THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 476 J.R.]

BETWEEN

G.I.

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY,

RONAN MAGUIRE SITTING AS THE REFUGEE APPEALS TRIBUNAL, IRELAND AND ATTORNEY GENERAL

RESPONDENTS

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 21st day of December, 2015

1. Following my decision in *G.I. v. Minister for Justice and Equality (No. 1)* [2015] IEHC 682 to refuse relief by way of judicial review and to refuse a reference to the Court of Justice of the European Union in this case, I listed the matter to allow any consequential applications.

2. Mr. Paul O'Shea, B.L., for the applicant has applied for leave to appeal, by seeking a certificate in that regard, and alternatively has (again) sought a reference to the Court of Justice. I understood him to be seeking costs if either of these options were to be permitted, but, if not, he accepted that he was "*in the court's hands*".

3. Ms. Silva Martinez, B.L., for the respondents opposes the applications for leave to appeal and for a reference and seeks her costs on the basis that they follow the event.

Reference to the Court of Justice

4. Mr. O'Shea submits that the requirement to engage in narrative consideration of country of origin information arises in every case by virtue of the Qualification Directive 2004/83/EC and that this issue should be referred to the Court of Justice. The applicant appears to be labouring under the misconception that the only grounds for refusing an application for a reference to the Court of Justice are the *acte clair* doctrine and the existence of a right of appeal. This is not correct. As I explained in my substantive judgment in this case, the court can also decline to refer a question if the EU law point is "*irrelevant*", or in other words that the case can be disposed of on other grounds.

5. In this case, as Ms. Martinez has pointed out, in the substantive decision I found that the applicant had been held to be so lacking in credibility that no country of origin information would have rescued him from this position. It therefore follows that even if (which I do not accept) the Tribunal should have engaged in narrative discussion of the country of origin information, this would not have made any difference to the result.

6. In short, if there was any error (a proposition which I have rejected) then it was harmless error.

7. It is, therefore, not necessary to the decision to refer to the Court of Justice the question of whether the Tribunal had correctly assessed country of origin material.

Leave to Appeal

8. In *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 205, MacMenamin J. noted that the question of law at issue must arise out of the decision itself rather than discussion during the hearing.

9. I would respectfully add that the point of law should also, at least, normally be one that is potentially decisive in the case, or in other words that it should be one that, if decided differently, could have a material effect on the order ultimately made.

10. Mr. O'Shea has submitted that a point of law of exceptional public importance arises from my judgment which he has stated in various different ways but essentially amounts to the argument (referred to above) that the EU Qualification Directive requires a narrative consideration of country of origin information in all cases.

11. In the present case, for the reasons explained, no amount of narrative consideration of country of origin information would have changed the conclusion that the applicant is not credible. As explained, if there was any error in this regard (which I do not accept), it was therefore harmless error.

12. My decision that there was no error of law may be a matter of exceptional public importance, but the decision that this applicant was so incredible that the rejection of his claim could not be remedied by discussion of country of origin information is not. Under those circumstances, it seems to me that this is not an appropriate case to grant a certificate giving the applicant leave to appeal.

Costs

13. As no particular basis was advanced in this case as to why costs should not follow the event in circumstances where I was refusing both leave to appeal and a reference to the Court of Justice, I will, therefore, allow the respondents their costs.

Order

14. Having regard to the foregoing, I will order:-

(i) that the application for a reference to the Court of Justice be refused;

(ii) that the application for a certificate enabling the applicant to appeal to the Court of Appeal be refused; and

(iii) that costs be awarded to the respondents.