioner was aware that NDW was married to the wife's sister and was a refugee living in Ireland. In fact NDW's interview notes and his negative s.13 report were appended to the wife's s. 13 report and discrepancies between his evidence and that of the wife were noted. By way of comment the Court notes that the account given by NDW of his treatment while incarcerated bears a striking similarity to the account given by the husband and wife in this case of their conditions of detention.

10. Ultimately, the s. 13 report stated that the wife's account was found "very hard to believe". It was found "inconceivable" that the couple could have found an abandoned hut in which they lived for three years or that the military would have any interest in tracking down the wife long after her brother-in-law had disappeared. The story of their life in the abandoned hut in a remote village was not found credible and it was suspected that the story was a "dubious ploy" invented to account for the three year delay between the incident of the missing truck and their eventual flight from the DRC.

11. A few days later the Commissioner made a negative recommendation in the husband's case. Negative credibility findings were again made. His account of his escape from NDW's house in April, 2000 was found to be implausible and it was determined that because his description of the circumstances that led to his arrest in 2003 were not believed, his claims of being arrested and imprisoned in 2003 were also not believed. It was found to be "impossible to verify the origin of any of the problems he claimed to have experienced". It was noted that he claimed to fear the families of the persons who went missing with the truck in 2000 and it was stated that "even if the events of 2000 did occur, which was not accepted, it must be noted that he had no problems between 2000 and 2003 and if he feared the government it could be expected that he would have said this when asked what he feared if returned to the DRC". His account of his travel to Ireland was also disbelieved. His wife's s. 13 report was appended along with extracts from country of origin information (COI), information on Kivu-Ngongo (where they claimed to have spent three years) and maps of the DRC and Angola.

The Appeal

12. The Refugee Legal Service (RLS) lodged a joint Notice of Appeal on behalf of the applicants on the 29th August, 2005. An oral hearing took place in 2007 but it was adjourned on a number of occasions to allow for the production of medical reports including reports from the Galway Rape Crisis Centre and Male Abuse Survivors Centre and from an examining physician at the SPIRASI Centre for the Care of Survivors of Torture (see further paragraph 33 above). The oral hearings were concluded in September, 2007. Three witnesses gave evidence at the hearing: the wife's sister, the brother-in-law NDW and their daughter. An attendance note of the hearings is before the Court.

RAT decision relating to the wife

13. The appeal decision commences with a summary of the wife's evidence. Discrepancies between what she said at interview and at the oral hearing were described. It was noted that some discrepancies were denied and some were attributed to translation errors. It was recorded that the wife could provide no explanation as to how if she and her spouse were being sought by the authorities in the DRC they would have provided them with passports in 2004. Equally she did not explain how her father in law could have arranged to meet them on the Angolan border in circumstances where they had had no contact with family when they were in prison or during the three years they were in hiding. The legal submissions were then summarised and the applicable law was inserted. In his analysis of the wife's claim the Tribunal Member, Mr. Ben Garvey, states that he has considered all the evidence including the law referred to by counsel, the SPIRASI report which was examined in great detail, the report from the Rape Crisis Centre and that of the three witnesses. Aspects of the applicant's testimony which the Tribunal Member found "impossible to believe" were very similar to those found "difficult to believe" by the Commissioner's officer. The Tribunal Member had difficulty with the wife's description of their travel to and into Ireland. He found that the contradictions in her evidence cumulatively undermined her credibility and he did not accept that she had provided a full and true explanation of how she arrived in the State.

14. Finally, the Tribunal Member indicated that he had read the five previous appeal decisions furnished by the applicants and found:-

"The Irish courts have made it clear on a number of occasions that the Tribunal is not bound in any way to follow previous decisions of the Tribunal concerning other Appeals (see Fasakin and Atanasov). Clearly this is a sound proposition in view of the ever changing facts and circumstances in the countries of origin concerned, and of the very individual nature of appeals in this context. As the Tribunal is frequently reminded by legal advisors, the refugee definition requires an analysis of the subjective as well as the objective circumstances in each appeal. The Tribunal has taken into account the individual facts in the instant Appeal and in addition the most up to date Country of Origin Information relevant thereto, as it is required to do. Given the facts of this particular case and the current Country of Origin Information referred to, the Tribunal finds that the previous decisions submitted are not of sufficient relevance to the instant appeal to warrant a conclusion that the current recommendation be overturned."

RAT decision relating to the husband

15. The husband's appeal also failed. In the impugned decision the Tribunal Member summarised the husband's evidence and highlighted differences with his wife's account. He summarised the evidence given by the three witnesses at the oral hearing and noted that a SPIRASI report was submitted as well as correspondence from the Galway Rape Crisis Centre.

16. In summarising the evidence given by NDW at the oral hearing, the Tribunal Member noted that NDW confirmed that the husband used to drive for him and he gave an account of the events of the 3rd April 2000 when soldiers came to his house and started shooting everywhere. They took him away and when they returned him to the house they shot his daughter and his twin sister. His twin sister died from her injuries. The niece who gave evidence was by then 17 years old. She is recorded as saying that she could only remember that soldiers came to the house and arrested her father; she was shot in the hip and spent one week in hospital. The wife's sister gave evidence that the applicants were in the house on the 3rd April, 2000 when the soldiers arrested her husband but she could not say how they escaped. The Tribunal Member also noted that lengthy oral and written submissions on behalf of the applicant.

17. When analysing the husband's claim the Tribunal Member outlined a number of credibility issues together with a number of discrepancies between the husband and wife's evidence. He said that "Although that wasn't fatal to his claim, the next tranche of his evidence cast serious doubt on his credibility." The Tribunal Member had difficulty believing the husband's narrative of the events which followed his escape from NDW's house, insofar as the husband recounted that that when he got to his house he saw that it was surrounded by soldiers. The Tribunal Member noted that it "could be assumed that the soldiers who had surrounded the in-laws' house would have established his identity and communicated same to the soldiers surrounding his own house. However the applicants managed to escape from armed soldiers and had no problem getting a lift to a village where they remained trouble-free for three years." The Tribunal Member did not accept that the applicants stayed in the village for three years during which time the villagers fed them nor did he accept that they did not know how far the village was from their house.

18. The Tribunal Member then noted discrepancies between the husband's account at his interview in relation to the warrant and at his oral appeal and also the very significant variations between the spouses' respective descriptions of their prison conditions and the husband's descriptions of those events at the appeal hearing. He noted that the husband also attributed blame for these discrepancies on the interpreter or the interviewer. These issues were cumulatively found to undermine his credibility. Negative credibility findings were also made relating to his account of his travel to Ireland and his failure to apply for asylum in Belgium or in any country other than Ireland and overall, it was found that the husband had left the DRC for reasons unconnected to a Convention reason.

19. In reaching his decision, the Tribunal Member stated that he had taken into consideration all of the evidence given by witnesses at the hearing and all of the reports including SPIRASI report and that he had considered the medical reports in line with the decision of the High Court in Khazadi and the Istanbul Protocol. He stated that he had considered the previous RAT decisions furnished and he concluded using the identical wording in the wife's claim (see paragraph 14 above) that the decisions were not sufficiently relevant to warrant overturning the S. 13 recommendation. He repeated that he had considered all relevant documentation and affirmed the Commissioner's recommendation.

Delay

20. The husband's RAT decision was notified to him on the 31st October, 2007. The within proceedings were commenced on the 31st January, 2008 and therefore three months outside of the 14-day time limit set out in s. 5(2) of the Illegal Immigrants (Trafficking) Act 2000. The applicants have sought an extension of time and by way of explanation for the delay, they have stated that the RLS in Galway delayed in notifying the applicants that they would not be challenging the RAT decision. The applicant's solicitor, Ms. Sarah Ryan, has also sworn an affidavit in relation to the delay. She states that the applicants first consulted her on the 28th November, 2007 and she had a consultation with them on the 5th December, 2007. She had a further consultation with them on the 7th January, 2008 and on that day they signed consent forms for the release of their papers from the RLS. On the 11th January, 2008 she received their proceedings from counsel. At all times since first consulting her, the applicants have kept in touch with their claim and attended all consultations and appointments as arranged. No further explanation is provided for the delay and especially the delay between the first and second consultations. No evidence was provided on any expressed intention on the part of the applicants to challenge the RAT decision.

21. The respondents resist the extension of time and argue that the reasons set out in the affidavit are insufficient to explain the delay.

The Issues in the Case

22. The applicants' arguments in this case centred on the consideration given by the Tribunal Member to (a) medical evidence furnished by the applicants, (b) the previous RAT decisions furnished and (c) the witnesses' evidence.

(a) Consideration of Medical Evidence

23. It is contended on behalf of the applicants that the SPIRASI reports constitute significant evidence which is material in nature and capable of supporting or corroborating the applicants' accounts and their credibility. In those circumstances, the Tribunal Member ought to have weighed the SPIRASI reports in the balance and if he were rejecting their contents he should have given a rational explanation for his decision. Reliance was placed on the judgments of MacMenamin J. in Khazadi v. The Refugee Appeals Tribunal [2006] I.E.H.C. 175; Gilligan J. in Khazadi v. The Refugee Appeals Tribunal (Unreported, High Court, 19th April, 2007) and McGovern J. in N.M. v. The Minister for Justice, Equality and Law Reform [2008] I.E.H.C. 130. It was argued that in the absence of a rational explanation for rejecting the medical evidence, neither the Court nor the applicant is able to understand with sufficient detail or clarity why the Tribunal Member discounted that evidence and the statement of reasons in the decision is therefore defective. Reliance was placed on Ahmed (T.M.A.A.) v. The Refugee Appeals Tribunal [2009] I.E.H.C. 23 where Cooke J. stated:-

"[...] the exercise which the adjudicating authority is required to carry out and to explain is to evaluate the totality of the information available; to weigh in the balance the different elements that tip in one direction and the other and to come to a conclusion as to the credibility of the evidence as a whole. It seems to this Court that where there is a physical piece of evidence that is capable of being related to the events claimed to have happened by the applicant, the obligation is, first of all, to take that into account and then secondly, to explain in the decision whether any significance was thought to attach to it at all and if not, why it is discounted as against the other factors that are taken into account as elements that embellish a story otherwise based upon public events."

24. The respondents argued that the Tribunal Member was entitled to attach whatever weight he felt appropriate to the medical evidence submitted by the applicants which, when compared to other reports submitted by asylum applicants, is at on the lower end of the scale of credibility. The Tribunal Member was entitled to have regard to the surprising feature that more physical evidence was not found in the context of the account given by the applicants.

(b) Consideration of previous RAT decisions

25. The applicants contend that the Tribunal Member acted in breach of fair procedures in failing to explain why the facts of the previous RAT decisions and, in particular, the RAT decision relating to NDW were of not of sufficient relevance to merit the conclusion that the Commissioner's recommendation ought to be overturned. The Tribunal Member erred by categorising the NDW decision as being similarly irrelevant to the other four decisions. Reliance was placed on the judgments of this Court in *L.C.L. (Lema) v. The Refugee Appeals Tribunal* [2009] I.E.H.C. 26 and *E.F.I. (Izevbigie) v. Refugee Appeals Tribunal* [2009] I.E.H.C. 94.

26. The respondents argued that each appeal is independent of the next and the decision of one Tribunal Member does not bind another Tribunal Member. Reliance was placed on *E.G. & D.G. (Gavran) v. The Refugee Appeals Tribunal* (Unreported, High Court, Hedigan J., 16th December, 2008) where Hedigan J. found that it would be objectionable as a matter of principle if Tribunal Members reached different conclusions on the same objective evidence. The paragraph used by the Tribunal Member in this case may have been pithy and formulaic but the previous RAT decisions furnished do not contain any objective findings that are inconsistent with the objective findings reached in this case. The respondents made submissions on each of the decisions furnished and it was argued that, apart from the NDW decision, none of the decisions bear any factual comparison to the applicants' case. The NDW decision is distinguishable because in that case, the Tribunal Member accepted credibility whereas in this case, the Tribunal Member found a number of reasons for rejecting credibility. The fact that NDW was believed by another Tribunal Member did not bind the Tribunal Member in this case to believe the applicants.

(c) Consideration of the Witnesses' Evidence

27. It was contended on behalf of the applicants that the Tribunal Member disregarded the evidence given by the three witnesses at the oral hearings which was supportive of the applicant's claim insofar as it placed them at the premises where N.D.W. was arrested on the 3rd April, 2000. It is contended that if one accepts this part of the applicants' account and if one disregards the second part of their account (i.e. in relation to the events that occurred after the 3rd April, 2000), the applicants may still qualify for protection as refugees.

28. The applicants accept that the summary of the witnesses' evidence set out in the RAT decision is accurate and comprehensive. The respondents argue that in those circumstances one must assume, in accordance with the general rules of evidence and judicial review, that the Tribunal Member took account of that evidence. They further argue that the evidence recorded by the Tribunal Member is not corroborative or supportive of the applicants' account and in the circumstances it was not fundamentally material to the appeals. Therefore even if the Tribunal Member failed to take the evidence into account, there was no breach of fair procedures.

THE COURT'S ASSESSMENT

29. This being a leave application to which s. 5 of the *Illegal Immigrants (Trafficking) Act 2000* applies, it is incumbent on the applicants to establish substantial grounds for the contention that the RAT decisions should be quashed. As there was a three month delay in commencing proceedings, the applicants must also show a good and sufficient reason for an extension of time.

30. As the Court has indicated on numerous occasions, the 14-day time limit set out in s. 5(2) of the Act of 2000 must be taken seriously. While the applicants have not satisfied the Court on the basis of the affidavit evidence that there is good and sufficient reason to extend time, the interests of justice require the Court to examine other factors including the merits of the case before making a final determination on the extension of time. As noted above, the applicants' arguments in this case centred on the consideration given to (a) medical evidence, (b) previous RAT decisions furnished and (c) the witnesses' evidence. It was contended that if the Tribunal Member had appropriate regard to those aspects of the applicants' evidence, their respective appeals might have had a different result. The Court will examine each argument in turn.

(a) Consideration of Medical Evidence

31. This is not a case where it is argued that no regard was afforded to the medical evidence furnished. The handwritten attendance notes of the oral hearings and the appeal decisions each demonstrate that the Tribunal Member received the SPIRASI reports and the correspondence from the Galway Rape Crisis Centre. The reports were referred to expressly in his decisions. The issue therefore is whether, when medical reports are read and referred to, the Tribunal Member is obliged to explain his reasons for not attaching weight to the contents of those reports.

32. The established law and principles set out in the series of decisions beginning with *Khazadi* is that where an applicant furnishes objective medical evidence from a reliable source that tends to support his asserted fear of persecution or is otherwise capable of corroborating his account, the Tribunal Member is obliged to weigh that evidence in the balance and to give a rational explanation for the weight he or she decides to attach to it. Those considerations obviously only arise where the report fulfils the criteria outlined above. Clearly, where medical reports appear to support the applicant's claim, the Tribunal Member ought to specifically state why he does not accept their content. Obviously, the higher the degree of support provided by the medical reports, the heavier the obligation to provide reasons for rejecting the findings. As *McGovern J.* stated in *N.M.*, "where the medical evidence is significantly supportive of the applicant's claim, cogent reasons for rejecting it should be furnished."

33. Whether such an obligation to give reasons for rejecting medical evidence arises in these particular cases necessitates careful examination of the specific medical reports furnished. The question for the Court is whether the medical reports were supportive of the applicants' appalling description of the torture claimed. The reports before the Tribunal Member were:-

- i. A Medical Referral Form dated the 9th August, 2004 from the applicants' General Practitioner in Galway to SPIRASI, indicating that they had been detained by soldiers for two months and subjected to beatings with a truncheon, burns, sexual assault and electric shock;*
- ii. A letter dated the 27th August, 2004 from a Counsellor with the Galway Rape Crisis Centre indicating that both applicants had been in contact and had explained their experience of torture and rape in the DRC. The wife described their arrest by soldiers in 2003 and said she was violently beaten, tortured and raped in front of her husband and had to witness the same happen to him. The Counsellor stated that both parties were in need of intensive counselling and support, that the husband had been referred to the Male Abuse Survivors Centre (MASC) and that the wife would continue to use the services of the Rape Crisis Centre;*
- iii. A letter dated the 30th August, 2004 from a General Practitioner in Galway stating that the applicants were on his panel since March, 2004 and that he was "given to understand" that the husband has a past history of torture (electrical burns on his left lower leg) and the wife had a history of sexual assault and beating with a truncheon;*
- iv. An undated invoice indicating that two walking sticks had been delivered to the husband via the Heath Board;*
- v. A letter dated the 24th August, 2005 from a different Counsellor with the Galway Rape Crisis Centre expressing "grave*

concern" about the wife who was not in a position in 2004 to deal with the ordeal she went through in the DRC but was now coming for counselling with the assistance of an interpreter which was not available previously. The Counsellor expressed the view that the wife would be in danger if she returned to the DRC;

vi. A letter dated the 15th September, 2005 from the original Counsellor with the Galway Rape Crisis Centre confirming that the husband had attended at the Centre and told her that he was violently raped, tortured and beaten in the DRC after being arrested because of his employment by N.D.W. The Counsellor stated that the husband had been referred to MASC and was on the waiting list owing to interpretation difficulties. He seemed very interested in getting support for himself and her impression was that he would require intensive counselling;

vii. A SPIRASI report dated the 10th December, 2005 prepared by a senior examining physician in relation to the wife. He recorded that the wife says that while detained in 2003 she was beaten with gun butts and burned with cigarettes on her ankles; three times a week her husband was raped in front of her; soldiers walked on her in their boots and she has a pain in the lumbar region because of that ill-treatment; she was two months pregnant but miscarried and was bleeding but received no medical treatment; she was also raped many times. The physician concluded:-

"Mrs [L] reports being physically and sexually abused while she was detained and of miscarrying her two months pregnancy as a consequence of that abuse.

On examination, there is a scar on the back of Ms. Lengo's right hand which she attributes to a knife wound she sustained while in prison and there is a discoloured area laterally above the left ankle, which she attributes to cigarette burns she sustained. These scars are consistent with the reported causes.

Psychologically, Ms. [L] has symptoms which could be attributable to the traumatic experiences that she reports sustaining but which do not appear to be severe in nature.

viii. A SPIRASI report dated the 10th December, 2005 prepared by a senior examining physician in relation to the husband. He recited the husband's full history and examination and concluded that:-

"He reports that he and his wife were detained in poor conditions for two months, during which time they were both physically and sexually assaulted. Mr [M] claims that he was beaten with a baton regularly while in detention and that he was also sexually assaulted by many of the soldiers who were detaining him, who sodomised him, achieving full anal penetration.

On examination Mr. [M] has two de-pigmented areas on his lower left leg, which he attributes to electrical burns sustained while he was being detained when he says they gave him electric shock treatment. He also claims to have sustained electric shock treatment to his genitalia on one occasion but no lesions were seen there.

Psychologically, he appears to be coping well with the traumatic experiences he reports sustaining. His sleep is somewhat disturbed but his appetite is normal and his mood appears reasonable. However, he does report some suicidal ideation.

ix. A report dated the 7th August, 2007 by the Counsellor at the Galway Rape Crisis Centre indicating that the wife had attended for counselling in 2005 and at the time she seemed emotionally scarred by her experiences in the DRC. She found it difficult to talk about her ordeals but she did disclose some details. The Counsellor felt at the time that she would need further counselling in the future, when she felt ready for it.

34. The Court's detailed examination of these reports leads to the conclusion that the medical evidence was not what could be described as so supportive or corroborative of the applicants' claim as to require the Tribunal Member to explain why the medical evidence was rejected.

35. The SPIRASI report in the husband's case, which was prepared by a very experienced doctor on the SPIRASI panel, is decidedly non-committal and neutral in tone and support for the husband's complaints is absent. The physician noted the husband's account of being beaten regularly, sodomised (achieving full anal penetration) and subjected to electric shocks to his legs and genitalia. He recorded the husband's account of suffering extreme torture, humiliation and psychological mal treatment immediately before his physical findings which were confined to sluggish reflexes, lower back pain and two de-pigmented areas on his lower left leg. The examining physician avoided the use of any of the well known Istanbul Protocol phrases to indicate his view as to whether the patient's injuries were "consistent" or "highly consistent" with, "typical of" or "diagnostic of" the ill-treatment that he claims to have sustained. He noted that "...psychologically, he appears to be coping well with the traumatic experiences he reports sustaining."

36. The same Senior Examining Physician examined and prepared a report on the wife. In her case he used the language of the Istanbul Protocol insofar as he concluded that the scars found on her right hand and left ankle were "consistent" with the reported causes, being an attack with a knife and cigarette burns respectively. However, the Court notes that it does not appear from the papers that the wife had previously claimed that she was attacked with a knife or burned with cigarettes. The appalling ill-treatment that the wife claimed included multiple and frequent rapes and beatings at the hands of her jailers over a two month period of time. She claimed that she was forced to witness her husband being sodomised and every night was taken from her cell to witness the execution of other prisoners. No mention was ever made of a knife attack or of cigarette burns. The husband claimed frequent rapes, beatings, electric current being applied to his legs and genitalia and he too was forced to witness the nightly ritual of prisoner executions. In the context of their complaints it is surprising that neither of the SPIRASI reports include findings which would corroborate or support those claims although the details were fully provided by each of the applicants to the physician.

37. The reports from the Galway Rape Crisis Centre repeat the claims made by the applicants but could not be said to do much more. It appears that the wife did attend for counselling in 2005 but the 2007 report states nothing which would cause a reader to infer that the wife continued or continues to attend. The 2005 report from the Male Abuse Survivors Centre indicates that the husband was interested in getting help for himself but had not yet attended counselling owing to the lack of translators. No evidence was provided to suggest that he did attend for counselling.

38. Ultimately, the surprising lack of objective medical findings in view of the torture alleged has to be set with the credibility findings made on much of the applicants' description of the events of 2000 in NDW's house, the three years of total isolation in hiding in the remote village, the two months incarceration in 2003 and the extraordinary and unexplained arrival of the husband's father with \$35,000 to secure their escape. The inference has to be drawn that there is a large credibility gap which was not filled by any medical evidence. On analysis, there is simply no comparison between the medical evidence in this case and the medical evidence in

Khazadi, N.M. or to a lesser extent Ahmed (T.M.A.A.), on which the applicants rely. In Khazadi the SPIRASI report listed "many physical findings of scars that were highly consistent or typical of the injuries that the applicant reported sustaining during the beatings or abuse that he sustained in prison". The SPIRASI report in Khazadi further stated that the applicant's description of his detention was credible and that he had physical evidence of the reported abuses which supported his story and went on to say that given the nature and severity of the abuse that he reported sustaining, it would come within the definition of torture as stated in the United Nations Convention Against Torture. In N.M. a Consultant Psychiatrist stated that the applicant's symptoms were typical features of anxiety such as you would find with Post Traumatic Stress Disorder. McGovern J. stated that those medical reports tended to support the applicant's account although they were not conclusive. In Ahmed, described as "a marginal case", the applicant claimed that she was detained by persons who stubbed out cigarettes on her legs. She had multiple lesions on her legs which a SPIRASI report deemed to be "typical of" burns inflicted by a cigarette. Cooke J. stated that there was therefore "potentially at least, physical evidence currently available in this jurisdiction which may possibly be linked to the mistreatment which forms the basis of the claim to a well founded fear of persecution." Cooke J. found that in those circumstances one would expect the Tribunal Member to explain why that piece of pertinent evidence was discounted as having a bearing upon the credibility issue. Although the Tribunal Member had mentioned the reports in passing, he had not evaluated their significance or explained why they were to be discounted.

39. Thus in Khazadi, N.M. and Ahmed, while the SPIRASI reports furnished did not establish the source of the applicants' injuries, the reports were evidence of the fact that injuries were found which were highly consistent or typical of the maltreatment claimed. In contrast, the medical evidence in this case was not of a nature that would tend to support or corroborate the applicants' claims. The wife has a scar on her hand which is consistent with a knife wound and a discoloured area on her leg with is consistent with cigarette burns. The designation of an injury as being "consistent with" the attributed cause is the lowest in the scale of causation in the Istanbul Protocol and means that the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes. The reports do not make any physical findings supporting the claim that the applicants suffered the numerous forms of ill-treatment alleged including torture, multiple rapes, electrical shock, being walked over by soldiers wearing boots and being beaten with gun-butt, truncheons and whips.

40. The Court is therefore satisfied that although it is preferable for the Tribunal Member to explain what significance (if any) he attaches to medical evidence furnished and to explain why it is discounted, his failure to do so in the circumstances of these cases does not breach fair procedures. Substantial grounds are not identified on this issue.

(b) Previous RAT decisions

41. The Supreme Court in Atanasov v. The Refugee Appeals Tribunal found that fair procedures require the Refugee Appeals Tribunal, upon the request of an applicant, to grant reasonable access to previous decisions that are reasonably required for legal relevance. In this case the applicants submitting five previous RAT decisions in support of their appeals, one of which was the decision of their brother-in-law NDW who was granted a declaration of refugee status. The Tribunal Member addressed those decisions in the same manner in both cases (as set out in paragraph 19 above), finding that given the facts of these cases, the previous decisions were "not of sufficient relevance to the instant appeal to warrant a conclusion that the current recommendation be overturned." The decision was criticised because the Tribunal Member did not acknowledge that one of the decisions related to NDW, who gave evidence in support of the applicants' appeals, nor did he make any specific remarks on any of the five decisions.

42. Neither party has disputed that the Tribunal Member read the previous decisions furnished nor has either party disputed the established principle that while Tribunal Members are obliged to consider previous RAT decisions furnished by an appellant, they are not bound by those findings. The question for this Court is whether the Tribunal Member acted in breach of fair procedures in omitting to expressly evaluate the relevance of the NDW decision because of its shared facts on the first part of the applicants' narrative.

43. The rationale underlying Tribunal Members' obligation to consider previous decisions of their colleagues furnished to them by an applicant is to promote consistency in decision-making and to avoid contradictory decisions on the law and on similar objective facts. Undoubtedly, the interests of justice and legal certainty would not be served were two or more Tribunal Members to interpret and apply the law in a different manner in cases involving the same objective facts. This is clear from Atanasov where Geoghegan J. held:-

"[...] it is blindingly obvious, in my view, that fair procedures require some reasonable mechanisms for achieving consistency in both the interpretation and the application of the law in cases like this of a similar category. Yet, if relevant previous decisions are not available to an appellant, he or she has no way of knowing whether there is such consistency. It is not that a member of a tribunal is actually bound by a previous decision but consistency of decisions based on the same objective facts may, in appropriate circumstances, be a significant element in ensuring that a decision is objectively fair rather than arbitrary."

44. As was noted in Gavran, the desirability of consistency in decision-making follows from the doctrine of equality before the law and the constitutional imperative that that people who appear before the Courts in essentially the same circumstances should be dealt with in essentially the same manner (see The State (Keegan & Lysaght) v Stardust Victims Compensation Tribunal [1986] I.R. 642, at p. 658). The obligation to treat like cases alike does not mean that Tribunal Members are obliged to reach identical conclusions on credibility. In Gavran Hedigan J. held:-

"the obligation to treat like cases alike requires that the conclusions reached by one Tribunal Member as to the objective situation in an individual's country of origin should accord with the conclusions reached as to that same objective situation by other decision-makers in other cases. That principle does not apply, however, to conclusions reached as to the subjective impact of a particular experience on an individual applicant; Tribunal Members must measure that subjective impact on a case-by-case basis and may justifiably reach different conclusions from one case to case."

45. The Court is satisfied that if one leaves aside the decision relating to NDW for the moment, then none of the four decisions furnished by these applicants involved objective facts or principles which were sufficiently comparable to the facts and principles at issue in the present case as to require the Tribunal Member to explain why they did not warrant departure from the Commissioner's negative recommendation. Their only common feature is that each of the applicants came from the DRC. Positive decisions of the RAT are not subjected to any judicial review analysis no matter how unusual those decisions appear on their face to be. However, it is a fact that the Tribunal Member in each situation has the very distinct advantage of hearing and seeing the applicant and evaluating his / her manner and demeanour as an important facet of a credibility assessment. That same Tribunal Member is also possessed with a degree of specialised knowledge in that he / she may have heard dozens of cases where similar relevant COI is consulted. That experience places the Tribunal Member in an advantageous position over the position of a court reading the decision. The decisions are of great utility in understanding background information but ultimately are determined on a credibility assessment of the particular applicant and the personal circumstances recounted.

46. The decision which relates to NDW, the applicants' brother in law, is also a positive decision which reversed the Commissioner's negative recommendation. There can be no doubt that the facts of the NDW case, as outlined in the analysis section of the decision, bore some resemblance to the applicants' case. The analysis of NDW's claim discloses that he claimed to work in a position of authority in a Kinshasa-based transport firm owned by President Kabila's brother. In April, 2000 he was involved in the logistics of transporting containers from the port in Kinshasa to the F.A.C. (Congolese Armed Forces). The lorry went missing and did not reach Kinshasa. Shortly afterwards security forces raided his home, handcuffed him and beat him up. He was questioned about the disappearance of the lorry and when first taken away he heard the voices of other people being interrogated about the missing lorry. When he was brought back to his home the families of the drivers had been gathered there by soldiers. The army ransacked his house and one of the soldiers shot and killed his twin sister. He and his wife were then arrested and brought to a military camp. Army personnel raped him and his wife. He was held in captivity and was released by the intervention of a high ranking soldier who had previously been a judge of the Supreme Court and was known to his father-in-law. NDW submitted a medical report which repeated his allegations of rape without elaboration or analysis and a further medical report which diagnosed significant depression and chronic anal pain. He had suffered an anal infection.

47. The Tribunal Member dealing with NDW's appeal found that that there were many aspects of the case which were implausible including his abduction and subsequent return to his home by the security forces; the medically unsubstantiated allegation of rape; the killing of his sister while he was spared and the untroubled and effective escape with the aid of a state legal official. The decision found that he "may or may not" have been raped or have held a position which was involved in the transport of the convoy and that he had been hesitant, evasive and inconsistent in describing the trucks and their escape. The Tribunal Member nevertheless held that COI supported the plausibility of the account that he was subject to detention and beatings by the police and that NDW had established to a credible degree that he worked for a transport company and he established the operating hierarchy of the company to a credible degree. He concluded that "No objective observer could conclude that if the Applicant's account is accepted he would not face persecution in D.R. Congo". He found that the applicant had placed his story (i.e. that the missing truck may have led the authorities to believe that he was assisting the rebels) in context and that overall, it was capable of being believed.

48. While NDW's case was not identified as being included in the five cases submitted to the Tribunal Member, it would not have been difficult to recognise great similarities in the applicants' narrative of events and his. The Court is not at all convinced that those similarities would necessarily operate in favour of the applicants in this case or that a Tribunal Member could be faulted for not affording the same benefit of the doubt to the extended story presented by the applicants. Perhaps if the applicants had arrived in Ireland at the same time as NDW there may have been more objective points of similarity but the facts here show a three year delay since the events which affected NDW's life and that of the applicants. More importantly, no objective findings were made in the NDW decision which run counter to any objective findings made in the applicants' decisions. Having considered the specific decision in NDW's case the Court is satisfied that the Tribunal Member provided correct if formulaic reasons as to why he was not bound by those decisions in the circumstances.

(c) Evidence of the Witnesses

49. The final argument is very much associated with the positive decision given to NDW in that the applicants submit that their claim may be divided into two parts – the first part being their connection with NDW and their presence at his house in 2000 when soldiers arrested him and upon their return shot his twin sister and daughter; the second part being that they fled to a remote area where they lived in an abandoned hut for three years before being arrested in 2003, detained and ill-treated and then making their way to Ireland.

50. The applicants argue that the first part of their account should have been given more credence in the light of the evidence of the three witnesses who they described as independent. They argue that as the first part of their story was corroborated, the Tribunal Member erred by neglecting to assess whether, leaving aside the second part of their claim, they are entitled to refugee status on the basis of that first part. This argument initially caused the Court some concern. However, the argument lost substance when viewed in the light of the findings made by both the Commissioner and the Tribunal that the second part of the story was in effect a convenient ruse to account for a three year period during which they came to no harm and therefore could not be viewed as being in need of international protection.

51. A review of the evidence provided by the three family members demonstrates that NDW confirmed that he employed the husband as his driver in the DRC. His daughter confirmed that her father had been arrested and that she had been shot. Her mother said that her sister and husband were at her house when her husband was taken away. This evidence certainly corroborated their presence in the house but it provided no explanation as to why they should be targeted either then or three years later by the security forces arising from the NDW's involvement in the loss of the government's arms consignment. The testimony of the family members provided no evidence on the applicants' escape through the back window / door of NDW's house. It added nothing to the applicants' case that they then went to their own house, found it surrounded and then hitched a lift to a remote area where they lived in hiding for three years. It did not explain how their respective narratives of their conditions of incarceration differed so profoundly or how there was so little support found in the medical reports of the horrendous sexual, physical and psychological torture claimed. It provided no assistance in the assessment of the credibility of their escape and flight from prison and their travel to Ireland. The Court cannot close its mind to the implausibility of the account that the applicants did not discuss the events of 2000 or the subsequent events with their family members upon being reunited with them in Ireland. The unfortunate reality is that even if the applicants were present in NDW's house when he was arrested, they have not established that they were the victims of persecution or in danger of persecution in the three year period between then and their flight from the DRC in 2003, or that if they were returned to the DRC they would have any well-founded fear of persecution. The Tribunal Member cannot be faulted for not considering a proposition so remote as to be absurd that their presence in NDW's house could make them refugees.

Conclusion

52. In the light of the foregoing the Court is satisfied that the applicants have not established substantial grounds nor have they shown any good or sufficient reason for time to be extended. Leave is refused.