THE HIGH COURT

JUDICIAL REVIEW

[2013 No. 6 J.R.]

BETWEEN

I.M. (NIGER)

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY,

REFUGEE APPEALS TRIBUNAL,

IRELAND AND ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Eagar delivered on the 17th day of December, 2015

1. The applicant seeks leave to apply for judicial review of an appeal decision by the Refugee Appeals Tribunal (hereinafter referred to as "the Tribunal") dated 10th October, 2012, affirming the recommendation of the Refugee Applications Commissioner (hereinafter referred to as "the Commissioner") that the applicant should not be declared a refugee. This was a telescoped hearing of the application. The single ground upon which the relief was sought was, as follows:-

> (a) The refusal of the applicant's appeal was arrived at in breach of the minimum procedures laid down by the European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518/2006) (hereinafter referred to as "the Regulations of 2006"). In particular, and without prejudice, to the generality of the foregoing Article 5(2) of the Regulations of 2006 states:-
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> > "The fact that a protection applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall be regarded as a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated, but compelling reasons arising out of previous persecution or serious harm alone may nevertheless warrant a determination that the applicant is eligible for protection."
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> No consideration of the applicability of this provision was carried out. In circumstances where it is doubtless that the applicant suffers from severe depression and Post Traumatic Stress Disorder, it is insufficient to dismiss an asylum purely on the basis of perceived lack of credibility especially where there exists prima facie evidence that the applicant did, in fact, suffer prior persecution or serious harm, regardless of the precise source of that prior persecution or serious harm.
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> (b) In the circumstances where the applicant put forward evidence of suffering serious harm or persecution in the past, it was for the first named respondent to assess same without any doubts recreated by such evidence. No attempt was made to do this and the decision is invalid.
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> (c) No proper regard was had to the SPIRASI report furnished the applicant's legal advisers. No allowance was made for the possibility that the applicant's account of his past might be inaccurate in whole or in part by reason of the mental condition of the applicant. The provisions of paras. 202 – 212 of the UNHCR Handbook were not applied to the applicant's case despite evidence that he is a "mentally disturbed person".
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> (d) The time taken to assess the applicant's application for international protection has been manifestly unreasonable thus invalidating the refusal of the applicant's appeal.

2. An extension of time was sought and it was conceded by the respondents.

Decision of the second named respondent – the applicant's claim

3. The applicant was born on 20th October, 1953, in Niger. He is of the Maradi ethnic group. He was a Muslim and has now converted to Christianity. The applicant suffers from Hepatitis B and liver problems.

4. The applicant stated in his ASY1 Form that he went to the United Kingdom after he was threatened with death in 1997. He applied for asylum there in 1997 but went back to Niger in the same year and withdrew his application for asylum. He claims that there was a change of president and he thought it was safe to go back. The applicant claims that the government wanted to kill him because he protested against the present government. The applicant was involved in giving presentations and holding rallies around the villages objecting about the manner in which food was being distributed by the government.

5. In his questionnaire, he described himself as being of the Hausa ethnic group (as opposed to Maradi as stated in his ASY1 Form). The applicant has had the benefit of twelve years education and was employed for over thirty years in the import and export of goods. The applicant is married and according to his questionnaire has one dependant child.

6. When the applicant arrived in Ireland, he presented a doctor's certificate in relation to his condition. The applicant has N-stage renal failure, together with a congestive heart complaint and Hepatitis B.

7. In answer to the question as to why he left his country of origin, he stated that the situation in the Republic of Niger was so severe that desperate measures were adopted by both domestic and international organisations because of the drought and

incessant and protracted civil war. Food, drugs and other relief materials were being distributed, however, he claims that his people's living conditions were not improved.

8. The applicant claims in response to the inequalities in relation to the distribution of supplies, many organisations were formed. One of them was Nryar Talakawan and Niger ("crying voice of the downtrodden of the country of Niger"). The applicant claims that he was one of the people who formed this organisation and he was committed to humanitarian services. He claims that the activities of the organisation were accepted and embraced by the people of Niger but incurred the wrath of the government.

9. He claims that the activities of the organisation were prescribed and its founders, including himself, were arrested, tortured, maimed and killed. He claims that he was arrested, tortured, and whilst in prison a man injected a poisonous substance into his body, he claims that this is the cause of his kidney failure and liver and heart problems. He claimed that his house was also burned down.

10. He claims that the problems were so bad that he was forced to flee Niger. At this point he fled to the United Kingdom and sought asylum. The applicant claims that he was arrested and imprisoned between July 2006 and March 2007. He claims that if he returns his life will be in danger and they will also kill members of his family believing they share the same views.

11. The applicant attended for a s. 11 interview in October 2007 and at interview, the applicant claims he was caught in a village or town called Diffa. He claims that the soldiers arrived and took him to prison and he claims that the name of the prison was Central Prison.

12. The applicant claims he was given injections everyday unnecessarily and that one of the prison guards told him they were giving him these injections in order to kill him. The applicant remained in prison until 20th April, 2007. He claims he was assisted in escaping by a group of maybe seven or eight men in uniform.

13. After escaping, the applicant attended a doctor called Dr. H. He claims that this man examined him and gave him an injection, but did not tell him the type of illness he was suffering from. He had but told him that his condition would mean that he would die if he remained in the country. The applicant arranged to leave the country. They left on 24th April, 2007, flying to Paris. He did not seek asylum there because of his condition as he was unwell. He arrived in Ireland on 25th June, 2007.

14. At interview, it was put to the applicant that he had given another name but the applicant claims these were the names on the document which he travelled under.

15. It was also put to the applicant that there was information that suggested he claimed asylum in the UK in 2000. The applicant claimed he only sought asylum there in 1997.

16. It was also put to the applicant that according to the documents provided by the UK authorities, he claimed asylum in the UK in July 1997 not February 1997, as he claims. The applicant claims that he has forgotten many things.

17. It was also put to the applicant that according to the UK documents, his appeal was refused and was heard and dismissed in June 1998. The applicant claims that as he had returned to his country in 1997, he did not have all the information.

18. It was put to the applicant that according to the UK authorities' information lodged in the asylum claim in March 2000 but made under the name of Davis, a Nigerian. The applicant claimed he was only there in 1997 and that this was incorrect.

19. According to the United Kingdom authorities, as apparent from the UK Home Office Border and Immigration Agency Report, the applicant applied for asylum twice in the United Kingdom as a Nigerian.

20. By letter dated 12th June, 2007, the UK Home Office Border and Immigration Agency confirmed that a person with fingerprints that matched those of the applicant had claimed to be the following person in the United Kingdom:

(i) R.A.; date of birth, 28th October, 1965; nationality, Nigerian;

(ii) M.D.; date of birth, 2nd November, 1959; nationality, Nigerian;

(iii) M.M.; date of birth, not known; nationality, not known.

The third reference was used when the Dutch police made an inquiry to the English authorities to the Consulate in Amsterdam in October 2000, thus the applicant's fingerprints again were connected with this particular identity in the Netherlands.

21. The applicant has claimed that his real problems began in 1996. He claims that his people were slaves or descendants of slaves. He further claimed that they would be taken to farms and would have to work for them with little food and on occasion, no food and without pay. He claims that in 1996, they were taken to a farm at 4am without any food and they worked until 2pm. At that point, some people in another area decided that if they did not get food, they did not work. There was a military regime in place at the time and the soldiers started beating them with whips and they started running in all directions. The applicant claims there was a general strike in the country and many protests. The applicant claimed that he was in trouble because the Head of State asked who had started the fight and because the applicant was one of those persons responsible, he was in danger. He claims that during 1996 and 1997, they were in hiding and he claims that they were preaching to raise awareness in other countries. He claims that when they could not get hold of the applicant, they went to his home, killed his parents, burning his home. It should be noted that the applicant made no reference to his children being burnt or harmed or killed on this occasion. The applicant confirms that it was the soldiers who killed his parents.

22. He claims that a man called H. from Nigeria was supporting them, providing food and he helped the applicant to go to the United Kingdom as they were looking to kill him. The applicant claims that they sought asylum but after a number of days, H. told him there was a change of government or the Head of State had died and he followed him back home.

23. It was later put to the applicant that at interview he stated that the former dictator, himself, had, in fact, phoned him and told him that he could come back as he had been cleared of any charges of being implicated and brought against him, and that the dictator had personally apologised to the applicant for the killing of his parents. The applicant claimed there must have been a problem with the interpreter and that he had never said such a thing. He claims that H. told him that the Head of State had died that H. was a very close friend of Head of State and this is why he returned.

24. The applicant made no reference to returning to the United Kingdom at any time. In the interim, he claims that the next problem started again in 2005. He claims that food assistance in aid was not reaching the people and people were dying and that they started to regroup. The applicant claims that they put people on the streets before the government could get there and that they could distribute it to poor people. The applicant claimed the government realised that if they did not they would have trouble and they started following them. The applicant claims that they would start moving around. How the applicant claimed in his questionnaire that he was arrested in July 2006 (and released in 2007). At the hearing, the applicant claims he was caught in 2007. This is only a minor issue, however, according to the second named respondent.

25. The applicant claims that one of his friends sold him out. He claims that when he was captured, he said the Head of State wanted him and he was taken to jail. He claimed they started pouring water on him. They removed his clothes and tied his hands behind his back. He claims they would haul him from the ceiling from his feet and beat him and he would be upside down. He claimed that he would be beaten with whips and sticks all over his body and was beaten and regularly injected. He claims that he was beaten everyday. He claims that they would inject him so that he would die as a result of the injection. He claims that they were injecting him with a disease.

26. The applicant was asked a number of detailed questions by his own legal representative in relation to the treatment he alleges he has suffered during the detention. It should be noted that in any of the previous stages of this process, the applicant referred to being beaten and injection but never referred to being stripped naked, subjected to water torture or to being hung upside down or to have his hands tied behind his back, nor to having his genitals interfered with so that he would become aroused then beaten.

27. The second-named respondent noted that a SPIRASI report was being sought by the applicant's legal representative and it was queried why this was not done since 2007 as the applicant had the same doctor since then. It was submitted on behalf of the applicants that it was simply a thing that had fallen through the gaps but the applicant had, in fact, attended Spirasi in late 2009 and that photographs had been taken and he had been examined. The applicant claims if he returns the government would kill him because slavery is still ongoing in Niger and they will believe that he wants to empower the masses there and they will kill him.

28. The applicant was asked whether he had any contact with his family. He claims that he had spoken with his wife a month ago. He was a asked about any children and he explained there was only one child, that they killed them all bar one. The applicant was asked when this happened. He claims when they went to his house they killed his parents and his children. He claims that three children were killed at that time. It was put to the applicant that his questionnaire referred to the killing of his parents and cousin and he also made no mention today of the killing of his children at that time. The applicant claims he did not fill in the questionnaire himself and in relation to not mentioning it today, he only recollects some things sometimes.

29. It was put to the applicant that he had stated before the Tribunal that the government had changed. In fact, what he had stated was that the head of state had died and so he returned to his own country in 1997. It was put to the applicant that at interview he had said something entirely different and he was asked if he remembered what he said. He claims that H. told that the head of state was dead, it was ok to go back after some weeks. The applicant states that the head of state was H.'s friend. It was put to the applicant that at interview he had stated the former dictator phoned him personally and told him he could come back and the applicant stated it was possible that the interpreter did not interpret correctly and he denied everything. The applicant was asked whether he was mistaken and he stated that the dictator did not call him, did not tell him he could come home, or did not apologise for the killing of his parents.

30. It was put to the applicant that he had claimed that his group had a lot of contact with aid agencies and yet there was no record of any existence of this group and it was put to the applicant that it would have been open to him to contact some of these aid agencies to get a letter of referral or confirming that they had in fact contacted with this group, support his case. The applicant claimed that these groups were not registered but that everyone in Niger would know of them. There were also questions put to the applicant about coming to the Netherlands.

31. Written submissions were presented on behalf of the applicant under cover of a letter dated 10th of September, 2012. One of the written submissions was a reference made to a letter from Mr. David Hickey, the Director of Transplantation Urology and Nephrology Services, from Beaumont Hospital dated the 11th March, 2011, which points out that from a medical point of view returning the applicant to Niger would in fact amount to a death sentence, because the treatment that he requires will not be available to him if he is returned there. In other words without the treatment that he requires, the applicant would have a very short life expectancy.

32. It was also submitted that the country of origin information supports the fact that there was torture of detainees in Niger and, while constitutional law prohibits arbitrary arrest and detention, police in practice ignore the provisions. It was also submitted that any assessment of state protection is irrelevant as the applicant claims to fear the state apparatus and internal relocation was also not an option given that he feared the state. The second-named respondent noted that there was no reference in the country of origin information to support any contention that the applicant, on any basis, would be discriminated against in the provision of health care if returned to Niger.

33. The Presenting Officer pointed out that the applicant had been untruthful in the manners identified above and this affected his overall credibility. The Presenting Officer said there were a number of areas in which the applicant's account was called into question as he had made no reference to the Tribunal as to his children's death, yet this was arguably one of the worst things that could happen to a parent in one's life. He also pointed out that the phone call from the dictator was now being denied there was not any record of this group that the applicant claimed to be involved with.

34. The second-named respondent noted that by letter dated 19th September, 2012, the SPIRASI report was submitted and the date of assessment was 27th April, 2010. The second-named respondent noted that while the applicant claims that when the authorities could not get hold of the applicant they went to his house and killed his parents, burning his home, and confirmed that it was the soldiers who killed his parents. The SPIRASI report refers to them dying from violence under a previous regime. She also noted that he claims that his problems arose because of his political opposition effectively, in the SPIRASI report it is recorded that he stated the authority to realise that he was not paying tax on stocks. His arrest occurred at a mud house when a stranger came up and identified him as a friend of the applicant's then host, the applicant confided in him. The man excused himself and then went back shortly with about a dozen soldiers.

35. She also noted that there was no reference in the SPIRASI report to the applicant being stripped naked, being subjected to water being poured over him, or to having his genitals interfered with so that he would become aroused and then beaten, and the second-named respondent said that the applicant had made no mention of these aspects of his torture to the SPIRASI examiner (noting that the assessment took 2 ½ hours). The SPIRASI report also notes the existence of non-latrogenic scars allegedly caused by the actions of the Niger authorities. It was found that these scars were consistent with injury in the manner alleged over many other possibilities

and the report concluded that the evidence of having been injected with an unknown substance is an adequate explanation for the renal failure and hepatitis B and that a physical examination was highly consistent with the stories told and the applicant remains a very ill man in need of care.

Analysis of the applicant's claim
36. The second-named respondent said that she found the applicant's account to be lacking in credibility for the reasons that had been identified in the interviews. She did not find the applicant's attempt to role back on previous evidence and previous denials at hearing to be truthful. She dealt with the various travels by the applicant to the United Kingdom and to the Netherlands and noted that whenever there was a problem the applicant claimed that perhaps the interpreter did not understand him but there had never been any complaint about the interpreter and the applicant had signed the bottom of every sheet of the interview notes when read back to him.

37. The second-named respondent found it strange that if this group is as widespread as the applicant claims it was, there would be absolutely no record of it at all in any country of origin information. He said she did not believe there was such group and that if it did have contact with the agencies claimed it did there would be reference to it.

38. The second-named respondent held that that she was not willing to accept that the applicant was tortured in the manner he alleged he was for the reason he alleged he was. She says it was possible the applicant received the ill-treatment that he did however she wanted to point out the implausibility. She states,

> "the Applicant claims that he was beaten every day and that the authorities injected him regularly with a disease so that he would die from the disease and that no one would ever find out that he had been beaten to death, however this makes no sense whatsoever. The Applicant is now claiming there are marks all over his body which show that he was beaten and that if this was indeed the case, then this would in any event have been evident. The SPIRASI report refers to many scars, the cause of which was dialysis and surgery and others consistent with latrogenic procedures."

She also queried how someone who was regularly injected with an infectious disease did not show signs of it prior to leaving prison. If the applicant was indeed being injected from the very beginning with such an infectious disease, she queried why he did not require medical attention while in detention. She said she noted the SPIRASI report referred to a series of letters or documents, all of which have not been provided to the Tribunal. The SPIRASI report does not detract from the negative credibility findings and she then indicated that going from an objective viewpoint, she can certainly conclude that the applicant would probably die if he returned to Niger, as the level of medical care that he has benefited from her will likely not be available to him in Niger but she said that this was a matter for another Tribunal and she affirmed the recommendation of the Refugee Applications Commissioner made in accordance with s. 13 of the Act.

Submissions on behalf of the applicant
39. Michael Lynn S.C. (with Paul O'Shea B.L.) opened the applicant's submissions by stating what he described as a well-established principle of refugee law:

> "untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case."

This is an extract from para. 199 of the UNHCR Handbook on procedures and criteria for determining refugee status.

40. Counsel on behalf of the applicant accepted that a number of adverse credibility findings were made against the applicant by the Refugee Appeals Tribunal which are not susceptible to challenging judicial review. However a SPIRASI report provided important evidential support for his account of past persecution. He submitted that the report was not addressed by the Tribunal in a fair and lawful manner. He said in general that the applicant's appeal was refused on the basis of a general negative assessment of his credibility. This assessment was based on a number of adverse credibility inferences or findings and he said that what was at issue in the proceedings was (a) the failure of the Tribunal to apply and weigh in a lawful manner the supporting SPIRASI report which was submitted in the course of the applicant's appeal and which had a bearing on the issue of the credibility of his account of past persecution and (b) as a consequence of the failure of the Tribunal to make a fair assessment of whether the applicant had been subjected to past persecution such as to warrant a granting of his appeal pursuant to Regulation 5 (2) of S.I. 518 (2006). Mr. Lynn cited the quotation in the conclusion of the SPIRASI report:

> "It is my opinion that the physical examination was highly consistent with the story told. His limited musculoskeletal function and gave a consistent degree of evidence that his general body was punished as described. He described very haphazard injecting of poison into his body by a person with no medical orientation. That is adequate explanation for both the renal failure and the hepatitis B. The heart disease may or may not be an independent factor; any comment on mitral valve disease and torture is outside my area of competence. It is of course very clear that I.M. remains a very ill man and is in need of medical care beyond what is reasonable to expect the country of Niger to provide him.
>
> It is also my opinion that the mental health assessment was also highly consistent with the story told. Mr. M. declared innocence and perplexity in respect of his misfortune and described a mental profile of posttraumatic stress disorder. The items are listed above. Mood dysfunction is a well-recognised feature of PTSD as is interference with cognition. It is my view that the critical physical illness may have blurred the PTSD profile in Mr. M.'s case but the BDI score of 41 testified to the severity of his depressed mood. Chemical treatment of his moods has been rendered difficult by his medical state and will remain under review by his experts."

41. Mr. Lynn describes the Tribunal's dealing with the SPIRASI report as terse, and he stated that no reasons were given as to the basis for holding that the SPIRASI report "does not distract from the negative credibility findings." He also complained that no or no cogent assessment was made of the independent expert evidence based on a clinical examination of the applicant as both his physical condition and his mental state were highly consistent with his account of persecution.

42. There was independent expert evidence before the Tribunal which was strongly corroborative of the applicant's account of past persecution yet the Tribunal dismissed the SPIRASI report as in effect having no influence on the negative credibility findings already made by the Tribunal. Counsel complained there were no reasons given for this dismissal of the SPIRASI report. Reference was made to letters or documents being referred to in the SPIRASI report which the Tribunal remarked were not forwarded to the Tribunal. Counsel criticised the second-named respondent for not seeking the document if any finding was to be made on that basis. Mr. Lynn referred to jurisprudence starting in April 2007 and finishing in July 2015 where a Tribunal's failure to have sufficient regard for medical evidence with a direct bearing on the applicant's case and/or its failure to provide a cogent reason for such medical evidence renders

the Tribunal decision unlawful. He referred in particular to A.M.N. v. the Refugee Appeals Tribunal, a decision of McDermott J. on the 3rd August, 2012. It was a case similar to this case as there were negative credibility findings. He also cited the decision of *Stewart J. in A.T. (DRC) v. the Minister for Justice & Equality* [The High Court, 23rd July 2015].

Submissions on behalf of the respondents
43. Ms. Ann Harnett O'Connor B.L. made a submission that Article 5 (2) of the 2006 Regulations provides as follows:

> "The fact that a protection applicant has already been subjected to persecution or serious harm or to direct threats of such persecution or such harm shall be regarded as a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated for compelling reasons arising out of previous prosecution or serious harm, though, may never the less warrant a determination that the applicant is eligible for protection."

44. She stated that where in this case, Article 5 (2) becomes operational and where compelling reasons are proffered in such circumstances, there would appear to be an onus on the decision maker to consider whether the reasons are so compelling as to warrant a determination that the applicant should be given the protection of this state, either as a refugee or by way of subsidiary protection.

45. Ms. Harnett O'Connor submitted the Tribunal did not believe the applicant and such past persecution was not accepted as having occurred and quoted from *N.B. v. the Minister for Justice Equality & Law Reform,* a decision of Faherty J. [2015] IEHC 267.

46. Counsel submitted that the second-named respondent did indeed assess the applicant's evidence of suffering persecution and determined that there were too many holes in the applicant's evidence of suffering persecution and determined that there were too many holes in the applicant's evidence for her to apply the benefit of the doubt.

47. She also submitted that the second-named respondent clearly had regard to the SPIRASI report. There was evidence that the applicant had scaring on his body, the most prominent of this being, according to the SPIRASI report submitted in September 2012 and based on a medical examination in April 2010, latrogenic. The remaining scars were considered by the author of the SPIRASI report to be consistent both the history of repeated beatings and with many other possibilities. The categorisation of a scar as consistent is at the lower end of the Istanbul Protocol. Paragraph 187 (b) of the Protocol defines its meaning as:

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

48. She submitted that the SPIRASI report is internally inconsistent as the author goes on to state that the events that the applicant describes satisfy the Istanbul criteria of torture, and then states that the physical examination was highly consistent with the story told, which is not consistent with the finding in regard to the scarring. Dr. Ennis then goes on to say that the applicant's musculoskeletal function and gave a consistent degree of evidence that his body was punished as described and that the very haphazard injection of poison into his body as described by the applicant was adequate as an explanation for both the renal failure and the hebatitis B. Neither of the latter descriptions nor the earlier one is equivalent to a finding of "highly consistent". It was clear from the report of the second-named respondent that the SPIRASI report was considered and that she came to the conclusion that it did not detract from the negative credibility findings made by her. She quoted the decision of Stewart J. in *A.G.G.R.C. v. the Minister for Justice & Ors.* [previously cited]. The court found there was no evidence from the decision of the Tribunal in that case that the SPIRASI report and its contents had been engaged with. These cases, counsel submitted, required that the Tribunal deal with or engage with and refer to the medical report and state why the Tribunal does not accept the report. In the instant case, she argued that the Tribunal has done so and that the requirement is not that the Tribunal should take each and every finding in the report and negate it.

Discussion
49. The only issue in relation to this case is how the second-named respondent dealt with the findings of Dr. Kieran Ennis provided in the SPIRASI report. Dr. Ennis first of all lists documents used in compiling the report. It would have been more helpful for the solicitor who acted for I.M. to submit all of the documents which Dr. Ennis used in compiling the report and in particular the letter from Professor Conlon and the letters from Beaumont Hospital, and a letter from Dr. Keane to Dr. Ennis dated the 23rd August 2007. If any of those documents are in the possession of the solicitor for the applicant these should have been forwarded to the second-named respondent. However the second named respondent could have sought this documentation but failed to do so.

50. The second-named respondent said in her ruling that she was not willing to accept that the applicant was tortured in the manner he alleged he was for the reasons he alleged. She points out that the applicant claimed that he was beaten every day and that the authorities injected him regularly with the disease so that he would die from the disease. She referred to the SPIRASI report referring to many scars the cause of which was dialysis and surgery and others consistent with latrogenic procedures. However the SPIRASI report also lists some scars and injuries and Dr. Ennis indicated that this was consistent with both the history of repeated beatings and many other possibilities. The second-named respondent does not refer to these aspects of the report of Dr. Ennis. Rather that she does query as somebody who has regularly injected with the disease did not show signs of it prior to leaving prison. However the reality from the point of view of the evidence was that within three or four days of leaving the prison the applicant had arrived in Ireland and was admitted to hospital.

51. There have been a substantial number of authorities in relation to the obligation of how SPIRASI reports ought to be treated by the Refugee Applications Tribunal. In *G.L.A. v. the Minister for Justice Equality & Law Reform & Anor*. [2013] IEHC 84 MacEochaidh J. reviewed many of the decisions starting off with the decision of McMenamin J. in *Kahzadi v. the Minister for Justice Equality & Law Reform* [unreported, 2nd May 2006]. This was an application for leave, and a substantive hearing in this case was decided by Gilligan J. on the 19th April, 2007 when Gilligan J. quashed the decision and said:

> *"Now, I take the view in the circumstances that arise that the Tribunal Member in considering any assessment of the Applicant's credibility was required to consider, as part of his deliberations, the medical evidence in total that was before him and was obliged as part of a rational analysis to explain having considered the medical evidence along with the other evidence that was before him why in the view of the Tribunal Member the Applicant was not telling the truth and his credibility was undermined."*

He continued:

> *"My overall conclusion is that the medical evidence that was before the Tribunal Member should have been considered, weighed in the balance and a rational explanation given as to why it was being rejected in circumstances where the Tribunal Member was making a finding that the Applicant was not credible."*

He referred to a decision to which this court was directed to, *A.M.N. v. the Refugee Appeals Commissioner* [2012] IEHC 393, a decision of McDermott J. In this case the SPIRASI report stated that the conditions were consistent with the history given the prison condition described in that case. It also deals with lacerations which were consistent with the history. The doctor in question concluded that the findings of the physical examination were "overall consistent to highly consistent with the history" and she also assessed the state of the applicant's mental health. MacDermott J. dealt with Istanbul Protocol in which "consistent with" is described as: *"the lesion could have been caused by the trauma described but it is non-specific and there are many other possible causes"* and "highly consistent" he describes as: *"the lesion could have been caused by the trauma described and there are few other possible causes."*

MacDermott J., in discussing the issue, stated that:

> *"However, while medical reports are rarely capable of providing clear corroboration of a claim, it is well recognised that there are occasions when examining physicians report on objective findings and use phrases which attach a high probative value to those findings."*

52. Counsel for the respondents stated that as in the A.M.N. case, there was a confusion within Dr. Ennis's report as to what was "consistent" and "highly consistent". However this issue was not dealt with by the Tribunal member and in particular the Tribunal member did not refer to dealing with the mental health assessment which he says is highly consistent with the story told and he also refers to a physical examination which is highly consistent with the story told.

Decision
53. This Court is satisfied that the law is set out in A.M.N. [previously cited] and G.L.A. [previously cited]. The Court concludes that the second-named respondent had erred in law in failing to describe what significance was attached to the medical report and if significance was attached to it, why it was discounted.

54. This Court also finds that it was open to the second-named respondent to seek from the solicitors the documents which Dr. Ennis had apart from the documents relevant to the application for refugee status.

55. As this is a telescoped hearing for leave to apply for *certiorari*, I will grant the leave application and make an order quashing the decision of the second-named respondent and direct that the appeal of the applicant be dealt with by a separate member of the Refugee Appeals Tribunal.

56. I would also make a recommendation that the solicitors for the applicant provide all the medical reports and letters to the Refugee Appeals Tribunal.