[2018] IEHC 527

THE HIGH COURT

2016 No. 897 JR

Between:

SULTAN CHAKARI

Applicant

– and –

THE CRIMINAL INJURIES TRIBUNAL, MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 1st October, 2018.

1. An essential element of any judicial review application is that there is some form of action on the part of a respondent decision-maker for a court to review. Here there is nothing. There has been no decision, there has been no failure to make a decision; it is not alleged that anything has been done in excess of jurisdiction. There is nothing for the court to review.

2. Mr Chakari submitted a non-fatal injury application to the Criminal Injuries Compensation Tribunal on 22nd July, 2016. As of the date of hearing, the Tribunal does not have sufficient information from Mr Chakari to make a decision on the substantive application. Certain relevant documentation remains outstanding. So Mr Chakari's application to the Tribunal is incomplete and cannot be processed. As a result, Mr Chakari's application, at his election, remains pending. Yet Mr Chakari comes now to court with this judicial review application seeking certain declaratory reliefs concerning the lawfulness of the Scheme of Compensation for Personal Injuries Criminally Inflicted, the non-statutory administrative scheme, pursuant to and in accordance with which the Tribunal operates ('the Scheme').

3. There is, it is true, a letter of 19th August, 2016, to the Tribunal from Mr Chakari's solicitor in which the solicitor notes that neither (a) general damages in respect of pain and suffering nor (b) any (if any) costs of legal representation are payable under the Scheme and asks the Tribunal "*to agree to dis-apply those provisions of the Scheme which exclude the payment of general damages in respect of pain and suffering*". In its reply letter of 8th September, 2016, the Tribunal stated, inter alia, that "*All applications made under the Scheme are processed within the parameters of the Scheme*". That, however, is not a decision susceptible to judicial review. Why so? Because in a system based on the rule of law, the Tribunal is not free to act other than in accordance with the Scheme pursuant to which it was established and in accordance with which it is required to operate. The Tribunal has not 'decided' to act in accordance with that Scheme; it must do so. Nor is there anything in the evidence before the court to suggest that the Tribunal is in any event competent to vary the Scheme.

4. When the court queried at hearing whether the within application was a matter that was more properly the subject of plenary proceedings, rather than judicial review proceedings, counsel for Mr Chakari referred the court to *QL v. The Minister for Justice, Equality and Law Reform* [2010] IEHC 223, in which Cooke J. observes, *inter alia*, at para. 14 that "*It is not difficult to conceive of circumstances in which, in the absence of any actual refusal to take a decision, some legal issue has arisen between an applicant and the administrative authority concerned which it is convenient to resolve by a declaration in order to facilitate the expeditious taking of the necessary decision*". The court respectfully does not consider that in making the just-quoted assertion, Cooke J. intended to invent a new form of hybrid proceeding in which (a) absent anything to review, (b) one could nonetheless commence judicial review proceedings, and (c) thereby elicit certain declaratory reliefs from the court. The court notes too that there has been no "*material change in circumstances or…new events or the coming to light of previously unknown facts or information*" such as are referred to in QL, para.19, which could warrant declaratory relief.

5. If Mr Chakari wishes to challenge the Criminal Injuries Compensation Scheme, the correct course of action is to commence plenary proceedings. If he wishes to challenge a decision of the Tribunal, then he must progress his application to the point where there is a decision that is susceptible to judicial review. Order 84 of the Rules of the Superior Courts 1986, as amended, ("*Judicial Review and Orders Affecting Personal Liberty*") has no application in respect of decisions that have yet to be taken. What Mr Chakari cannot get, with respect, is what he has sought, which is a review of nothing. There being nothing for the court to review, there is nothing further for the court to do, save to refuse all reliefs sought.