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THE HIGH COURT
JUDICIAL REVIEW

[2005 No. 1026 J.R.]

BETWEEN

D.V.T.S.

APPLICANT

AND
THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM
AND THE REFUGEE APPEALS TRIBUNAL

RESPONDENTS

Judgment of Mr. Justice Edwards delivered on the 4th day of July, 2007.

Background to the proceedings

1. The applicant is a national of Cameroon, West Africa. He arrived in Ireland on 8th October, 2003 and upon his arrival at the frontiers of the State (Dublin Airport) he applied for asylum based upon his fear of persecution in Cameroon on account of his political opinion. He applied for a declaration pursuant to s. 17 of the Refugee Act, 1996, that he was a refugee as defined in s. 2 of that Act. He completed the necessary form and the questionnaire in support of his claim. He was subsequently interviewed by an investigating officer authorised in that behalf by the Refugee Applications Commissioner in the context of an investigation of the application by the Commissioner pursuant to s. 11 of the Refugee Act, 1996 for the purpose of ascertaining whether the applicant was a person in respect of whom a declaration should be given. Following the said s. 11 investigation, the Commissioner prepared a report in writing in accordance with s. 13 of the Refugee Act, 1996 (as amended) as to the results of the investigation and the said report recommended to the Minister for Justice, Equality and Law Reform that the applicant should not be declared a refugee as he had failed to establish a well-founded fear of persecution as defined under s. 2 of the said Act.

2. The applicant appealed the recommendation of the Refugee Applications Commissioner to the Refugee Appeals Tribunal (the second named respondent herein) pursuant to s. 16 of the Refugee Act, 1996. The applicant's appeal was heard on 23rd March, 2005. He was afforded an oral hearing. Moreover, he was legally represented at the oral hearing by the Refugee Legal Service. The applicant himself gave evidence and was cross-examined by the presenting officer. The Tribunal also considered certain documents submitted by the applicant including a political party membership card with a letter of attestation re his identity and nationality, a birth certificate and two photographs. The applicant submitted medical reports including a report furnished by a Dr. John Goode of the Centre for the Care of Survivors of Torture dated 19th March, 2005 (hereinafter referred to as the SPIRASI report) and certain country of origin information. The second named respondent had also been furnished with copies of the reports, documents and representations in writings submitted to the Commissioner under s. 11 and, of course, the Tribunal had a copy of the Commissioner's s. 13 report. Moreover, the Tribunal itself sought certain clarifications of the SPIRASI report, and the clarifications were provided by letter of the 8th April, 2005.

3. On 30th day of June, 2005 the second named respondent decided to refuse the applicant's appeal. Accordingly, the Refugee Appeals Tribunal affirmed the recommendation of the Refugee Applications Commissioner given under s. 13 of the Refugee Act, 1996 that the applicant should not be declared to be a refugee. The decision of the Refugee Appeals Tribunal under s. 16 (2)(a) of the 1996 Act was duly notified to the applicant in accordance with the requirements of the Act and no issue arises in relation to that.

4. The applicant is dissatisfied with the decision of the Refugee Appeals Tribunal. He has sought to challenge it by way of application for judicial review in the context of which he seeks diverse reliefs including an order of certiorari quashing the said decision. Section 5 of the Illegal Immigrants (Trafficking) Act 2000 provides that a person shall not question the validity of a decision of the Refugee Appeals Tribunal under s. 16 of the Refugee Act 1996 as amended by s. 11(1)(k) of the Immigration Act 1999, otherwise than by way of an application for judicial review under O. 84 of the Rules of the Superior Courts. Moreover, an application for leave to apply for judicial review must be made within the period of fourteen days commencing on the date on which the person was notified of the decision unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made. The application is required to be made by motion on notice and leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed.

5. By a notice of motion supported by a grounding affidavit, dated 23rd September, 2005 the applicant sought leave to apply for diverse reliefs by way of judicial review including an order of certiorari quashing the decision of the second named respondent dated 13th June, 2005. The said application was out of time but when the matter came on for hearing before MacMenamin J. in the High Court, on 14th February, 2007 the applicant succeeded in persuading the court that there were good and sufficient reasons for extending the period within which the application shall be made. Moreover, the court was disposed to grant the applicant's application for leave to apply for judicial review in part. It was satisfied that there were substantial grounds for contending that the decision of the Refugee Appeals Tribunal ought to be quashed albeit on a more restricted basis than that contended for by the applicant. Accordingly, the court ordered that the applicant do file an amended Statement of Grounds and granted him leave to apply by way of application for judicial review for the reliefs now set forth at para. 4 of the amended Statement of Grounds that was filed in accordance with the High Court's said order on 20th January, 2007, on grounds now set out at para. 5 of the same document. Those paragraphs are in the following terms:

> "(4) Reliefs sought:
>
> (a) An order of certiorari by way of application for judicial review quashing the decision of the second named respondent dated the 30th day of June, 2005, notified to the applicant by letter dated July 26th, 2005, that the applicant's claim for asylum in Ireland be refused.
>
> (b) Such further or other order as to this Honourable Court shall see meet.
>
> (c) An order providing for costs.
>
> (5) Grounds upon which relief is sought:

(i) The second named respondent failed to take relevant considerations as to torture and country of origin information into account in reaching the decision that the applicant herein was not entitled to asylum in the State and/or took into account irrelevant considerations when making that decision. Without prejudice, the second named respondent failed to consider the relevant facts and documents as provided by the applicant and the relevant country of origin information in reaching its said decision."

6. At the hearing before me it was strenuously argued by Ms. Sarah Moorehead, S.C. on behalf of the respondents, that the applicant was not at large to argue anything he liked on account of the second sentence in para. 5(1) of the Statement of Grounds, that is the sentence commencing with the words "without prejudice". She submitted the applicant had not been granted leave to challenge the second named respondents' assessment of his credibility generally, or specifically in relation to details of escape; failure to apply for asylum in France; distribution of placards; supporting documentation (including photographs) or with respect to whether or not matters were put to the applicant. She contended that the applicant had been granted leave to apply for judicial review on just one ground wholly limited in nature namely, a failure to take into account relevant considerations as to torture and country of origin information. Ms. Moorehead contended that the second sentence of para. 5(1) of the amended statement of grounds could only be read in conjunction with the first sentence and that the reference therein to relevant facts and documents as provided by the applicant and relevant country of origin information merely amplified the reference in the first sentence to "relevant considerations as to torture and country of origin information", but did not add substantially to it. Mr. Conor Power, B.L. on behalf of the applicant sought to argue his case on a much wider basis and effectively sought to contend that he was at large to argue a failure to take into account the relevant facts and documents in the Tribunal's general assessment of the applicant's credibility, and not just facts and documents relating to torture and country of origin information. I expressed the view at the hearing that I was in somewhat of an invidious position in that I was not present when MacMenamin J. made his order and that accordingly I could only deal with the matter on the basis of what was contained in the written order of MacMenamin J. as perfected. I took the view, and it is a view that I continue to hold, that that document conveys that it was MacMenamin J.'s clear intention to confine the applicant's leave to apply for judicial review to an alleged failure on the part of the second named respondent to take into account relevant considerations as to torture and country of origin information. Accordingly, I was satisfied, and remain satisfied, that the construction of McMenamin J.'s order contended for by Ms. Moorehead is the correct one.

The applicant's story

7. As a prerequisite to appreciating the applicant's story it needs to be understood that Cameroon is a divided society. In the southern part of the country the population is predominantly English speaking and in the remainder of Cameroon the population is predominantly French speaking. The Government is dominated by Francophones and Anglophones contend that they are discriminated against and oppressed by the Government. The Anglophone constituency, or a portion thereof, is represented by the Southern Cameroon National Council (SCNC) and advocates political independence for Southern Cameroon. Apparently the SCNC was established in 1992 as a result of a split within the Social Democratic Front (SDF) the leading opposition party in Cameroon.

8. The applicant is a Francophone but is married to an Anglophone. According to the applicant, he was not a member of the SCNC but was a sympathiser because his wife is an Anglophone. The applicant told the Tribunal that in January, 2000 he went to Limbe with J.E.A. to participate in demonstrations, to get all the Anglophones to come together and participate in the struggle for freedom. During the course of demonstrations on that day the police intervened and arrested two members of the SCNC. These individuals were high ranking members of the party. The applicant was also arrested during these demonstrations together with approximately twenty demonstrators (described by the applicant as "militants"). They were taken to Limbe Gendarmerie (Police Station), and detained. After one week eighteen militants were released by the police. The applicant and one other militant remained in detention. The applicant claims that he was tortured and assaulted regularly during his detention. He was not allowed visits from his family. He was kept for another seven days and was then transferred to Euea Central Prison, where again he was severely tortured. According to the applicant, "I was accused of having knowledge of where the SCNC were hiding its arms". He claims that he was then taken before a Military Tribunal and he was asked to sign an undertaking not to participate in further demonstrating. According to the applicant it was made plain to him that "if they find me engaged in demonstrations, I would be given thirty years in prison or the death sentence". Having given the required undertaking he was freed on the 1st May, 2000. According to the applicant he was sick for approximately one year after his release.

9. The applicant told the Tribunal that following this incident he decided to stop sympathising with the SCNC. He claimed that his sympathies with the SCNC began in 1999 and ceased following his release in May, 2000. According to the applicant he subsequently became a member of the SDF in 2001. He maintained that he joined the SDF in June, 2001. The applicant stated "I was militating in the province of Southwest and Northwest. I was militant with the SDF My role was to arrange meeting halls, bring in chairs and classify the seats. I was also supposed to inform members of the meetings". The applicant told the Tribunal that while he and some others were campaigning in the lead up to the legislative and municipal elections in 2002, they were interrupted by opponents and the police. According to the Tribunal, the applicant's testimony was that when they told the President of the SDF of this, the President of the SDF told the applicant and other supporters "to carry out rebellion". (In para. 13 of the affidavit of the applicant sworn on the 22nd September, 2005 grounding his application for leave to apply for judicial review, the applicant has asserted that at all times he has described his activities with the SDF party in Cameroon as protesting or relating to a protest. He asserts that the Tribunal mischaracterized the action as rebellion. As the court did not hear the oral testimony of the applicant, and as the second named respondent does not accept the mischaracterization allegation, the court cannot be expected to adjudicate on this issue. In any case the applicant does not have leave to argue a mistake of fact in this context.) In any event the applicant claims that the President of the SDF then sent people to Nigeria to produce placards for this action (however it may be characterised) because the main printing press in Douala had been burnt down.

10. The applicant contended that when these placards had been printed the President of the S.D.F then despatched supporters including the applicant to distribute them. The applicant maintained that while doing so he was arrested on 10th June, 2002 in Buea in the province of the Northwest. He was then transferred to Bemenda Central Prison. He claimed that during his detention there he was tortured. The applicant maintained that he was accused by the police of being a member of the militant team that went to Nigeria to produce the placards. He was reminded of the undertaking he had given in the year 2000. While in Bemenda Central Prison he was transferred to a hospital for treatment. While in hospital he escaped with the assistance of his uncle who had bribed the prison commander. His uncle drove him into hiding in a small village for one week. He stayed with his maternal aunt. He then went home to his village. He stayed with his mother there and was treated with traditional medicine. He spent approximately three to four months in his home village. His uncle subsequently arranged for him to leave the Cameroon.

11. In relation to the specifics of the torture that the applicant claims to have suffered this (somewhat surprisingly) is not described in any detail in the Tribunal's decision, notwithstanding that medical evidence had been submitted to the Tribunal in support of the applicant's contentions in that regard. However, it is particularised in the report of the Refugee Applications Commissioner pursuant to s. 13(1) of the Refugee Act, 1996 (as amended). With respect to his imprisonment in the year 2000 the R.A.C. notes he alleged that

he was tortured while in custody, that his hands and feet were bound, outstretched, then beaten daily with belts or machetes. Moreover, with respect to his arrest and detention in 2002 (he originally said this was 2003 but later corrected it to 2002) he again alleged that he was tortured, stating that he was beaten on the head and had his feet whipped as many as five hundred times each morning.

12. When examined by doctors from the Centre For The Care Of Survivors Of Torture (who have produced the aforementioned SPIRASI report) the history he gave them included allegations that while he was imprisoned in Bamende prison he was subjected to "Falanga", during which the soles of his feet were repeatedly thrashed with a stick or a flexible rubber truncheon known as a "matraque". He reported that he was gun butted into the side of his face, above his left eye, and knocked unconscious. The wound required suturing and this was done, with poor result, in the prison's First Aid room. He also alleged that he was beaten many times across his back with rubber piping known as "badin". He further claimed that at other times he was struck on his back and trunk with a machete.

The applicant's claim
13. The applicant contends that the Refugee Appeals Tribunal failed to correctly consider the medical evidence presented to it and further that it misapplied the Istanbul protocol. Further, the applicant alleges that the Refugee Appeals Tribunal breached fair procedures in failing to consider all the relevant country of origin documents supplied to it and, secondly, in its selective use of country of origin information.

The SPIRASI Report dated 19th March, 2005
14. It states:-

> "Mr. D.S. has a number of scars on his person which, in the context of his history, were deemed to be of possible significance.
>
> (i) There are two irregular scars over the left frontal region of his head, 2" and 1" in length. The larger of the two scars shows evidence of suturing (stitches) but with bad cosmetic result. This wound may have been infected. These injuries, allegedly caused by the blows of a gun butt, do appear to be the result of trauma from a blunt instrument blow, with soft tissue rupture and laceration.
>
> (ii) There is a ¢" crescentic scar below the right rib cage, an unusual site for injury and thought to have been caused by the blow of a matraque, and inflicted during the multiple beatings he alleges sustaining. In addition, there a series of fine vertical ╨" scars in parallel across the abdominal wall. These are tribal scars.
>
> (iii) On the radial (outer) aspects of both wrists are small areas of depigmentation, where Mr. S. relates, his wrists were secured by tight handcuffing for prolonged periods. The history is in keeping with the clinical observations.
>
> (iv) Across his back there is a series of parallel stripe scars (as per diagram) and some flat, superficial oval scars, all of which it is claimed were caused by beatings with flexible hose pipe or matraques. The two types of scar are distinctly different, the distribution suggesting a defensive posture by the prisoner (Mr. S.) whilst blows were being struck on his body.
>
> (v) Both lower legs show evidence of many circular shaped flat scars where it is alleged more blows and kicks were struck. Certainly the scars are evidence of trauma, the aetiology of which could not be proved.
>
> (vi) Mr. S. reports that he was repeatedly subjected to falanga, and this trauma may well have been the cause of a diffuse mottled appearance of the soles of his feet, where micro-haemorrhages have stained the soft tissues and give rise to the appearance of altered pigmentation changes. Prolonged standing and walking cause the feet to be painful.ö

15. Following the said examinations, the medical examiner gave his conclusions as follows:-

> "Mr. D.T.S. has given a history of imprisonment and severe ill-treatment in Cameroon. Clinical examination has revealed evidence of psychological disturbance and physical injuries, which taken in the context of his history, are of a severity and nature, to amount torture as defined in the United Nations Convention Against Torture and with the features of associated post-traumatic stress. Mr. S.'s abiding fear is of further retaliation in his country of origin, should he return to that jurisdiction."

16. Arising out of that report the Refugee Appeals Tribunal queried the use of the words "deemed to be of possible significance" in the prelude to the list of injuries found by the medical examiner upon examination of the applicant. The Tribunal specifically expressed itself to be unclear as to whether the medical examiner was in fact of the view that Mr. S.'s injuries were as a result of the torture alleged by him. By letter dated the 8th April, 2005 Dr. Patrick O'Sullivan, senior physician with the Centre for the Care of Survivors of Torture, and a co-signatory of the report of the 19th March, 2005, replied stating:-

> "In saying that a number of the scars noted during the clinical examination 'were deemed to be of possible significance' we are saying that it was felt that the ones which are described in some detail could be related to the history of the various physical abuses which Mr. S. reports sustaining. Other scars were present but were noted to be tribal in origin or to be otherwise unrelated to the alleged abuses. The specific scars identified were thus generally thought to support the history given by Mr. S. The irregular scars on the left frontal region of Mr. S.'s head are typical of blunt instrument trauma and certainly would be consistent with the alleged blows from a gun butt. The crescentic scar on the right ribcage margin is consistent with the alleged blow from a matraque, which was thought to have caused it. The depigmentation on the wrists is typically seen following prolonged handcuffing. The marks on the back are highly consistent with the history of beatings with flexible hosepipes and matraques. The marks on his lower legs are non-specific but could be consistent with the abuses he alleges sustaining to his legs, i.e. beating and kicking. The features noted on the soles of his feet would be highly consistent with the falanga which he alleges sustaining.
>
> The Conclusion confirms this belief, in that 'Clinical examination revealed evidence of a psychological disturbance and physical injuries, which taken in the context of his history, are of a nature and severity to have amounted to torture …' This may be unclear to the Tribunal member but was intended to confirm our belief that the findings on physical and psychological examination supported the history given by Mr. S. and also supported the belief that the abuses that occurred were of a nature and severity to come within the definition of torture as stated in UNCAT."

17. In its decision dated the 30th June, 2005 the second named respondent had this to say with respect to the medical evidence:-

> "The applicant submitted a report from SPIRASI dated 19th March, 2005 and a supplementary report on request by the Tribunal member dated 8th April, 2005. I note its contents and also note that the reports indicate that it is believed that the findings on physical and psychological examination on the applicant supported the history given by Mr. S. It is the function of the Tribunal to decide whether medical clinical findings amount to torture. In this regard the Tribunal has the benefit of the provisions of the Istanbul Protocol on the Effective Investigation and Documentation of Torture submitted to the High Commissioner for Human Rights, August 9th, 1999. While the SPIRASI report states *inter alia* that the clinical findings is consistent with the allegation of torture in this case, notwithstanding this the Istanbul Protocol defines the words 'consistent with' as 'the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes.'"

18. The applicant herein has drawn the courts attention to the fact that the Istanbul Protocol defines "highly consistent" with as:-

> "The lesions could have been caused by the trauma described, and there are few other possible causes."

19. The applicant contends that the Tribunal failed to appreciate that the SPIRASI report regarded the injuries to the applicant's back, and to the soles of the applicant's feet, as not merely consistent with torture but highly consistent with torture, thereby removing it from the realm of the merely possible to the probable.

20. On the face of it the Tribunal does not appear to have appreciated or taken account of this aspect of the evidence.

Country of origin information

21. The respondent had before it certain country of origin information sourced by the Refugee Applications Commissioner and alluded to by the said Commissioner in his s. 13 report dated the 20th October, 2004. The Tribunal also had before it certain supplemental country of origin information supplied by the applicant at the oral hearing. The country of origin information sourced by the Refugee Applications Commissioner included principally extracts from the UK Fact Finding Mission to Cameroon, 2004, and in particular the section thereof entitled "The Security Forces and the Police", and from the US State Department Report on Cameroon 2004. It is clear from a reading of this documentation that it is widely accepted that political opponents of the government in Cameroon have in the relatively recent past been subjected to arrest, detention and torture. However, there is anecdotal evidence (which it is very difficult to quantify) of some degree of improvement in that situation, and also of the operation within Cameroon, of a number of domestic human rights NGOS, foremost among them the government established NCHRF (National Commission for Human Rights and Freedoms). There is, however, some evidence that certain Cameroonians regard the NCHRF as a front for the government and do not have confidence in it.

22. The supplemental country of origin information submitted by the applicant included an Amnesty International release of the 29th February, 2002, a Human Rights Watch Report of 1st January, 2001; a Medical Foundation for the Care of Victims of Torture Report dated 26th June, 2002; a report of the International Federation of Human Rights entitled "Torture in Cameroon: An Ordinary Reality, a Systematic Impunity" dated the 29th October, 2003; an Amnesty International Report on Cameroon dated 2004 and the section of the United Nations Committee Against Tortures Report dated the 5th February, 2004 entitled "Conclusions and Recommendations: Cameroon". This material confirms, if it were ever really in doubt, that torture and ill treatment of political opponents of the Cameroonian government has been widespread in Cameroon in the recent past.

23. In evaluating the country of origin information the second named respondent had this to say:-

> "Available information (US State Department Report on Cameroon, 2004, Appendix B appended to the section 13 report and the UK Fact Finding Mission Report 2004, appendix B appended to the s. 13 report) indicates that there are numerous domestic human rights NGO'S operating in the country, including, among others, the National League for Human Rights, and the Organisation for Human Rights and Freedoms. The government established NCHRF (appendix F), although hampered by a shortage of funds, conducted a number of investigations into human rights abuses, visited prisons and organised several human rights seminars aimed at judicial officials, security personnel and other Government offices. This issue must be considered in the context of the general credibility of his claim. While the Cameroon has a poor human rights record and it is acknowledged by the State Department Reports on Cameroon 2004 and the UK Fact Finding Mission in Cameroon 2004, that torture has been used in the Cameroon, nonetheless, these reports note that those who perpetrate torture have been punished by law. This must be considered in light of the forward looking aspect of the convention. The fact finding report on Cameroon 2004, on the security forces and the police indicate that Dr. Banda, Chairman of the National Commission for Human Rights and Freedoms (NCHRF) in the Cameroon informed the delegation that force is sometimes used to implement the law. Dr. Kanga of Nouveaux Droits DelHomme (NDH) informed the delegation, that policemen who have committed human rights violations have been prosecuted for their actions. People are able to complain about police violations without having to fear persecution. Dr. Kanga added that those who perpetrate torture have been punished by the law. 325 police officers were sanctioned between 1995 and 2002. However, NCHRF encouraged reconciliatory action rather than legal. They generally do not want to go to court because of excessive lawyer fees. Dr. Kanga stated that not all police and magistrates are corrupt – appendix B appended to the s. 13 report.
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> For the reasons outlined above, I am not satisfied that the objective element for a well founded fear as defined in the Geneva Convention as amended by the New York Protocol, and further outlined in the Refugee Act 1996 (as amended) has been established by the applicant. Similarly I cannot accept that he has established a well founded fear of persecution owing to the reasons required by law."

24. In relation to country of origin information, supplied by both the Department and on behalf of the applicant, while it was suggested on behalf of the applicant that the reports supplied on his behalf, appended to his Notice of Appeal (Form 1) clearly convey a totally different picture from that referred to in the UK Fact Finding Mission to Cameroon, 2004 report, it should be pointed out that the author of the s. 13 report stated:

> "The UK Fact Finding Mission to Cameroon, 2004 report, inter alia on 'Security forces and the Police' (appendix B) indicates that there have been reports of the detention of SCNC members in Cameroon and that force has sometimes been used to implement the law. However, Mr. Jacques Franquin, UNHCR, states that although particular groups have suffered state persecution, this was no longer the case. It was also admitted that torture has been used, but that those who perpetrate torture had been punished by law."

25. The applicant contends that the respondent's use of country of origin information was entirely selective. He argues, forcibly, that the country of origin information must be viewed as a whole and that when it is viewed as a whole it is clear that torture has been endemic for some time in the Cameroon. The applicant contends that regard should have been had to this in considering the applicant's story and in considering the objective consistency of it. In particular the court's attention has been drawn to a portion of the US State Department Report on Cameroon, 2004 wherein it is stated:-

> "Authorities often administer beatings in temporary holding cells within a police or gendarme facility. Two forms of physical abuse commonly reported by male detainees were the 'bastonnade', where authorities beat the victim on the soles of the feet and the 'balancoire', during which authorities hung the victim from a rod with his hands tied behind his back and beat him, often on the genitals. There were reports that some non-violent political activists have experienced this abuse during brief detentions that followed participation in opposition party activities. Security forces and government authorities continue to arrest and arbitrarily detain various opposition politicians, local human rights monitors, journalists, union leaders and other critics of the government, often holding them for prolonged periods without charges or trials and, at times, incommunicado. Police also arrested person during unauthorised demonstrations."

26. In summary, the applicant's case is that the Tribunal had before it plentiful country of origin information that people such as himself have been and are likely to be tortured in Cameroon and of the type of torture perpetrated.

27. The respondents submit that the decision of the second named respondent, read as a whole, reveals ample evidence which justifies the ultimate conclusions made by the second named respondent. They submit that it is wrong in law to over analyse or parse the decision of a decision maker and they rely on various authorities, which I accept, in that regard. They further submit that the decision of the second named respondent taken as a whole, clearly shows that the applicant failed in his appeal notwithstanding any issue of alleged torture or past persecution but by virtue of an application of the forward looking test, in accordance with law, such that the applicant had not satisfied the objective of the element of the definition set out in s. 2 of the Refugee Act 1996 (as amended). The general positions taken were amplified under specific headings. With respect to the question of torture and the application of the Istanbul Protocol the respondents submit that the weight, if any, to be attached to the medical evidence adduced on behalf of the applicant is solely a matter for the Tribunal member concerned. Further, the failure to appreciate the distinction between "highly consistent" as distinct from "consistent" was not an error of such materiality as to affect the validity of the decision and, moreover, the country of origin information as set out was sufficient to ground the decision made by the Tribunal member. Further the Tribunal member had taken into account relevant inconsistencies in the applicant's story. Further, if the second named respondent was guilty of an error in its evaluation of the medical evidence such an error constituted a mistake as to a matter of fact and was not amenable to judicial review. Moreover, the determination of the second named respondent was based on his assessment of the current situation in the applicant's home State, and was made "notwithstanding this evidence".

28. With regard to the reliance placed by the second named respondent on country of origin information it was submitted by the respondents that the country of origin information primarily relied upon by the Tribunal member was the most up to date country of origin information available. Further, the Tribunal was entitled to rely upon, and to single out for quotation, that portion of the country of origin information that suggested that persons who perpetrate torture have been punished by law, that policemen who have committed human rights violations have been prosecuted for their actions and that people are now able to complain of police violations without having the fear of persecution. It is submitted on behalf of the respondent that it was open to the second named respondent to determine that country of origin information revealed an ability on the part of the applicant's home State to provide protection for him. It was submitted that the applicant is obliged in law to produce cogent evidence of an inability of his home State to provide him protection and in this regard reliance is placed upon the decision of Feeney J. in *Aderenian v. Refugee Appeals Tribunal* (Unreported, High Court, 9th February 2007). It was submitted that the country of origin information indicated that, while not perfect, the State of Cameroon was able to afford the applicant State protection and that the applicant did not adduce more up to date independent evidence to contradict this.

The Law

29. Section 2 of the Refugee Act 1996 (as amended) provides the following definition of refugee:-

> "In this Act 'a refugee' means a person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country."

30. It is clear that there are two components of the definition to be considered by anybody charged with adjudicating on that issue. Firstly, it has to be determined whether or not the applicant in fact has a fear of persecution and, if so, secondly, it has to be determined whether or not that fear is well founded. It is clear that in dealing with the well foundedness of an applicant's fear of persecution a two part test is applicable comprising both the subjective and an objective element. The process is well described by Goodwin – Gill, in the Refugee in International Law, 2nd Ed. Clarendon Paperbacks Oxford at p. 354:-

> "Simply considered, there are just two issues: first, could the applicant's story have happened, or could his or her apprehensions come to pass, on their own terms, given what we know from available country of origin information? Secondly, is the applicant personally believable? If the story is consistent with what is known about the country of origin, then the basis for the right inferences has been laid.
>
> Inconsistencies must be assessed as material or immaterial. Material inconsistencies go the heart of the claim and concern, for example, the key experiences that are the cause of flight and fear. Being crucial to acceptance of the story, applicants ought in principle to be invited to explain contradictions and clarify confusions.
>
> Inconsistency may be immaterial if it relates to incidentals, such as travel details, or distant dates of lesser significance. A statement from which different inferences can be drawn, however, is not an inconsistency, and generally a negative inference as to credibility ought only to be based on inconsistencies that are material or substantial; a series of minor inconsistencies and contradictions may nevertheless combine together to cast doubt on the truthfulness of the claimant."

31. In the instant case the second named respondent has determined that the applicant is not credible. It is well established that the court must not fall into the trap of substituting its own view on credibility for that of the Tribunal member. In the words of Peart J. in *Imafu v. The Minister for Justice, Equality and Law Reform and Others* (Unreported, High Court, 9th December, 2005):-

> " … a Court will be reluctant to interfere in a credibility finding by an inferior tribunal, other than for the reason that the process by which the assessment of credibility has been made is legally flawed."

32. At the leave stage in the same case, Clarke J. in a judgment delivered on 27th May, 2005, helpfully sets out a number of propositions distilled from the growing jurisprudence in this area on foot of which the High Court has been disposed to grant leave to various applicants to apply for judicial review on the basis that they are at least arguable to a sufficient extent to justify a finding of substantial grounds. The propositions identified by Clarke J. are as follows:-

> "(i) The assessment by the RAT of the credibility of an appellant and his/her story forms part of the decision making power conferred by the Refugee Act 1996 and therefore, in accordance with the principles set out in *East Donegal Cooperative Limited v. The Attorney General* [1970] I.R. 317 such assessment must also be carried out in accordance with the principles of constitutional justice: *Traore v. The Refugee Appeals Tribunal and Anor.* (Unreported, Finlay Geoghegan J., 14th May, 2004).
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> (ii) Where the assessment of the credibility of an appellant places reliance upon a significant error of fact in a manner adverse to the applicant such error renders the decision invalid; *Traore*.
>
> (iii) While the assessment of credibility is a difficult and unenviable task it is not permissible to place reliance 'on what one firmly believes is a correct instinct or gut feeling that the truth is not being told'. Such a process is an insufficient tool for use by an administrative body such as the Refugee Appeals Tribunal. Conclusions must be based on correct findings of fact.
>
> *Da Silveria v. The Refugee Appeals Tribunal and Others* (Unreported, High Court, 9th July, 2004, Peart J.)
>
> (iv) A specific adverse finding as to the appellant's credibility must be based upon reasons which bear a legitimate nexus to the adverse finding. *Kramarenko v. Refugee Appeals Tribunal and Anor*. (Unreported, High Court, 2nd April 2004, Finlay Geoghegan J.) placing reliance on the decision of the United States Court of Appeals for the Ninth Circuit in *Aguilera-Cota v. INS* 914 F. 2d 1375, (9th Cir. 1990).
>
> (v) A finding of lack of credibility must be based on a rational analysis which explains why, in the view of the deciding officer, the truth has not been told*. Zhuchkova v. Minister for Justice, Equality and Law Reform and Anor.* (Unreported, High Court, 26th November 2004, Clarke J.)."

33. I further note, and it is of assistance to me, that in *Kramarenko*, Finlay Geoghegan J. approved the decision of Mr. David Pannick Q.C. (sitting as a Deputy Judge of the High Court) in *R. v. Immigration Appeal Tribunal ex parte, Sardar Ahmed* [1999] I.N.L.R. 473, that in turn adopted the finding of His Honour Judge Pearl in *Horvath v. Secretary of State for the Home Department (United Nations High Commissioner for Refugees Intervening)* [1999] I.N.L.R. 7 to the following effect:-

> "It is our view that credibility findings can only really be made on the basis of a complete understanding of the entire picture. It is our view that one cannot assess a claim without placing that claim into the context of the background information of the country of origin. In other words the probative value of the evidence must be evaluated in the light of what is known about the conditions in the claimant's country of origin."

Decision

34. Having carefully considered the evidence before me and the submissions of both parties I am satisfied that the decision of the second named respondent is to be legitimately criticised on three major grounds and that it cannot stand.

35. It seems to me that in assessing the credibility of the applicant, the second named respondent placed reliance upon a significant error of fact in a manner adverse to the applicant. I am referring here to the failure on the part of the second named respondent to appreciate and take into account that the medical evidence contained in the SPIRASI report of the 19th March, 2005 indicated that both the marks on the applicant's back, and the features noted on the soles of his feet, were to be characterised as highly consistent with the physical abuse and/or torture alleged. The Istanbul Protocol defines "highly consistent" with as:-

> "The lesion could have been caused by the trauma described, and there are few other possible causes."

36. The second named respondent appears to have, erroneously, noted that the injuries in question were merely consistent with the physical abuse and/or torture alleged. The Istanbul Protocol defines the phrase "consistent with" as:-

> "The lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes."

37. It is being urged on me on behalf of the applicant that "highly consistent" equates with "probable" whereas "consistent with" equates with "possible". I accept this submission. Accordingly, I am satisfied that the second named respondent placed reliance upon a significant error of fact in assessing the credibility of the applicant.

38. The second ground on which the decision of the second named respondent must be criticised is that there does not seem to have been any meaningful attempt on the part of the second named respondent to assess the applicant's claim of having been tortured in the context of the background information of the country of origin. The second named respondent only alludes to country of origin information in the context of attempting to address the well foundedness of the applicant's stated fear of persecution. I will address this separately in a moment. However, there does not seem to have been an engagement on the part of the second named respondent with the overwhelming evidence from the country of origin that in recent years the torturing of political dissenters by the police and security services in Cameroon was both endemic and systematic. Moreover, several of the sources confirmed the prevalence of the specific type of torture to which the applicant claims to have been subjected, namely, being beaten or whipped by a rubber truncheon type implement, particularly on the soles of the feet. Further, several of the reports confirm instances of systematic harassment of political protesters and the arbitrary detention and subsequent ill-treatment in custody of political protesters. This important information does not appear to have been taken into account by the second named respondent in assessing the credibility of the applicant. No criticism is levelled at the second named respondent for taking into account the matters that he did take into account with respect to assessing the credibility of the applicant and in particular for having regard to the matters listed in s. 11B of the Refugee Act 1996. He was, indeed, obliged to have regard to those matters. The problem is, however, that he failed to have regard to the whole picture. Further, the matters that I have alluded to could hardly be described as being of minor significance in the light of the specific personal history advanced by the applicant as having been experienced by him.

39. The third ground on foot of which I would criticise the decision of the second named respondent is with respect to his assessment

of the well foundedness or otherwise of the applicant's stated fear of persecution. Having read the entirety of the country of origin information that was before the Tribunal I regret to say that I agree with the applicant that the second named respondent appears to have been selective in the material that he relied upon in arriving at the conclusion that the objective element for a well founded fear as defined in the Geneva Convention as amended by the New York Protocol, and as further outlined in the Refugee Act 1996 (as amended) had not been established by the applicant. I cannot accept the respondent's submission that the Tribunal member was entitled to select the information that he did select on the basis that that was the most up to date country of origin information that was before him at the time of the decision. There was a significant body of other information before him, submitted by the applicant, that was neither so old nor so out of date as to justify him in failing to take it into account. (In any case the second named respondent does not state that he preferred the information in question because it was the most up to date). The conclusions and recommendation of the United Nations Committee against Torture: Cameroon of the 5th February, 2004 notes in particular the following subjects of concern. It recalled that, in 2000, it had found that torture seemed to a very widespread practice in Cameroon and it expressed concern that this situation was reported as still existing. It expressed itself troubled by the sharp contradictions between consistent allegations of serious violations of the Convention and the information provided by the State Party (the Government of Cameroon). In particular, the committee declared serious concern about:

> (a) reports of the systematic use of torture by the police in gendarmerie stations after arrests;
>
> (b) the continued existence of extreme overcrowding in Cameroonian prisons. In that context it noted with particular concern the large number of deaths at Douala central prison since the beginning of the year (2003) (twenty five according to the State Party, seventy two according to non-governmental organisations);
>
> (c) reports of torture, ill-treatment and arbitrary detention perpetrated under the responsibility of certain traditional chiefs, sometimes with the support of the forces of law and order.

40. At para. 6 of the report the committee, while welcoming the effort made by the State Party to transmit information relating to the prosecution of State officials responsible for violations of human rights, expressed itself concerned about reports of the impunity of perpetrators of acts of torture. It stated that it was particularly worried about:-

> "(a) The fact that Gendarmes can be prosecuted for offences committed in the line of duty only with the authorisation of the Ministry for Defence;
>
> (b) Reports that proceedings have actually been initiated against perpetrators of torture only in cases where the death of the victim was followed by public demonstrations;
>
> (c) The fact that the case of the "Bépanda 9" remains unsolved;
>
> (d) The reluctance of victims or their relatives to lodge complaints, through ignorance, distrust or fear of reprisals;
>
> (e) Reports that evidence obtained through torture is admissible in the courts."

41. The Tribunal also had before it the report of Amnesty International, 2004 covering events from January to December 2003. This report, reported that as recently as November 2003, the authorities harassed and threatened human rights defenders suspected of helping the Paris based International Federation of Human Rights to compile a report on torture in Cameroon. It also reported that in the run up to presidential elections in 2004, as in 2002, the authorities banned opposition meetings and detained government critics including political activists and journalists.

42. The Tribunal also had before it a report of the International Federation for Human Rights dated the 29th October, 2003 which reported that the situation with respect to human rights in Cameroon remained bad and problematical areas, are the rights of detained persons and the frequent use of torture. It noted that in answer to the United Nations Human Rights Committee's concerns the Secretary General of the Minister for Justice had stated that torture was very severely punished in Cameroon. Notwithstanding this, however, FIDH found that during preliminary investigations, torture, voluntary blows and ill-treatment are daily practised in Gendarmeries and police stations after an arrest. Further, no one complains after being tortured and maltreated. Cameroonians are divided between a feeling of fear, the fear of reprisals if they decide to complain and of major discouragement as they do not believe in a fast and independent justice. This absence of complaints strongly contributes to reinforce the impunity of police forces in Cameroon. The FIDH report is critical of the NCHRF (otherwise the CNDHL). It states that the actual functioning of this organisation is not satisfactory and that it remains hopelessly closed to any representation of the opposition. Accordingly, it remains ignored by the population. The FIDH mission identified numerous obstacles to the activities of civil society. In particular it noted that human rights defenders, compared to political opponents of subversive people, are unceasingly hindered in their activities by shadowing, police custodies, humiliation, and sometimes even death threats.

43. The courts attention was drawn to the decision of Feeney J. in *Adernerian v. Refugee Appeals Tribunal* (Unreported, Feeney J., 9th February, 2007) wherein he stated:-

> "As pointed out by Herbert J. in the *Kvaratskhelia* case it is the function of the Refugee Appeals Tribunal and, not of this court in a judicial review application, to determine the weight, (if any), to be attached to country of origin information and other evidence proffered by or on behalf of the applicant. The Tribunal member correctly identified that the obligation was on the applicant to provide clear and convincing evidence of the State's inability to protect. This was not a situation of a complete breakdown of law and order and therefore the correct approach was that it must be presumed that the State was capable of protecting its citizens. It was recognised that such presumption could be rebutted but such rebuttal required clear and convincing evidence."

44. In this particular case the applicant did provide evidence to the Tribunal of the State's inability to protect. I have just rehearsed some of it. The second named respondent asserts in his ruling that he had regard to all of the relevant facts. However, the country of origin information before him contained conflicting information. He gives no indication as to how, or on what basis, he resolved the conflicts in the information before him. Moreover, he gives no indication as to the basis on which he elected to prefer the apparently anecdotal accounts of certain interviewees quoted in the US State Department Report on Cameroon, 2004 and the UK Fact Finding Mission report on Cameroon 2004. While this court accepts that it was entirely up to the Refugee Appeals Tribunal to determine the weight (if any) to be attached to any particular piece of country of origin information it was not up to the Tribunal to arbitrarily prefer one piece of country of origin information over another. In the case of conflicting information it was incumbent on the Tribunal to engage in a rational analysis of the conflict and to justify its preferment of one view over another on the basis of that analysis. The difficulty in the present case is that the second named respondent firstly, does not allude to the fact that the information is

conflicting and secondly, does not give any indication as to why he was inclined to prefer the information contained in the US State Department Report on Cameroon, 2004 and the UK Fact Finding Mission Report 2004 to that contained in the reports submitted by or on behalf of the applicant.

45. In conclusion, and for the reasons outlined, I am disposed to grant the applicant the relief sought by him in para. 4(a) of his amended statement of grounds.