Neutral Citation: [2014] IEHC 49

THE HIGH COURT

JUDICIAL REVIEW

Record No. 2011 / 851 J.R.

Between:

A.A.M.O. [SUDAN]

APPLICANT

-AND-

THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT OF MS JUSTICE M. H. CLARK, delivered on the 17th day of January, 2014.

1. Sometimes the Court is called upon to review a decision which is so unfair and irrational and contains so many errors that judicial review seems an inadequate remedy to redress the wrong perpetrated on an applicant. This is such a case.

2. The extraordinary feature of this application for asylum was that the applicant's case was documented and supported to an unusual level but was nevertheless refused on credibility grounds.

3. The substantive hearing of the challenge to the Tribunal decision came before this Court on six grounds granted by O'Keeffe J. Three of those grounds relate to the treatment by the Tribunal of reports from Amnesty International and the other three grounds relate to the Tribunal's findings of fact on the availability of state protection and internal relocation. The Court quashed the decision and expressed its deep concern at the fundamental nature of the many errors identified which infect the legality, fairness and constitutionality of the decision as a whole.

4. Mr Anthony Collins S.C. with Ms Patricia Brazil B.L. appeared for the applicant and Ms Siobhán Stack B.L. appeared for the respondents. At the request of the respondents the Court now gives its reasons.

Background to the claim

5. The applicant arrived in Ireland on the 23rd April, 2009, and applied for asylum on the 14th July, 2009. A starting point to the background of the challenged decision is the appeal submission prepared by the Refugee Legal Service (RLS), who represented the applicant at that stage and where numerous flaws in the Commissioner's Section 13 report were identified for the purposes of the appeal. The Court adopts the RLS' précis as representing the facts which were originally presented to the Commissioner by the applicant together with approximately 25 documents in support of his claim. Those documents included:-

- His passport containing visas for Egypt and Ireland;
- His Sudan Medical Union membership card;
- His Legislative Council membership card;
- A Sudanese Peoples Liberation Movement (SPLM) statement dated the 24th March, 2009, (referring to him by his nickname A.S.), regarding his capture and assault by security organs on the 20th March, 2009;
- His degree, a certificate of his experience and his certificate of registration as a doctor;
- Three letters from *Médecins Sans Frontières* (MSF) confirming that he worked for that organisation in Sudan and the MSF report 'The Crushing Burden of Rape' dated the 8th March, 2005;
- The ICC arrest warrant for President Al-Bashir dated the 4th March, 2009;
- Articles relating to the expulsion of NGOs from Sudan;
- Email correspondence between the applicant and a named Embassy in Khartoum in March, 2009;
- An invitation to the applicant from Front Line Defenders dated the 14th April, 2009, to visit Ireland for rest and respite;
- Letters from a consultant psychiatrist and a psychotherapist who treated the applicant in Dublin, dated July, 2009;
- A report relating to a forensic medical examination of the applicant conducted at a Khartoum hospital, filed at a Khartoum police station on the evening of the 21st March, 2009;
- 11 photographs of his injuries;
- An article published in a Sudanese doctors' magazine dated April, 2009 recounting his story (referring both to his nickname and his given name) and bearing his photograph;
- A letter from a psychiatrist in Cairo dated April, 2009;
- Country of origin information (COI) relating to Sudan dated 2009;

- Articles published online by the applicant (in Arabic);

- A letter of support from Front Line Defenders;

- The business card of the named representative of the named Embassy in Khartoum who accompanied him to view the damage to his clinic in 2008; and

- Copies of his airline tickets and his boarding passes.

6. With such submissions the Tribunal must have been aware of the full outline of the evidence on which the appellant relied and on which he would be examined and cross examined. As the judicial review relates solely to the Tribunal decision, the Court will say no more about the primary negative recommendation other than that the methods used and findings made by the Commissioner's Office failed the refugee assessment process abysmally.

7. The right to appeal a negative recommendation contained in the Commissioner's Section 13 Report is a right protected by Section 16 of the Refugee Act 1996. The right to appeal the decision of a primary decision maker is a facet of the effective remedy guaranteed by the Irish Constitution, the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union. Every appellant has the right to expect a fresh hearing before a fair and impartial tribunal where his documents will be read, his appeal submissions considered, his evidence heard, the correct legal principles applied and an objective assessment made of the case. The system failed the applicant in this case.

8. The appeal process under the Act of 1996 provides an opportunity for an asylum seeker to have a full rehearing of his / her claim knowing that it is his obligation to convince the Tribunal member that the Commissioner was wrong in his assessment. The appellant has at this stage the advantage of knowing why his claim failed at first instance and the appeal to the Tribunal is his opportunity to address the findings which he believes were wrong and to address evidential deficiencies identified in the Section 13 report. The time between the first assessment and the appeal is frequently well spent in addressing those deficiencies by the obtaining of, for instance, documents of identity, court documents, material COI, medical assessments and other evidentiary tools to address any gaps identified. This all occurred in this case.

The claim outlined in submissions and documents presented to the Tribunal
9. The applicant's claim on appeal, as presented by the RLS submission, was as follows:

> *The applicant is a Sudanese national who applied for asylum on the 14th July, 2009, alleging that he would be at risk of persecution if returned to Sudan due to his work as a human rights and opposition party activist and because of past persecution there. While his name is [A.A.M.O]. he is commonly known by his nickname [A.S.]*
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> *The applicant's claim is that he is a doctor who qualified from Juba University in Khartoum in 2002. He worked in Darfur for the well known NGO Médecins Sans Frontières (MSF) between October 2004 and May 2005. During his time in Darfur he and other humanitarian organisations were trained to document human rights violations and in particular the incidence of widespread rape being committed by the Sudanese government on the Darfuri population. He compiled daily reports on the patients he treated. His reports and those of other MSF doctors were collated and formed the basis of the report entitled, "The Crushing Burden of Rape: Sexual Violence in Darfur" published by MSF in 2005. Following the publication of this report he was warned that the Sudanese authorities who were very sensitive to any criticism of events in Darfur were aware of his association with the report and that his safety was compromised.*
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> *This information caused him to leave MSF and Darfur. He relocated to [a village in North Sudan], where he engaged as a general practitioner in private practice but continued with his activities in drawing attention to human rights violations committed by the Sudanese government in Darfur by holding meetings in the local community and writing articles on the internet. He furnished some of the articles authored by him on the effects of the removal of food and medical aid on the population of Darfur. On several occasions he was warned to stop writing such articles.*
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> *In 2008 his medical practice was attacked by members of the Sudanese security forces and three out of the six rooms in the clinic were destroyed. Witnesses told him that the men said they did not want him to work again in [the named village]. He reported the incident to [a named official] in [a named] Embassy in Khartoum and that embassy official travelled to [the village] to photograph the damage and document the incident and to arrange for financial assistance to the applicant. He was fearful for his safety and applied on line for a visa to visit the UK.*
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> *He continued working as a doctor but following the issue of an arrest warrant for President Al Bashir on 4th March 2009 the Sudanese government dismissed all human rights NGOs from Darfur and cracked down on all human rights activists who were generally suspected of having contributed to the process which resulted in the indictment issued by the ICC against President Al Bashir. In early March 2009,* The warrant issued from the Prosecutor of the International Criminal Court. *members of the Sudanese security services came to his clinic looking for him. He believed that they had come to arrest him so he fled to Khartoum. He was assisted to relocate internally by funding provided by an American NGO. The car he travelled in was followed by another car but he managed to escape. He then did not feel safe in the Khartoum hotel he was staying in and had to change his lodgings.*
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> *On the 20th March 2009, while in hiding in Khartoum and awaiting news of his visa to the UK he was abducted at gunpoint by members of the security service who detained and tortured him and threatened to harm his mother. His abductors made frequent reference to the MSF report and to articles he had written under his nickname throughout the course of his torture when he was repeatedly kicked in the testicles, beaten and generally kicked. Fluid was injected into his penis which burned and caused great pain. He was kicked unconscious and woke up in the back of a truck. His abductors seemed to think he was dead and threw him from the vehicle into the street close to where he was abducted. He managed eventually to make it to his flat and contacted friends for help. One of those [named] friends was highly placed. The other [named friend] was a --- who took him to [a named] police station where he registered a complaint against the security authorities. They then took him to [a named] hospital where he was assessed. A medical report was obtained and photographs taken and these were submitted to the police station. The incident was also reported to the Sudan Doctors Union who described the abduction and torture and named him in an article on the mistreatment of doctors who speak out against human rights abuses. It was also reported to the UN Mission in Sudan and picked up by Amnesty International who contacted the applicant and eventually contacted the Irish NGO Frontline who invited him to come to Ireland for a period of respite. They arranged his visa and flights to Dublin."*

10. All the photographs, reports and letters furnished to the Commissioner were also provided to the Tribunal.

The appeal hearing
11. The applicant's appeal was first heard on the 24th March, 2010, but due to delay in translating a large volume of documents the appeal did not conclude until the 1st March, 2011. On the 22nd August, 2011 - seventeen months after the initial hearing - the Tribunal issued its decision to refuse the appeal and affirm the Commissioner's negative recommendation. Leave was granted to seek an order of certiorari quashing this decision on the 26th July, 2012.

12. At the appeal hearing the applicant explained that because he had a very common name for the north of Sudan where he and his family lived he acquired the nickname, A.S. by which was generally known both as a student and as a doctor. He explained that he had been a human rights defender and a critic of the Sudanese government and had been involved in politics since his student days. He provided detailed information about his family, education, qualifications and work history and he again supported his claim with personal documentation as outlined above. This included a report and letters from Amnesty International which are central to the challenge. He also provided a letter from the named division of MSF confirming that he worked with the organisation as a doctor in Darfur in 2004 / 2005. He explained that when he left Darfur in April, 2005 he joined the SPLM and was elected to the Legislative Council of Northern State. From then until March, 2009 he ran a medical clinic in a named village.

13. He outlined his difficulties with the Sudanese authorities while working at his clinic and continuing with his opposition to events in Darfur; how he received threatening phone calls which obliged him to scale down his writings and presentations; how in late 2008 members of the security forces came to his clinic and destroyed three of its six rooms and told an onlooker that they wanted the applicant replaced by another doctor; how he reported the attack to the named Embassy in Khartoum and a named Embassy official visited the clinic to see the damage and to record the event in photographs; how he continued his work in the three remaining rooms at his clinic; how the issue of the indictment against President al-Bashir by the ICC caused a crack-down on most international NGOs including MSF and their expulsion from Darfur and Sudan alongside any critics of the President's policies in Darfur; how he avoided arrest from the security forces by going to Khartoum where the named Embassy aided him financially to relocate internally; how he initially stayed in a hotel in Khartoum and then rented a flat in a different neighbourhood and also how when he was shopping for groceries one night he was abducted by state security forces, taken to a building and tortured. He detailed grotesque acts of torture, his loss of consciousness and how believing he was dead, his attackers threw him the next morning onto the street where he had been abducted. He further described how he crawled to his flat where he phoned his friend who was the highly placed individual and a close friend who a doctor. They convinced him to report the incident to the police. At first the police did not want to file his complaint but they did so when the Minister intervened. The police sent him to a hospital where a doctor assessed him and wrote a medical report. He described the nervousness of the doctors in the hospital and their unwillingness to be involved. He believed that the police had contacted the hospital. His friends also took photos of his injuries.

14. The Tribunal Member's note of the evidence at the hearing indicates that the applicant expanded on the sequencing of his abduction, torture and dumping and on how his injuries were subsequently photographed and his case taken up by 'Sudanese doctors against torture', an organisation which published details of his case. His situation was reported to the UN Mission in Sudan and he was contacted by Amnesty International who informed the organisation Front Line Defenders of his situation. The applicant described how he went from Khartoum to Cairo and then to Ireland for rest and recuperation at the invitation of Front Line Defenders with whom he stayed for three months while attending a psychiatrist and a psychotherapist. In July, 2009 as his visa was about to expire, he applied for asylum.

15. He described an interview with the BBC after he came to Ireland where he was referred to as Dr. A and he also furnished a medical report from SPIRASI describing post-traumatic stress disorder (PTSD) and a report from his treating psychiatrist in Dublin dated March, 2010 which stated that "*he had symptoms very much consistent with post traumatic stress disorder as a direct consequence of his exposure to torture and ill-treatment whilst in custody in the Sudan*."

16. Mr Andrew Anderson, deputy director of Front Line Defenders, and one of the two friends who had assisted the applicant in Khartoum on the night after his abduction and torture, gave evidence as witnesses on his behalf at the appeal hearing and in support of his narrative of events which led to his flight from Sudan. After the hearing a further document from Amnesty International was presented to the Tribunal together with submissions which had been requested by the Tribunal on the effect of the secession of South Sudan and on the political situation in Sudan.

The Contested Decision
17. The Tribunal decision is dated the 2nd August, 2011. It first outlines notes taken by the Tribunal Member at the three lengthy oral hearings where matters of importance were addressed. The operative legal principles were then set out including the guiding procedures provided by Council Directive 2004/83/EC (the 'Qualification Directive' or QD) which was transposed into domestic law by the *ECs (Eligibility for Protection) Regulations 2006* (S.I. No. 518 of 2006), commonly known as the 'Protection Regulations'. This was followed by an analysis of the applicant's credibility and a consideration of the medical reports furnished, the witnesses heard and the availability of state protection and internal relocation.

18. It is immediately evident that the applicant was not found credible. His witnesses were deemed inadequate and the medical reports were considered generalised and unhelpful. The central findings were as follows:

- The applicant gave contradictory evidence about the origins of his alias or nickname and it was not plausible that he would have a licence to practice medicine under an alias.

- His evidence about how his captors thought him to be dead and threw him out on the street was "transparently contrived".

- If he genuinely feared persecution he would have applied for asylum when he first arrived in Ireland.

- The use by Amnesty International of his name was "*a calculated attempt by the Applicant to place himself in a different position as a consequence of the altering political position in Sudan*".

- He was introduced in a BBC radio interview using only a small part of his name and "*It is clear from this that he knew what he was doing*".

- There were differences in the instances of torture recounted by the applicant to Amnesty International and to the doctors who prepared the medical reports submitted.

• The medical reports did not address the relative likelihood or the causes of the applicant's injuries by reference to the Istanbul Protocol. Nothing in the reports indicates that the cause can be attributed to the incidents complained of.

• He gave no plausible explanation for creating a public profile for himself and he deliberately sought to put himself in the public eye for the purposes of enhancing his application.

• Whether or not he is a doctor, he is a person who is of great tenacity and has put an enormous amount of effort into his application. This underlines the fact that he is a highly skilled and able person. (This was stated not to be a criticism).

• The southern part of Sudan is the country with which the applicant is closely politically aligned and also where he received his education.

• The Front Line Defenders witness did not have any knowledge of the applicant prior to his coming to Ireland and was relying on third party information. This was not useful. He had only a tenuous link to the applicant.

• The evidence given by the doctor who appeared as a witness was generalised and did not go to the substance of his claim.

• Much of his evidence was not just less than candid but was intended to be confusing.

19. The Tribunal Member went on to find that internal relocation was a viable alternative and that since the applicant had not presented evidence that he made a report to the police, he had failed to show an absence of state protection. Further he did not make any efforts to relocate internally where the proposed site of internal protection was Juba, South Sudan.

Submissions
20. With a degree of admirable restraint, the applicant's counsel laid out his arguments as being first that had the Tribunal Member considered the content of the Amnesty documents furnished he could not have decided the appeal in the manner he did and second, that his conclusions on internal relocation and state protection were irrational, unreasonable and reached in error of law, fact and fair procedures and incapable of severance from the decision as a whole.

21. Counsel for the respondents accepted that the Tribunal Member erred in law and in fact in relation to state protection and admitted that the evidence did not support the Tribunal Member's finding that the applicant had not reported his abduction and torture to the police. The respondents also accepted that the finding of internal relocation was in error but, with an astonishing show of valour, sought to argue that the decision could nonetheless stand as the Tribunal Member made three separate findings; the first and most important being that he did not believe the applicant's account for stated reasons. The second and third findings that the applicant could access state protection or could reasonably be expected to relocate to Juba were superfluous to the credibility findings which the respondents stand over and could be severed from the decision.

THE COURT'S ANALYSIS
22. As previously stated, at the hearing of this application the Court expressed its deep concern at the fundamental nature of the many errors identified which infect the legality, fairness and constitutionality of the decision as a whole. The Court delivered its decision and gave its reasons *ex tempore* and made an order quashing the Tribunal decision. At the request of the respondents the Court now gives its reasons in writing.

23. Again as previously indicated, when reviewing this quite extraordinary decision on the day of the hearing, the only conclusion which the Court could draw for the Tribunal's decision not to recommend that the applicant should be declared a refugee is that the Tribunal Member simply did not like the applicant. This can be the only explanation for doubting the applicant's well-documented name and occupation and rejecting his description of how he was known by his nickname - described in pejorative terms as an *alias* - and his background in human rights work as a doctor. Once that doubt was expressed, the letters from MSF confirming his employment with them in Darfur, the oral evidence of his Sudanese medical colleague, the documentation showing the involvement of a named Embassy official, the photographs of the applicant's damaged medical clinic, the applicant's injuries, the medical reports from three different sources including the Nadim Centre for Psychological Management and Rehabilitation of Victims of Violence in Cairo of the 13th April, 2009, the reports and letters from Amnesty International and the evidence of the deputy director Frontline were all treated as suspect.

24. Personal dislike is not a valid reason for any legal decision and certainly not a reason for ignoring numerous documents relevant to a claim which appear to emanate from reliable sources. If a decision maker finds that an applicant is a person who had gone to great lengths to set up a false claim, then his reasons and conclusions must be soundly based on the evidence presented which has been properly and fairly assessed. That unfortunately is not the case here.

25. As indicated at the hearing of this application, the Court was very surprised to find that the respondents were defending this decision. The practice of reading the entire file ahead of the hearing had led the Court to observe that key parts of the applicant's case were ignored and / or misunderstood or simply wrong. For instance, the finding that the applicant could have relocated to another state (the newly constituted South Sudan) to avoid the need for international protection when South Sudan is a State with which he has no ties at all was so evidently flawed that on this ground alone, the decision was legally unsound.

26. Similarly the errors made on state protection were immediately evident from reading the decision. While they were not defended at the hearing it was argued that they could be severed from the decision. In the view of the Court, when these errors are seen in the context of the applicant's evidence and the documents furnished, the state protection finding was so bizarre as to be irrational and suggests that the Tribunal Member either chose to ignore the applicant's documentation or simply never considered them. Those documents included a report which on its face was a certificate issued by the Khartoum Locality Police Committee on the 21st March, 2009, following a medical examination at a local hospital. Further, the applicant furnished an article published in a Sudanese doctors' magazine in April, 2009 which referred to his abduction and torture and states "*I filed a complaint against the security organ […].*" It is very difficult for this Court to reconcile the finding that the applicant failed to report to the police with the careful record made of the evidence called and the documents furnished and the appeal submissions made.

27. The named friend who provided oral evidence at the hearing corroborated the report to the police and the visit to the hospital. His evidence was rejected as *generalised* in the Tribunal summary and the decision makes no mention of the documents relating to his report to the police. This represents a clear breach of sub-sections (d) and (e) of Section 16(16) of the Refugee Act 1996, as amended by Section 11 of the Immigration Act 1999, and Regulation 5(1) (a) and (b) of the Protection Regulations 2006.

28. That clear error of fact was compounded by an error of law in that the Tribunal Member appears to consider that failure to report to the police equates to failure to establish that that the Sudanese State was unable to protect the applicant. Such a finding indicates total failure to appreciate that the applicant's case was that he feared persecution at the hands of state agents. The Court cannot avoid concluding that the erroneous findings on state protection and internal relocation are indicative of a negative bias which infects the entire decision.

29. By way of example, the applicant has no connections with South Sudan or Juba – the location suggested for internal relocation. It is apparent from the appeal papers that the issue was raised either by the Presenting Officer or by the Tribunal Member at the second appeal hearing as written submissions were filed in advance of his third hearing in March, 2011 specifically refuting the connection with South Sudan. Those submissions expressly state that the applicant would not appear to be entitled to citizenship of South Sudan, that the creation of a newly independent state had no bearing on his entitlement to refugee status and that the independence of South Sudan (referenced by up to date COI demonstrating renewed violence in both Sudan and South Sudan) did not necessarily mean peace in the region. The Tribunal Member nevertheless expressly declared that Juba "*does not present a distinct risk of even generalised serious harm*", and that "*the applicant had not identified any risk attached to relocation in Juba where the applicant would be provided with protection against the risk of persecution but also access to better public services, employment and other social rights*". No objective sources for this finding were cited and the written submissions furnished in advance of the final hearing were ignored, in breach of Regulation 5(1) (a), (b), (c) and (e) and Regulation 7 of the Protection Regulations.

30. The applicant's case is that he is from the Northern part of the Republic of the Sudan where his family live and where he had his medical clinic. He gave no indication of involvement in the politics of South Sudan and South Sudan is a separate and sovereign state to Sudan. Without clear and convincing evidence of an ability to relocate there, such as dual citizenship, a separate state cannot be part of any consideration of the concept of internal relocation. It is difficult therefore to understand how the applicant's case could be characterised in the following manner by the Tribunal Member:-

> *"Further, at the heart of this case, is the issue that Sudan is now separated into two separate and distinct countries. The southern part is now the country with which the Applicant is closely politically aligned with and also the location where he says he received his education, namely Juba which is known to be the capital of Southern Sudan, supported by the American Government."*

31. The later comment, "*The Applicant was at College in Juba and the party of which he belonged is now one of the major political forces in Southern Lebanon [sic]. His own evidence is that he studied in Juba*" is factually inaccurate. He did not go to university in South Sudan. The University of Juba which he attended is in Khartoum – a fact which is clear from his documentation. Similarly, the finding that the applicant had not made any efforts to consider relocating to avoid persecution is incomprehensible, given that he relocated firstly to the named village and then later to Khartoum.

Credibility assessment

32. Even though the Court has determined that the findings on state protection and internal relocation are sufficiently irrational and ill-founded for this decision to be set aside, the Court also accepts the applicant's argument that the Tribunal Member failed to have any or adequate regard to the documents furnished by Amnesty International when assessing his credibility. Those documents – furnished by a well-known and highly respected source specialising in identifying and drawing attention to human rights abuses – were compelling in supporting the applicant's claim. The Court has no experience of any other claim supported by Amnesty in the judicial review list. There are two possible reasons for this; (1) Amnesty rarely endorses a case or (2) with such endorsement an applicant is generally recognised as a refugee or recommended for subsidiary protection or humanitarian leave to remain. The documents in question included a letter dated the 26th November, 2009, stating that based on the information he had provided to them and their knowledge of the circumstances under which he left Sudan, Amnesty believes he "*is in need of international protection and would be at serious risk of arbitrary detention, torture and other ill-treatment were he to be forcibly returned*". The letter also explained the facts relating to the request made to Frontline to assist him. A second Amnesty document was a letter written in March, 2010 seeking the applicant's consent to publish details of his case in their report entitled, *'Agents of Fear: the National Security Service in Sudan'* and in their information sheet, *'A.S. Sudan: Human Rights Defenders in Exile'*. The letter also asked the applicant if he would be one of their focal points for the media. A third Amnesty document dated the 3rd December, 2010, which was obviously prepared for concerns raised at the appeal, outlined that Amnesty International does not rely on victims' testimonies as the sole source of documentation but spends a significant amount of time corroborating evidence. They also noted that they had approached the applicant, rather than the reverse being the case.

33. The second letter had been obtained by the RLS to allay the Presenting Officer or the Tribunal's hypothesis that the applicant had only given permission for his name to be used in an Amnesty International report to further his asylum claim.

34. These letters and other documents were dismissed as "*a calculated attempt by the Applicant to place himself in a different position as a consequence of the altering political position in Sudan*". The rationale for this finding is unclear.

35. While the determination of an applicant's credibility is uniquely within the remit of the protection decision maker, that decision maker must act judicially and within the law. He is not at large to act perversely in disregard of relevant statements and documents capable of supporting an applicant's claim. The Court therefore accepts that the contents of the very compelling Amnesty reports and letters were ignored and that the conclusions drawn were irrational.

36. Similarly, the contents of the furnished SPIRASI report. which concludes that "*Under the description of the United Nations Convention Against Torture, the applicant has given a detailed history of ill treatment which amounts to torture, and has expressed the clear fear that his life will be in danger should he be returned to Sudan*", were irrationally rejected for not using the language of the Istanbul Protocol. The SPIRASI report in fact uses the definition of torture provided by the UN Convention against Torture which surely must have as strong a validity as the wording of the Istanbul Protocol. Whatever the Tribunal's reasons for rejecting the medical opinion that the applicant was tortured, the absence of the language of the Istanbul Protocol is not an adequate reason.

37. The Court is satisfied to a very high degree that documents clearly capable of corroborating or confirming the truth of the applicant's account were disregarded in favour of a heavy reliance on the applicant's demeanour which the Tribunal Member did not favour. Such reliance was also in the teeth of his evidence that he was contacted by both Frontline and Amnesty International who became aware of his maltreatment and that he had not contrived to put himself in the public eye to advance his claim. For these reasons the Court is satisfied that the credibility findings made are unsustainable and provide an additional basis to justify the quashing of the decision.

Conclusion

38. The decision in this case lacked justice and understanding in breach of the basic criteria identified in the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* and was also in fundamental breach of Sections 11B(i) and 16(16) (d) and (e) of the Refugee Act 1996 and Regulations 5 and 7 of the Protection Regulations. The decision was quashed at the hearing date, the appeal was remitted and the applicant was granted his costs. It is hoped that the new appeal has been heard humanely and expeditiously.