THE HIGH COURT

2018 No. 902 JR

Between:

X AND Y (A MINOR SUING BY HER MOTHER AND NEXT FRIEND X)

Applicants

– and –

THE MINISTER FOR JUSTICE AND EQUALITY, THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL, IRELAND

AND THE ATTORNEY GENERAL

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 11th July 2019.

I. Background.

1. It is useful to begin this judgment with a summary chronology of some key events:

Jun. 2014 First Applicant, a national of the Democratic Republic of Congo (DRC), arrives in Ireland and applies for asylum.

First Applicant completes a Refugee Status Questionnaire.

Aug. 2014 First Applicant attends s.11 interview.

ORAC refuses applicant declaration as refugee on basis that internal relocation possible.

Sept. 2014 First Applicant appeals ORAC decision. Seeks papers-only appeal.

May 2016 First Applicant notifies RAT that she has been waiting 20 months for papers-only appeal.

Apr. 2017 First Applicant completes and sends international protection application.

Dec. 2017 First Applicant attends s.35 interview with IPO.

Mar.2018 First Applicant completes second s.35 interview and her daughter (the Second Applicant), a minor, is included in this claim.

IPO refuses subsidiary protection to applicant. First Applicant found not credible in s.39 report. IPO refuses declaration of refugee status and subsidiary protection to Second Applicant.

IPO refuses both applicants humanitarian leave to remain.

Apr. 2018 First Applicant appeals IPO decision (s.39 report).

July 2018 First Applicant sends legal submissions and country reports to IPAT raising a separate issue as to treatment of failed asylum seekers on return to DRC.

Aug. 2018 Appeal heard by IPAT.

Sept. 2018 IPAT decides to refuse appeal (the 'Impugned Decision'). Impugned Decision rejects First Applicant's credibility.

Nov. 2018 Within proceedings commenced 10 days out of time. At the hearing of this application an explanation was offered as to the particular personal reasons which led to the delay in commencing the proceedings. Counsel for the Minister indicated that he was not pressing the lateness point. In all the circumstances the court is satisfied to proceed to judgment without formally ruling on the extension of time.

II. The United Kingdom Decisions

2. The First Applicant submitted to the IPAT, by reference to certain COI concerning the DRC, that if she returns to that jurisdiction she will face detention and likely be interviewed by State forces as a failed asylum seeker/returnee and be exposed (with the Second Applicant) to detention and interrogation amounting to torture or inhuman and degrading treatment. In what any fair-minded reader would conclude is a thorough and comprehensive decision, the IPAT states that: "*It is also submitted that simply by virtue of her being a failed asylum seeker that she is at risk. I note that some of the COI relied upon to this effect relies upon a report entitled Unsafe Return and point out that such report has been subject to criticism in the court[s] of England and Wales*". Two cases are then mentioned, a UKUT case that is referenced in material that was placed before the IPAT and which it could have been expected that the IPAT would read, and a decision of the High Court of England and Wales. So the complaint in this regard boils down really to the fact that in the course of a thorough-going analysis of the material before it, the IPAT mentions that some of the material before it has been criticised by a body as well-reputed as the High Court of England and Wales. That is not the entirety of the IPAT's reasoning, it engages in other reasoning, and it does not substitute the reasoning of the High Court of England and Wales (or indeed the UKUT decision which was referenced in the materials provided by the Applicants) for its own reasoning. Moreover, what was done by the IPAT in this regard comes nowhere close to what Cooke J, was concerned with in *MAMA v. Refugee Appeals Tribunal* [2011] IEHC 147, para.9, when he counselled against reliance on foreign court reports as "*an acceptable source of information as to factual*

conditions in a country of origin". That is not what the IPAT was about here; it simply said in effect 'The Tribunal has looked at the COI information before it and is conscious that some of it has been criticised by a body as august as the High Court of England and Wales'. Counsel for the First Applicant complains that the decision of the High Court of England and Wales was not mentioned at the IPAT hearing. Perhaps it might have been better if it was, but the court does not see when one looks at the Impugned Decision as a whole and the thoroughness and propriety with which all the information before the IPAT was considered that this amounts to a fatal flaw in the decision-making process or the Impugned Decision, not least again because the mention of the UK case-law did not comprise the entirety of the IPAT's reasoning, the IPAT engages in other reasoning, and it does not substitute the reasoning of the High Court of England and Wales (or indeed the UKUT decision which was referenced in the materials provided by the Applicants) for its own reasoning. It is not as if the IPAT did not know that among the materials before it there was information favouring the Applicants. As the court has repeatedly noted, perfection in decision-making and decisions is not a requirement at law; no human decision-making processes or decisions could satisfy that standard. What is required is fairness, reasonableness and rationality, and that is what the Applicants got at the hearing and in the decision of the IPAT. Yes, if the IPAT had given a decision in which it said 'There is an English case that went unmentioned at hearing, we agree with everything in that decision and the reasons the English court gives are also the reasons for this decision and those are the only reasons we are giving', then of course a difficulty would arise. But when it comes to the facts at hand, any fair-minded reading of the IPAT decision could only lead to the conclusion that one is simply not in that space, nowhere near it in fact:

> – the IPAT identified the materials submitted, name-checking and discussing some of the more salient authorities and extensively quoting from some of them;
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> – the IPAT acknowledged that there were viewpoints supporting the fear expressed by the Applicants;
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> – the IPAT concluded, by reference to probative and reliable first-hand sources, that the risk presenting was confined to politically active persons; and
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> – the IPAT specifically stated that "all of the information and documentation provided has been fully considered" (and no evidence has been adduced to suggest that this was not so).

3. The court does not see that there is a basis in any of the foregoing for affording to the Applicants any of the (discretionary) reliefs now sought.

III. Credibility

4. In her notice of appeal of 23.09.2014, the First Applicant challenged ORAC's finding as to the availability of internal relocation within the DRC. For there to have been consideration of the availability of internal relocation, it seems that the First Applicant must have been found to be credible (though this is never expressly stated). However, the First Applicant's appeal was then overtaken by the enactment of the International Protection Act 2015 and the transitional provisions contained therein. By virtue of s.70 she was deemed to have made an application for international protection under s.15, with the provisions of the Act of 2015 thereafter to apply subject to certain prescribed/necessary modifications. She had no vested rights that entitled her to rely on a repealed statute (*SG v. MJE* [2018] IEHC 184, *VB v. MJE* [2019] IEHC 55). The appeal which occurred was an appeal of a decision made under s.39(3) of the Act of 2015, in conjunction with the transitional provisions in s.70. An oral hearing was elected for, at which oral evidence was given and fell for consideration.

5. No complaint was made at the time of the appeal about the breadth of the matters which had been revisited by the IPO, nor was it sought in any way to confine the IPAT in the ambit of the task that it conducted. Nor does the court see that the IPAT was in any way confined from finding as it did as to credibility. Strikingly, in the Grounds of Appeal, the First Applicant notes that the IPAT's hearing is a "*de novo investigative process*" and reminds the IPAT member of the obligation to "*make his own assessment, no matter what view the original interviewer may have formed"*. Yet it is now complained in effect that that is how the IPAT proceeded, and it is sought to 'rewind the clock' back to the autumn of 2014. If there was a point to be raised about 'rewinding the clock', and the court respectfully does not see that there was, it fell properly to be made when first engaging with the process under the Act of 2015, not following receipt of a decision that one does not like at the conclusion of a process in which one freely participated without objection.

IV. Conclusion

6. For the reasons aforesaid, the court is coerced as a matter of law into declining the reliefs sought.