Neutral Citation: [2015] IEHC 287

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 1457 JR]

BETWEEN

M. A.

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 6th day of May 2015

1. This is a "telescoped" judicial review of two decisions of the Minister. The applicant seeks *certiorari* of a decision refusing him subsidiary protection dated 8th October, 2010, and of a deportation order made on the 20th October, 2010.

2. This Court has previously ruled on a preliminary issue dealing with the Article 8 E.C.H.R. assessment in the "Examination of file" appended to the deportation order. A decision on that issue is contained in the judgment of this Court in *C.I. & M.A. v. Minister for Justice* [2014] IEHC 447. The Court found that the Article 8 "private life" rights assessment was deficient.

Background

3. The applicant is a national of Afghanistan. He arrived in the State in May of 2005 and made an application for asylum immediately. He completed a questionnaire for this purpose on 20th May, 2005, and was interviewed by the Office of the Refugee Applications Commissioner on 29th September, 2005, and again on the 26th of October, 2005. The applicant claimed to be unable to return to Afghanistan as the government had accused him of being a spy for the Taliban and accused him of killing a regional Governor. He claims that he did not seek State protection because it is the Afghan authorities who are the agents of persecution. A section 13 report was issued on 10th January, 2006, recommending against refugee status on the basis of lack of credibility. The applicant appealed this decision to the Refugee Appeals Tribunal who affirmed the recommendation of the Commissioner in a decision of the 31st January, 2008, based on the lack of credibility of the applicant and, in the alternative, on the absence of a Geneva Convention nexus.

4. The applicant made an application for humanitarian leave to remain and subsidiary protection on 3rd and 4th April, 2008, respectively. He received a decision refusing his application for subsidiary protection under cover of letter of 11th October, 2010, on the basis that he had failed to show that he would face a real risk of suffering serious harm if returned to Afghanistan. By letter of 3rd November, 2010, the applicant received notice of a deportation order issued against him dated 20th October, 2010, with an "Examination of file" under section 3 of the Immigration Act 1999, appended thereto.

Applicant's Submissions

5. Counsel for the applicant, Mr. Ian Whelan B.L., makes four broad challenges relating to the subsidiary protection decision, namely that: (i) there was a failure to lawfully assess the issue of internal relocation within Afghanistan; (ii) there was a failure to give reasons and to assess the totality of the country of origin information and weigh it in the balance; (iii) there was a breach of the principle of *audi alteram partem*; and (iv) there was a failure to adequately assess the issue of State protection in Afghanistan.

6. It was pointed out that because no internal relocation decision was made by the Commissioner or by the Tribunal, the first consideration of the issue was by the Minister. It was submitted that the decision that the applicant can relocate to Kabul was made without seeking the applicant's views. Counsel refers to a decision of Cooke J. in *S.B.E. v. Refugee Appeals Tribunal* [2010] IEHC 133, which he states is identical to this case, to support the contention that the Minister failed to make any assessment of the personal circumstances of the applicant as required by Reg. 7(2) of the E.C. (Eligibility for Protection) Regulations 2006. In supplemental written submissions, it was argued that the decision of this Court in *E.I. & A.I. v M.J.E.L.R.* [2014] IEHC 27 clarifies that internal relocation decisions should be taken in cooperation with an applicant. The applicant was not personally interviewed in connection with the subsidiary protection decision.

7. The applicant also claims a lack of fair procedures and a breach of the principle of *audi alteram partem* in the context of the failure by the Minister to give the applicant notice of the any of the matters which were considered in refusing his applications. It is said that this is contrary to the approach Clarke J. identified in *Idiakheua v. Minister for Justice, Equality & Law Reform* [2005] IEHC 150. The applicant refers to a number of cases decided by the Court of Justice of the European Union ("C.J.E.U.") in order to reinforce this view. Counsel refers to the case of Case 17/74 *Transocean Marine Paint Association v. Commission* [1974] E.C.R. 1063, and specifically paragraph 15 thereof, to submit that there is a general rule of European law that "a person whose interests are perceptibly affected by a decision taken by a public authority must be given the opportunity to make his point of view known".

8. It is submitted that the right to due process and natural justice has consistently been reinforced by the C.J.E.U., in Case 28/05 *G.J. Dokter & Ors v. Minister van Landbouw, Natuur en Voedselkwaliteit* [2006] E.C.R. I-05431 it was stated that:-

> "It is equally settled case law that respect for the rights of the defence is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the proceedings in question. That principle requires that the addressees of decisions which significantly affect their interests should be placed in a position in which they may effectively make known their views on the evidence on which the contested decision is based."

Further, in the decision of Case C-349/07 *Sopropé – Organizações de Calçado Lda v. Fazenda Pública* [2008] E.C.R. I-10369 the C.J.E.U. stated that:-

> "36. Observance of the rights of the defence is a general principle of Community law which applies where the authorities

are minded to adopt a measure which will adversely affect an individual.

37. In accordance with that principle, the addressees of decisions which significantly affect their interests must be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision. They must be given a sufficient period of time in which to do so."

9. Counsel also refers to the decisions of the Court of Justice in Case C-141/08 *Foshan Shunde Yongjian Housewares & Hardware Co. Ltd v. Council of the European Union* [2009] E.C.R. I-09147 and Case T/112/07 *Hitachi Ltd, Hitachi Europe Ltd and Japan AE Power Systems Corp. v. European Commission* [2011] E.C.R. II-03871 in support of his submission that, if a decision maker intends to make a decision refusing an applicant subsidiary protection or leave to remain in the State, he is obliged under national and European law to ensure that the individual is made aware of what information the decision maker relies upon to ground the refusal. It is submitted that in this case the applicant was not informed of the information the Minister relied upon to refuse his claim, nor did the Minister communicate with him at all. Further, the applicant's position is said to be worsened owing to the fact that he does not have an appeal against the decision as he would have under the E.U. (Subsidiary Protection) Regulations 2013.

10. Finally, it is submitted that the applicable test in respect of state protection contained in Regulation 2 of the E.C. (Eligibility for Protection) Regulations 2006 was not applied in the assessment of the protection available to the applicant and the consideration employed by the Minister is invalid.

The Respondent's Submissions

11. Counsel for the respondent, Ms. Sinead McGrath B.L., submits that the applicant's subsidiary protection application is based on the same set of facts as those outlined in his asylum claim, which was rejected for a lack of credibility. She notes that the applicant also submitted extracts from country of origin reports detailing general insecurity and violence in Afghanistan and that he submitted that his home State could not provide him with meaningful protection. Counsel also observes that no submissions were made in relation to internal relocation by the applicant, save to request that the Minister would not consider it in his case.

12. The respondent submits that the examination of the subsidiary protection application provided a comprehensive analysis of the applicant's claim and was based on up to date country of origin information. In this regard, counsel notes that the separate elements of the claim were fully analysed, namely whether he would be at risk from: (a) the Hezb-i-Islami; (b) due to the alleged killing of the uncle of Commander of Mazar-i-Sharif; (c) because he was a spy for the Taliban; (d) because he was a member of the Hazara tribe and is a Shia Muslim; (e) the death penalty or execution; and (f) indiscriminate violence in Afghanistan. It is submitted that the Minister's analysis is thorough and detailed. In particular, it is noted that regard was had to the security situation prevailing in Afghanistan at the time and the particular situation in Samangan province in which the applicant had lived before fleeing to Iran. In this light, the Minister made a finding that the applicant could relocate to Kabul on the basis of the security reports in the country of origin information. Counsel observes that it was noted by the Minister that no reports or details could be found in relation to the alleged killing of Atta Muhammad Noor's uncle. It is also noted that the Minister examined the position of the Hazara ethnic group under the current government in Afghanistan.

13. It is submitted that the applicant has not pleaded the alleged illegality in his Statement of Grounds (which he has raised in his legal submissions) to the effect that internal relocation was not an aspect of the Tribunal decision and therefore the applicant did not have an opportunity to comment upon it in the context of the subsidiary protection decision. Further, it is contended that counsel for the applicant failed to reference such complaint whatsoever when narrowing the grounds of challenge before McDermott J. on 24th March, 2014. Without prejudice to this, it is submitted that it is an untenable complaint for the applicant to make in light of the provisions of Council Directive 2004/83/EC. The respondent notes that Regulation 7 of the E.C. (Eligibility for Protection) Regulations 2006 reflects the provisions of Article 8(1) of the Directive, which is set out at paragraph 25 below.

As such, it is submitted that it is a clear and necessary aspect of any examination of an application for subsidiary protection and that the applicant is on notice of same. Counsel relies on the dicta of Charleton J. in *F.N. & ors v. Minister for Justice, Equality and Law Reform & ors* [2008] IEHC 107 in this regard.

14. In any event, counsel submits that the issue of internal relocation did arise in the context of the asylum application during the s. 11 interview and that the applicant's response is recorded in the subsidiary protection examination. Further, it is said that the applicant was given full opportunity to address the issue in his application for subsidiary protection and simply requested that the Minister disregard it.

15. It is submitted that no sustainable complaint is made out with regard to the applicant's submission that the Minister failed to give reasons for his decision. It is submitted that, contrary to the applicant's contentions, the Minister carried out a case specific analysis in light of current country of origin information and outlined clearly why the applicant was not considered eligible for subsidiary protection. It is submitted that there is no lack of clarity in the examination. Further, counsel asserts that the Minister did not selectively apply the country of origin information, rather it was analysed in a rational and reasonable manner and ultimately that it was open to the Minister to reach the conclusion he did on the basis of the evidence before him. Counsel refers to the dicta of Cooke J. in *M.E.O. [Nigeria] v. Minister for Justice, Equality & Law Reform* [2012] IEHC 394 and *D.G. and M.D. v. Minister for Justice, Equality & Law Reform* [2010] IEHC 256 in this regard.

16. It is stated that the complaints raised in the applicant's legal submissions to the effect that the Minister did not put "information" to the applicant and that there was "no level of communication at all" prior to the decision is vague and is not directed at any specific "information". Counsel submits that the complaint is unsustainable in any event, particularly in light of the correspondence which took place between the applicant and the Minister. In this regard it is noted that the applicant submitted further country reports including a Human Rights Watch Report (2009) and an Amnesty International Report (2009) and also enclosed character references in respect of his s. 3 application. It is noted that the Minister replied to this correspondence and assured the applicant that decisions would issue by October 2010. In this regard it is submitted that the applicant was aware his file was under active consideration and that the decisions were imminent. Further, it is noted that the applicant had the benefit of legal advice from asylum and immigration solicitors who would be aware that the Minister would consider the applications in light of up to date country of origin information. It is noted that the applicant raised no complaint at that stage, nor was a request made that he should be informed of any matters arising or consulted in respect of same prior to a decision being reached.

17. In particular, counsel refers to the dicta of Cooke J. in *M.E.O. [Nigeria] v. Minister for Justice, Equality & Law Reform* [2012] IEHC 394 in support of this submission, where he states at paragraphs 90 & 91:-

"As already pointed out above, the fundamental responsibility of the decision maker in these cases is to determine whether, in light of the representations made, there exists a genuine risk to the applicant of being exposed to the claimed

> inhuman treatment because of the conditions prevailing in the country of repatriation if the deportation is implemented. It is therefore incumbent on the decision-makers to inform themselves as to the prevailing social, political, economic, security or other considerations prevailing in the country of destination which are relevant to the claims or fears expressed on behalf of the prospective deportee. Given that there is invariably some lapse of time between the making of the representations on the one hand and the final determination of the application on the other it is incumbent on the decision-makers to consult the most up-to-date information available as to the circumstances likely to be faced by the deportee when implementation takes place. There are often, as the cases in the Asylum List frequently demonstrate, instances where very significant political, military and security changes can occur in the country of destination in that interval. The regime from which the asylum seeker has fled may change at short notice. Where country of origin information consulted by the decision-maker discloses facts material to the very basis of the assertion of a risk of mistreatment for the purposes of s. 5 of the Act of 1996, there may well be an obligation upon the decision maker to give notice of the material in question for the purpose of comment or rebuttal before a decision is made. That is not the case here…In the judgment of the Court, in the absence of reliance upon particular material which contradicts any specific and essential statement of fact relied upon by an applicant which is pertinent to the applicant's personal situation or condition, there is no obligation upon the respondent to enter into consultation with an applicant or to give advance notice for the purpose of comment or rebuttal of publicly accessible material of this general character, intended to be relied upon in setting out the grounds for rejection of representations and for making a deportation order."

18. The respondent refers to the s. 3 examination of file and notes that to a large extent it focuses on the issue of refoulement. In this regard, counsel observes that the executive officer who compiled the report referred to up to date country of origin information dealing with the security situation in Kabul and in Samangan province in particular. It is noted by the respondent the examination of file stated that in light of the country of origin information: (i) the security situation in Samangan province was stable; (ii) the *Hezb-i-Islami's* fighting potential was eroded over the years; (iii) there were a considerable amount of government forces in Afghanistan; (iv) the *Hezb-i-Islami* is now aligned with the Taliban; (v) the applicant has the option of residing in Kabul; (vi) no country of origin information was available in relation to the alleged killing of Mohammad Noor's uncle; (vii) low level former Taliban members are able to reintegrate into the local community; (viii) the government had made significant efforts to address historical tensions affecting the Haraza community; and (ix) that the applicant claims to have lived in Iran on two occasions between 1995 and 1998 and 2001 and 2005. As such, it is submitted that the basis for the Minister's conclusion is clearly set out and that the respondent could not be said to have failed to outline his reasons in respect of the decision.

Findings

19. A decision on an application for subsidiary protection which is determined on the basis that the applicant may internally relocate in the relevant country of origin must comply with the provisions of Article 8 of Council Directive 2004/83/EC and Regulation 7 of S.I. 518/2006. The matters to be considered in this context have been addressed in numerous decisions of this Court and have been summarised by Clark J. in *K.D. v Minister for Justice, Equality and Law Reform and in E.I. v Minister for Justice, Equality and Law Reform* (supra).

20. The Court found the consideration of the subsidiary protection decision to be very poorly presented, mixing extracts from quoted material with the author's own text whereby it was difficult to discern whether one was reading the author's own words or quoted material. However I was able to discern that the author identifies three questions to be answered. The first question was whether the applicant would be at risk of suffering serious harm if returned to Afghanistan (from the *Hezb-i-Islami* party, from persons connected with a land dispute, from the government on the basis of being accused of killing a named person and on the basis of being accused of spying for the Taliban and on the basis of being of the Hazara tribe and being Muslim.) The second question to be answered was whether he would be risk of execution/death penalty and the third question was whether there was a risk of harm from indiscriminate violence.

21. The author appears to address the first question from page 2 to page 11 of the report. Much of the text on these pages appears to be extracts from country reports and other quoted material. One of the conclusions reached is that "the applicant would be able to return to Samangan province [his home] and not be at risk of suffering serious harm"

22. In the next paragraph the author says:-

> "It is considered that the applicant also has the option of residing in the capital Kabul. It is noted that C.O.I. states the finding of the Asylum Tribunal that "considered the risk to former members of the Afghan National Army from the Taliban and *Hizb-e-Islami*. With regard to relocation to Kabul, the Asylum and Immigration Tribunal found:-
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> > 'Where the risk to a particular appellant is confined to his home area, internal relocation to Kabul is in general available. It would not be unduly harsh to expect an appellant with no individual risk factors outside his home area to live in Kabul and assist in the rebuilding of his country.'"

23. It is difficult to read this as anything other than a finding that the applicant can relocate to Kabul on his return to Afghanistan. However, the quoted material justified internal relocation to Kabul for former members of the Afghan National Army who fear the Taliban and a particular political party. The applicant in this case feared the particular political party but also feared the Government and this does appeared to have been addressed in the brief consideration of internal relocation.

24. It is difficult to understand why an internal relocation appraisal was undertaken by the author because the overall findings are that the applicant has nothing to fear if he returns to his home province.

25. Findings on internal relocation and on adequacy of State protection are appropriate when it is accepted that the protection seeker has an objectively justified fear. In this case it was found that there was no objective basis for the fear but for reasons which are not stated the decision makers make internal relocation findings in the course of answering the question as whether the applicant would be at risk of serious harm if he returned to Afgahistan. As indicated in my decision in *E.I.*, (supra) and as stated above, an internal relocation finding, no matter why made, must comply with the law and that law is set out in Article 8 of the Qualification Directive which provides:-

> "Internal protection
>
> 1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.

2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant."

26. In *K.D. v Refugee Appeals Tribunal* [2013] IEHC 481, Clark J. explained the application of these these rules as follows:-

"28. The following principles can be said to apply to an assessment of the internal relocation alternative:-

(1) An inquiry into the availability of internal relocation is only appropriate where a protection decision-maker **accepts** that the applicant has a well-founded fear of persecution for a Convention reason in his country of origin **but** that risk is localised and does not extend to the whole of the state.

(2) Internal relocation has no logical part to play in a decision if **no well-founded fear** of persecution is accepted or if it is found that the persecution feared has no Convention nexus;

(3) A large number of decisions refer to the relocation option notwithstanding a finding that there is **no well-founded fear of persecution on credibility grounds.** In such cases, what the decision maker really means is, 'if what you say is true, which is not accepted, you have given no credible explanation for coming to Ireland instead of moving elsewhere away from the claimed danger' . These 'even if' findings are not internal relocation alternative findings requiring adherence to Regulation 7 but are part of a general examination of whether an applicant has a well-founded fear of persecution.

(4) Localised Risk: Where it is **accepted** that an applicant has a well-founded fear of persecution for Convention reasons but that fear is **localised** and confined to a particular area, it is relevant to consider the possibility of internal relocation as an alternative to refugee status. In such cases, Regulation 7(1) of the Protection Regulations requires the protection decision maker to identify (if only in general terms) a place or area within the country of origin where the risk of persecution does not exist and where the applicant might reasonably be expected to stay. Security from persecution or serious harm and meaningful state protection in the proposed area of relocation are key.

(5) Where there is a well-founded fear of persecution and a general area has been identified as an alternative to refugee status then the protection decision-maker must pose two questions: (i) is there a risk of persecution/serious harm in the proposed area of relocation? If not, (ii) would it be reasonable to expect the applicant to stay in that place?

(6) **Absence of Risk**: Where the persecution feared is of a general or public character such as a religious or tribal conflict or oppression by a political regime which controls a particular region or city, it will be necessary to consult appropriate up-to-date C.O.I. to determine whether the risk of persecution/harm is genuinely absent from the proposed area of relocation. In such cases the decision maker must engage in a detailed and careful enquiry as to the general circumstances prevailing on the ground in the proposed area, in accordance with Regulation 7(2).

(7) If the persecution feared emanates from private or domestic actors, such as a threat from a particular family member, **and** a Convention nexus has been established, the protection decision-maker must make an objective, common sense appraisal of the reality of whether the risk faced by the applicant could be avoided by moving elsewhere, having regard to the applicant's own evidence.

(8) **Reasonableness**: It is not enough for the protection decision-maker to determine that the risk of persecution is absent from the proposed area of relocation. He or she must go on to consider whether it would be reasonable to expect the applicant to stay in that place, having regard to his/her personal circumstances and the general conditions prevailing on the ground, in accordance with Regulation 7(2) of the Protection Regulations. The reasonableness assessment is not concerned with assertions such as 'I won't know any one', but rather with matters of substance such as whether the applicant is old, infirm, ill, has many small children or is without family support and other real issues.

(9) The U.N.H.C.R. Guidelines on International Protection: Internal Flight or Relocation Alternative (2003) indicate that consideration should be accorded to whether the applicant could lead a relatively normal life in the selected place of relocation without undue hardship, in the context of the country concerned. Unless there is objective evidence that the general circumstances prevailing in the proposed area are harsh – for example if the proposed area is the site of a conflict or a humanitarian crisis – there is in general no obligation to seek out a specific town or detailed information on economic and social conditions in the proposed location. However, if a specific objection is taken by the applicant to the location this objection must be examined.

(10) Burden of Proof: There is a shared burden of proof. The protection decision-maker who accepts a well-founded fear of persecution but determines that refugee status is not appropriate because internal relocation is available must conduct a careful enquiry to identify a safe relocation area, having regard to up-to-date objective evidence about that area and also to the applicant's own evidence in that regard.

(11) Fair procedures: As a matter of fair procedures the proposed safe area should be notified to and discussed with the applicant to establish whether he/she could reasonably be expected to stay there. The applicant is obliged to cooperate, to answer truthfully, to provide all relevant information available to him/her to determine the reasonableness of the relocation area and to provide information on any personal factors which would make it unreasonable or unduly harsh for him/her to relocate rather than being recognised as a refugee;

(12) No State is obliged to consider the internal relocation alternative even when the Convention-related persecution feared is confined to a particular part of the applicant's state. States can recognise an asylum seeker as a refugee solely on the basis the criteria under Section 2 of the Refugee Act 1996, without ever turning to the relocation alternative.

(13) The threshold to be reached before internal relocation is considered is high. The applicant would be recognised as a refugee but for the fact that he can safely relocate. The inquiry is commensurately careful."

27. In *E.I.*, I stated the view that every internal relocation appraisal was required to be conducted in accordance with these basic rules even where the decision maker was redundantly deciding internal relocation having found that an applicant did not have a well founded fear of persecution (in asylum claims) or of serious harm (in subsidiary protection claims). As indicated above, the internal relocation finding was redundant given that the decision maker finds the absence of a risk of serious harm. If there was no risk of serious harm, why would the applicant have to relocate to Kabul?

28. It was incumbent on the decision maker to give the applicant an opportunity to react to the proposition that he relocate to Kabul. This did not occur. That he had indicated (in his application papers) that internal relocation was not an option does not remove the respondent's legal obligation to take such a decision in co-operation with him. I reject the applicant's suggestion that he was not on notice of the possibility that internal relocation might be examined merely because it had not been examined in the asylum process. But this does not absolve the respondent from involving the applicant in the consideration of internal relocation if this is necessary in the citcumstances. It may be that there is adequate information already on the file to permit a lawful consideration of the issue to take place.

29. It does not avail the respondent that the applicant was asked in his section 11 Asylum interview whether he could relocate to another part of Afghanistan. The answer given is not referred to in either the first instance or appellate decisions on the asylum claim and no question of internal relocation is analysed in that process. In the internal relocation consideration in suit the author does not refer to the applicant's answer to the question posed at s. 11 interview stage in the part of the decision dealing with internal relocation though the answer is referred it at a later part of the decision but not in any context relating to the possibility of internal relocation. There is no indication that the applicant's personal circumstances are addressed; the general conditions in Kabul do not appear to have been addressed. The question of whether it is reasonable for the applicant to relocate to Kabul is not addressed. The author relies on certain country of origin material for the internal relocation decision. This material is not properly identified and appears to relate to the findings of an Asylum and Immigration Tribunal of some unidentified nation where risk factors associated with former members of the Afghan army were assessed but no such factor is relevant to the applicant's circumstance. I accept the applicant's arguments that the internal relocation finding was unlawful because it is in multiple breach of Article 8 of the Qualification Directive and of the domestic transposing measure.

30. The respondent states that the complaint regarding internal relocation was not pleaded. Though I have some sympathy for this view, it can be said that the pleadings are just about wide enough to embrace the issue. As can be seen the internal relocation finding is based on a non-referenced quote from country of origin information which appears to deal with relocation prospects of former members of the Afghan army – an irrelevant factor in this case. The applicant's pleadings make numerous complaints about the misuse of country of origin information and such pleading might be said to address the misuse of the information in the internal relocation finding. In addition it is expressly pleaded that the subsidiary protection decision is *ultra vires*. My decision that the internal relocation decision is in breach of Article 8 of the Directive and Regulation 7 of the Regulations confirms that the decision is *indeed ultra vires*.

31. Pleadings serve to define issues in dispute and to avoid trial by ambush. The written submissions in this case amplify points not fully made in pleadings. The complaint about internal relocation was fully set out by the applicant in written submissions dated March 2014 and again, further to a request from the Court, in supplemental submissions of November 2014.

32. The combination of the pleadings and the written submissions identified the point about internal relocation and no prejudice has been suffered by the respondent. I should add that the pleadings in this case predate the new rules requiring specificity in judicial review pleadings and it may well be that the pleadings in suit would not be adequate if governed by the current version of Order 84 R.S.C..

33. I am persuaded to take a generous view of the pleadings because the court, as an organ of the State, has a duty (under Article 4 (3) of the Treaty on European Union) to ensure that the obligations of E.U. law are achieved and the multiple breach of Article 8 of the Directive cannot be permitted to stand.

34. I grant an order quashing the subsidiary protection decision and will hear the parties as to what other orders might be required.