# THE HIGH COURT

## JUDICIAL REVIEW

**[2023] IEHC 53**

**[Record No. 2021/1040JR]**

**IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT, 2000, AS AMENDED**

**BETWEEN:**

**A.S.**

**APPLICANT**

**AND**

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE**

**RESPONDENTS**

**JUDGMENT OF Ms. Justice Siobhán Phelan, delivered on the 2nd day of February, 2023**

### INTRODUCTION

**1.** These proceedings turn on the net issue of whether the First Respondent failed to properly weigh and consider a SPIRASI medical report submitted in evidence on behalf of the Applicant in arriving at the Decision on appeal that the Applicant's claim for international protection lacked credibility.

### BACKGROUND

**2.** The Applicant is a young Muslim man of Temne ethnicity from Sierra Leone. He made a claim for international protection in February, 2019 on the basis that if returned to Sierra Leone, he would face persecution and/or suffer serious harm. The Applicant states that he was a prominent youth leader in the All People's Congress [hereinafter the "APC"] party and was intimidated and tortured both before and after the national elections in Sierra Leone in or about

March, 2018. He claims that in February, 2018 he and his father, both known locally for their political involvement with the APC, were targeted by members of the rival Sierra Leone People's Party [hereinafter the "SLPP"] who ransacked their family home, abducting both father and son and subjecting them to torture, releasing the Applicant's father after one day. The Applicant claims that he kept a mobile phone concealed on his person throughout this time and managed to escape on the second day by breaking down a door which was not in good condition.

**3.** As a result of the events in February, 2018, the Applicant claims that he spent a significant period of time in hiding at an aunt's house for fear of further persecution. In December, 2018 he came out of hiding to attend a political demonstration with his APC colleagues. He claims that the demonstrators were assaulted and beaten by a mob of SLPP supporters at this political demonstration. He claims that he sustained fractures in the ring fingers of both hands during this violent assault, in which other friends and family members were abducted.

**4.** Following the demonstration, the Applicant claims that he was forced back into hiding and learned from radio reports that friends and family members were subjected to a ritualistic induction to a secretive West African Society known as the Poro Society.

**5.** The Applicant refers to the subsequent death of his father which he believes was caused by the trauma and injury inflicted upon him when he was abducted in February, 2018 and he submits his father's death certificate in evidence. The death certificate records the cause of death as hyperextension and a cerebrovascular accident.

**PROTECTION APPLICATION**

**6.** Following his application for international protection in the State in February, 2019, the Applicant's claim was assessed pursuant to the International Protection Act, 2015 [hereinafter "the 2015 Act"]. His application was refused at first instance by the International Protection Office [hereinafter "the IPO"].

**7.** In the report prepared pursuant to s. 39 of the 2015 Act, the IPO noted that it had been put to the Applicant that had he been tortured in the manner in which he claimed to have been,

he would have had more injuries than bruises to his arms. The IPO considered that the Applicant's account of the beatings he had endured and the resultant injuries did not appear to be credible as the injuries he claimed to have sustained were limited to cuts and bruises to his forearms even though the beating described had been vicious wherein the Applicant claims to have been kicked and slapped in the face by twenty men. The IPO concluded with regard to the claimed abduction in February, 2018 as follows:

> *"When the Applicant's explanation in relation to the place he was allegedly taken to by his captors, the timing of same, his description of the beatings and resultant injuries, his escape and his mobile phone are all considered together when analyzing this material fact, the account of his abduction, torture and escape is not found to be credible and is rejected on the balance of probabilities."*

**8.** The Applicant's claim to have been involved in a demonstration in December, 2018 was also found to be lacking in credibility by the IPO following analysis.

**9.** Further, it was not accepted that the Applicant's father died as a result of his ordeal when abducted, particularly as his death certificate identified natural causes of death indicating that the Applicant's father died as a result of a stroke due to underlying health conditions.

**10.** The Applicant lodged an appeal against the decision of the IPO to refuse to recommend protection to the First Respondent and submitted medical evidence in the form of a SPIRASI report dated the 20th of May, 2021 in support of that appeal.

**11.** The appeal was declined following an oral hearing by decision dated the 9th of November, 2021. It is the decision to refuse the appeal that is the subject of challenge in these proceedings.

## THE ISTANBUL PROTOCOL AND TRIBUNAL GUIDELINES IN RELATION TO MEDICO-LEGAL REPORTS

**12.** The Istanbul Protocol Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (United Nations, 2004) is published by the Office of United Nations High Commissioner for Human Rights ("UNHCR")

and is recognised as setting the international standard of investigating and documenting torture. Paragraph 187 of the Istanbul Protocol provides:

> *"The following discussion is not meant to be an exhaustive discussion of all forms of torture, but it is intended to describe in more detail the medical aspects of many of the more common forms of torture. For each lesion and for the overall pattern of lesions, the physician should indicate the degree of consistency between it and the attribution given by the patient. The following terms are generally used:*
> *(a) Not consistent: the lesion could not have been caused by the trauma described;*
> *(b) Consistent with: the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes;*
> *(c) Highly consistent: the lesion could have been caused by the trauma described, and there are few other possible causes;*
> *(d) Typical of this is an appearance that is usually found with this type of trauma, but there are other possible causes;*
> *(e) Diagnostic of this appearance could not have been caused in any way other than that described."*

**13.** Under the framework of the Istanbul Protocol causation is expressed in terms of consistency rather than judicial standards of proof (e.g. "*more likely than not*" or "*beyond a reasonable doubt*") to avoid the conflation of clinical opinions with judicial determinations. Clinicians routinely consider the cause of the symptoms of their patients. In the case of medico-legal evaluations of torture or ill-treatment, clinicians have the necessary knowledge and experience to formulate an opinion on the possibility of whether the clinical findings that they observe were caused by the infliction of the severe physical and/or mental pain or suffering alleged. The Protocol goes on to state (para.??):

> *"Ultimately, it is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important in assessing the torture story..."*

**14.** The First Respondent has produced the International Protection Appeals Tribunal (IPAT) Guideline No. 2017/6: Medico-legal Reports pursuant to s. 63(2) of the 2015 Act [hereinafter "the Guidelines"]. The Guidelines are described as being informed by the Istanbul

Protocol, the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, the International Association of Refugee Law Judges' Guidelines on the Judicial Approach to Expert Medical Evidence, case law and international best practice and are intended to assist in the proper consideration of medico-legal reports.

**15.** At paragraph 4.1 of the Guidelines, it is stated that the purpose of medico legal reports is:

> *"Expert medical evidence serves the following purposes in refugee status determinations:*
>
> - *To substantiate claims of ill-treatment;*
> - *To establish a correlation between physical and psychological injuries and the alleged Torture or ill-treatment;*
> - *To reduce the need for the Appellant to give testimony about traumatic events;*
> - *To address the possible effect of removal and return of the county of original upon a person's physical or mental well-being;*
> - *To explain an Appellant's difficulties in giving evidence or recounting events by providing possible explanations for inconsistencies within the Appellant's narrative o events and by providing possible explanations for reticence or reluctance in divulging a full account of events."*

**16.** The Guidelines explain that the Istanbul Protocol sets out the hierarchy of terms to be used by the medical practitioner in reporting on the consistency of physical and psychological findings with the asserted history of torture or ill-treatment (para. 5.3) and adopts those terms.

**17.** As regards visible injuries the Guidelines reproduce the terms generally used as follows (para. 5.4):

> *"• Not-consistent: the lesion could not have been cause by the trauma described,*
>
> *• Consistent with: the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes.*
>
> *• Highly consistent: the lesion could have been cause by the trauma described, and there are many other possible causes.*

*• Typical of: this is an appearance that is usually found with this type of trauma, but there are other possible causes.*

*• Diagnostic of: this appearance could not have been caused in any other than that described."*

**18.** The Guidelines go on to deal with the consideration of medico-legal reports providing at para. 6.2 to 6.5:

*"[6.2] A finding in a Medico-Legal Report that the injury, either visible or non-visible, exists shall, subject to paragraph [6.8], satisfy the required standard of proof as to the existence of that injury.*

*[6.3] A finding that the lesions are "highly consistent" with, "typical of" or "diagnostic of" the Appellant's asserted history will usually satisfy the required standard of proof that the lesion was caused by the trauma described.*

*[6.4] While the primary role of the Medico-Legal Report is to substantiate claims of ill-treatment by reporting on the consistency of injuries presented with the Appellant's asserted history, the Medico-Legal Report may also have a role as part of the credibility assessment.*

*[6.5] A finding of 'consistency' in accordance with the Istanbul Protocol may have evidential value, and such a finding, as opposed to a finding of "highly consistent" with, "typical of" or "diagnostic of", should not be rejected as having no evidential value."*

**19.** It is clear from the foregoing that it is generally accepted by the First Respondent that a medico-legal report may be relevant both to the substantiation of a claim of ill-treatment and as part of the credibility assessment and findings attract varying evidential value for these purposes depending on the nature and strength of the finding. The fact that the findings in this case were "*consistent*" as opposed to "*highly consistent*", "*typical of*" or "*diagnostic of*" was considered significant in arguments advanced on behalf of the Respondents in these proceedings, albeit that the Guidelines recognise that findings of "*consistent*" may have some evidential value also, both for the purpose of substantiating a claim of ill-treatment and as part of the credibility assessment.

**THE SPIRASI REPORT**

**20.** SPIRASI is the Irish Centre for the Care of Survivors of Torture. The SPIRASI Report was completed by a GP who has been working with SPIRASI since October, 2020. As set out in the Report, he had received training in the examination of asylum seekers and in the preparation of medico-legal reports for the purpose of his work with SPIRASI.

**21.** The Report recites the documents used in its compilation which include, *inter alia*, the Istanbul Protocol Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (United Nations, 2004), Guidelines for the Examination of Survivors of Torture (D. Forrest, F. Hutton for the Medical Foundation for the Care of Victims of Torture, UK 2000) and Medico-Legal Reports, Guideline 2017/6 (International Protection Appeals Tribunal, 2017). The Report also states that the terminology and hierarchy of terms used in the report in relation to physical findings is in accordance with the Istanbul Protocol (Para. 187, Section D. of the Protocol) and reproduces that terminology.

**22.** In this case the Report prepared with reference to the Istanbul Protocol by the SPIRASI doctor records some of the relevant parts of the history given by the Applicant. In an opening summary of the circumstances pertaining to the asylum claim, it is recorded:

> *"He has physical injuries and scars that are consistent with his account of trauma. He has psychological symptoms of Generalized Anxiety Disorder that are in keeping with his account of trauma."*

**23.** The Report goes on to record in some detail, supported by photographs, the SPIRASI doctor's physical findings which are recorded as follows:

> *"There is noticeable swelling and restricted movement of the proximal interphalangeal joints (IP joint; middle knuckle in layman's terms) on examination. This is more pronounced on the right than on the left. These lesions are demonstrated in photographs 1-3. There is noticeable malalignment of the ring fingers when [name] makes a fist and again this is more pronounced on the right than on the left. The strength and sensation of both ring fingers is normal."*

**24.** An X-Ray report dated the 30th of January, 2020 is recorded as showing:

*"There is ankylosis of the PIP joint of the right finger. The left ring finger appears unremarkable…."*

**25.** Referring to this finding, the SPIRASI doctor reports:

*"The finding of ankylosis (stiffening) of the right ring finger is in keeping with clinical examination, however it should be noted that radiological findings do not always correlate exactly with clinical findings and so the absence of any positive X-Ray findings in the left ring finger does not preclude a milder injury to that digit."*

**26.** He continues:

*"[Name] attributes his finger injuries to being attacked with a metal stick during a demonstration as outlined [above]. He recalls putting his hands up to protect his head and then being struck across both hands with a metal stick and feeling a "crack". If hit with sufficient force by a metal object, the ring fingers may have fractured. As part of the natural healing process and bone remodelling, this could plausibly lead to swelling and stiffening of the bone and knuckle, particularly if it was not treated by a medical professional at the time of the injury. This would be true of any significant blunt force trauma sustained to the hands or fingers. Therefore I find that the injuries sustained to [name]'s ring fingers are consistent with the account given, as outlined in the IP [Istanbul Protocol] paragraph 187(b)."*

**27.** Physical examination also disclosed lesions on the Applicant's forearms. Having considered the Forrest Guidelines under the heading "*Scars from Torture*" and the Istanbul Protocol (para. 189) also relating to scarring, the SPIRASI doctor states:

*".....I find that these lesions are consistent with the account given, in that they could have been caused by the trauma described, but they are non-specific scars on exposed parts of the body, so there are other possible causes including accidental injuries. It is important to consider that all the above lesions in their entirety and in the context of the account given of the physical trauma. As stated in the [Istanbul Protocol], paragraph 188, ultimately it is the overall evaluation of all lesions and not the*

*consistency of each lesion with a particular form of torture that is important in assessing the torture story. In my opinion, the above physical findings of finger injuries and scars are consistent with the account of torture given by [name]."*

**28.** From a psychological perspective, the SPIRASI doctor did not consider all diagnostic criteria for PTSD to be present at the time of the Applicant's attendance with him but instead concluded that the Applicant had psychological symptoms that include anxiety, flashbacks and poor sleep, that are consistent with Generalized Anxiety Disorder, and are in keeping with his account of trauma.

**29.** In conclusion, the SPIRASI doctor states:

*"[Name] is a 20 year old male from Sierra Leone who recounted to me how he was abducted by supporters of an opposition political party and detained for 2 days and subjected to numerous beatings. He also recounted being physically assaulted on another occasion by the same opposition party supporters, while he attended a demonstration. He has physical injuries and scars that are consistent with his account of trauma. He has psychological symptoms consistent with Generalized Anxiety Disorder, in keeping with his account of trauma."*

**DECISION SOUGHT TO BE IMPUGNED**

**30.** The Decision which the Applicant seeks to impugn is detailed and runs to 36 pages.

**31.** The SPIRASI Report is referenced in four places in the Decision. It is first referenced at paragraph 2.2 as one of the documents considered by the First Respondent.

**32.** The next reference appears at paragraph 4.3.22 of the Decision where the First Respondent mentions, *inter alia*, the SPIRASI Report and states:

*"By way of documentation, the Appellant has submitted newspaper articles and medical documentation in respect of his injuries. However, the Spirasi report only indicates that his physical presentation is consistent with his claim; on the Istanbul*

*protocol, that is the lowest positive level and of the least probative value. It only means that the injuries could have been caused in the manner claimed, but that there are numerous other possible causes. His presentation and reported symptoms, both physical and mental, in that report are based on the claim as reported by the Appellant. If his claim is not otherwise credible, the conclusions reached in the Spirasi report, on the basis of those claimed events, cannot be seen as reliable."*

**33.** In the next part of the impugned Decision the First Respondent addresses sequentially the separate elements of the Applicant's narrative claim relating to the alleged abduction, ill-treatment and escape from captivity in February, 2018. The approach of the First Respondent in this exercise is detailed and forensic. The First Respondent refrains from making adverse findings in respect of several elements of the claim on the basis, *inter alia*, that the position is "*uncertain*" and is dependent on the assessment of the Applicant's general credibility.

**34.** At paragraph 4.3.26 a third reference is made to the SPIRASI Report in respect of the February, 2018 abduction as follows:

*"As such, at this stage, and in light of the plausibility and other credibility issues arising, the best that can be said is that this aspect of the Appellant's claim is uncertain and dependent on the Appellant's general credibility and the potential application of the benefit of the doubt. While the Spirasi report notes that the Appellant's condition is consistent with his claim, in the event that this general credibility is not established, the conclusions reached in that report cannot be relied upon, where they are based on the Appellant's own reported claim."*

**35.** The First Respondent then proceeds to consider the Applicant's claimed participation in a demonstration in December, 2018 at which he claims he was beaten. Again, the First Respondent addresses sequentially the Applicant's narrative claim relating to the alleged events and the reliability of newspaper reports submitted by him in support of his account. The approach of the First Respondent in this exercise is again detailed and forensic. As before, the First Respondent refrains from making adverse findings on the basis that the position is "*uncertain*" and is dependent on the assessment of the Applicant's general credibility. This may be a reference to findings which might benefit from a relaxed evidential requirement under

s. 28(7) of the 2015 Act (or otherwise the "*benefit of the doubt*") where general credibility is established.

**36.** Although otherwise very thorough, no reference is made to the findings in the SPIRASI Report in the analysis exercise conducted by the First Respondent, even in considering the torture and ill-treatment which the Applicant claims he was subjected to on two separate occasions in 2018.

**37.** At paragraph 4.3.51 of the impugned Decision, no less than 7 items are listed and detailed that were found to have undermined the Applicant's credibility as regards his narrative and therefore his "*general credibility*". As the First Respondent has pointed out no issue is taken in the present proceedings with any of these credibility findings. Several of the items listed as undermining of general credibility, however, are also treated as leading to a finding of "*uncertain*" earlier on in the Decision with regard to the substantive claim advanced. Reference is separately made to potential credibility issues which arise (but are not cited as determinative) including an issue arising from the lack of serious injuries following the assault in February, 2018 but no reference is made in this regard to physical findings recorded in the SPIRASI Report.

**38.** At paragraph 4.3.60 of the Decision, the First Respondent refers for a final time to the SPIRASI Report and states:

> *"It may have been appropriate to overlook issues such as those* [in the preceding paragraphs] *had the Appellant's general credibility been otherwise established and the Tribunal merely mentions them as the kinds of matters that could possibly be overlooked in an appropriate case. However, in light of the number and nature of inconsistencies identified above, assessing credibility in the round and with regard to all the documentation and evidence submitted, it is not appropriate to find that the Appellant's general credibility has been established in this case. Given the conclusions in the Spirasi report are dependent on the Applicant's own reported symptoms and condition, it does not aid his credibility. As such, the Appellant cannot be afforded the benefit of the doubt in respect of the uncertain aspects of his claim."*

**39.** No detail of the actual findings contained in the SPIRASI Report in respect of the physical and psychological injuries found to be present by the SPIRASI doctor appears in the Decision and the First Respondent did not engage in any substantive manner with the contents of the Report when considering whether the complaints of abuse on the two separate occasions in 2018 were substantiated.

**GROUNDS OF CHALLENGE**

**40.** In the written legal submissions submitted on behalf of the Applicant this application for judicial review is described as being *"based solely upon the manner in which the medical evidence was considered by the first Respondent. In short, the Applicant says that the medical evidence, being an expert report, was of probative value and was required to be considered as part of the assessment of the claim in the round"*. It is complained that the First Respondent compartmentalizes the medical report and does not consider its probative value in establishing both the Applicant's claim to have been subjected to torture or ill-treatment and in assessing his credibility.

**41.** In response, the Respondents contend that the medical report of the 20th May, 2021, was taken into account in the text of the Decision of the 9th November, 2021. The Respondents rely on the overall structure of the impugned Decision in which the First Respondent analyses the overall credibility of the Applicant's claim in its component parts by addressing these component parts sequentially in the light of his own narrative and its internal coherence and refers to the SPIRASI Report in the context of that analysis which the Respondents contend shows that proper regard was had to that report.

**42.** Although the Respondents further argue in reliance on the decision of the Supreme Court in *Meadows v Minister for Justice & Ors* [2010] IESC 3, the Supreme Court and the touchstone decision in *Keegan v Stardust Tribunal* [1986] IR 642, that the conclusion reached is one which was open to the Tribunal on the evidence before it and having regard to the matters which it is bound to take into consideration, no rationality challenge has been made in this case and the overall reasonableness of the impugned decision is not before me in these proceedings.

**DISCUSSION AND DECISION**

**43.** Section 28 of the 2015 Act requires the First Respondent to assess the facts and circumstances of claims for international protection. Under that provision, the First Respondent is required to consider, *inter alia,* all documentation presented on behalf of the claimant including documentation which relates to whether the claimant has been subject to persecution or serious harm (s. 28(4)(b)) and the general credibility of the claimant (s. 28(4)(f)). The case made on behalf of the Applicant in these proceedings is that the SPIRASI Report ought to have been considered as evidence in the case in assessing the claim that the Applicant was subjected to torture or ill-treatment and determining the credibility of the Applicant's narrative in this regard. It is contended that in the manner in which the impugned Decision is expressed, it appears that the medico-legal evidence was discounted as being dependent on the history as given by the Applicant and as not being reliable because the claim was not otherwise believed for the reasons set out in the Decision. It is contended that the obligation on the First Respondent was to weigh all of the evidence, including the SPIRASI Report before arriving at conclusions as to the credibility of the Applicant's narrative.

**44.** The Respondents emphasised in submissions that when it comes to the consideration of medical reports, it must be borne in mind that it is the Tribunal that is tasked with making the decision regarding the Applicant's claim for protection and the outcome is not determined by a medical examiner. However, it is no part of the case made on behalf of the Applicant that the medico-legal evidence is dispositive. The case made is simply that it is relevant and ought to be considered in the mix of all of the evidence before conclusions are reached and it is contended that this has not occurred.

**45.** It is further contended on behalf of the Respondents, however, that it is clear from the terms of the Decision that the Tribunal considered the report. I am referred to the fact that the First Respondent mentions both the physical and mental aspects of the Applicant's situation as contained in that report, albeit without identifying what these were. It is argued that the Tribunal also correctly identifies the probative value that could be ascribed to the consistency between narrative and injuries. It is contended that the Tribunal proceeded properly in arriving at findings in relation to the narrative given before then turning to conclude that the medical report does not outweigh the otherwise incredible aspects of the narrative in this case.

**46.** Helpfully, the parties are largely agreed on the legal principles which apply. The submissions of the parties identify a host of relevant authorities as including *Khazadi v Minister*

*for Justice* (Unreported, High Court,19th April 2007; *J.M. (Cameroon) v The Minister for Justice, Equality and Law Reform* (Clark J., unreported, 16 September 2013*), R.A. v (Uganda) v RAT* [2014] IEHC 552; *M.M. v Refugee Appeals Tribunal* [2015] IEHC 158; *R.O. (an infant) v Minister for Justice, Equality and Law Reform* [2012] IEHC 573, [2015] 4 I.R. 200; *A.M.C. (Mozambique v. Refugee Appeals Tribunal (No. 1)* [2018] IEHC 133; *A.M.C. (Mozambique v. Refugee Appeals Tribunal (No. 2)* [2018] IEHC 431; *R.S. (Ukraine) v IPAT* (No.2) [2018] IEHC 512; *R.S. (Ukraine) v IPAT* (No.2) [2018] IEHC 743; *J.U.O. (Nigeria) v IPAT and ors.* (No. 2) [2019] IEHC 26; *J.U.O. (Nigeria) v. International Protection Appeals Tribunal* [2018] IEHC 710; *A.M.C. (Mozambique v. Refugee Appeals Tribunal (No. 1)* [2018] IEHC 133; *AMN v RAT* [2012] IEHC 393; *Meadows v Minister for Justice & Ors* [2010] IESC 3; *Keegan v Stardust Tribunal* [1986] IR 642; *M.Z. (Pakistan) v IPAT & ors.* [2019] IEHC 125; *H.A.A. [Sudan] Refugee Appeals Tribunal & ors.* [2015] IEHC 144; *R.S. (Sri Lanka) v Minister for Justice and Equality & RAT* [2016] IEHC 550; *C.M. v. International Protection Appeals Tribunal* [2018] IEHC 35; *A.M.C. (Mozambique v. Refugee Appeals Tribunal (No. 1)* [2018] IEHC 133; *R.S. (Ukraine) v. International Protection Appeals Tribunal (No. 1)* [2018] IEHC 512; *J.U.O. (Nigeria) v. International Protection Appeals Tribunal* [2018] IEHC 710; *AMN v RAT* [2012] IEHC 393; They part company, however, as to the conclusion I should arrive at on an application of the principles developed in these authorities. In terms of the application of established principles, much turns on whether I accept that the First Respondent did not consider the medico-legal evidence in arriving at findings on the basis that it was only of probative value if it were determined that the claim made was otherwise credible (as the Applicant contends) or whether I conclude instead that the terms of the Decision show that the medico-legal report was in fact weighed but was not considered probative because of the low level finding of "*consistent*" made.

**47.** The parties agree that it is for the Tribunal and not this Court to weigh the evidence including the medical evidence. It is further agreed that evidence comprised in medical reports is but another part of the evidence which the Tribunal should consider together with the other evidence in the case. In his judgment in *MZ (Pakistan) v IPAT &Ors.* [2019] IEHC 125 Humphreys J., considering an issue in relation to the consideration of a SPIRASI report, states (at para. 14):

> *"Overall it is a matter for the tribunal to weigh the evidence. The applicant's submission alleges that there was an 'improper rejection' of the medico-legal report*

*(see para. 30), but this conflates failure to find for the applicant with impropriety. A tribunal member is not obliged to find for an applicant simply because the applicant presents a medical report. That would delegate decision-making to the applicant's doctor. It is, of course, different if the injury is diagnostic of the applicant's account; but if the medical report indicates that the applicant's account is merely probable or that the injury is merely consistent with it, then that only provides some support, and the tribunal is entitled to consider that any such support is outweighed by other evidence in particular circumstances, having considered all matters fairly in the round."*

**48.** As made clear in the above extract, the Tribunal defers to a medical opinion only in relation to diagnostic matters which require medical expertise. None of the parties in this case demur from this statement of principle.

**49.** In the *MZ (Pakistan)* case the Court then goes on to list a number of decisions in this area and says of these decisions that (para. 16):

*"....The bottom line is that, leaving aside a medico-legal report that is diagnostic, a fact-finder is entitled to consider that such support, if any, is given by a report to an applicant's account is outweighed by other evidence, having considered all relevant matters in a fair manner."*

**50.** In *C.M. v. International Protection Appeals Tribunal* [2018] IEHC 35 Humphreys J. states at para. 6 regarding the SPIRASI medical report in that case that:

*"On the core point as to the cause of the assault, the doctor essentially accepted the applicant's story at face value because one cannot objectively verify what an individual patient's nightmares are about. Just because you can find a highly sympathetic doctor to write down what you tell them does not make what you tell them something that a tribunal has to accept. Mr. de Blacam submits that on the evidence of the report it would be irrational to come to any other conclusion. However, it seems to me that the tribunal is entitled to put the report in the balance with all other evidence. The tribunal position was that the IPAT member was not contending that the applicant was not the subject of an assault of the kind described, but that the report did not rule out the*

*possibility of the cause of the injuries being otherwise. There were a number of negative credibility findings, unchallenged as I have noted, and in the circumstances it was considered that submission of the report was not sufficient to override the credibility findings."*

**51.** As the Learned Judge summarised in the preceding paragraph (para. 5) in the judgment:

*"Much reliance was placed by Mr. de Blacam on the SPIRASI report (dated 15th November, 2016) which features in each of the grounds in the statement of grounds. It is not the law that if an applicant comes forward with a SPIRASI report or any medical report he or she is entitled to succeed (see X.X. v. Minister for Justice and Equality [2016] IEHC 377 (Unreported, High Court, 24th June, 2016) at para. 111). Evaluation of the SPIRASI report, as with any evidence, is primarily a matter for the decision-maker."*

**52.** In *A.M.C. (Mozambique v. Refugee Appeals Tribunal (No. 1)* [2018] IEHC 133 Humphreys J said that in balancing the SPIRASI report in that case against the background matrix that (para. 6):

*"It is not necessary for a decision-maker to tediously recite after each hammer blow to the applicant's credibility that she is making a specific finding in relation to each and every sub-matter, outlining the precise contours of such sub-finding. Peart J. said in G.T. v. Minister for Justice Equality and Law Reform [2007] IEHC 287 (Unreported, High Court, 27th July, 2007) that the court should read the decision as a whole rather than parse and analyse it word for word. Similarly, a decision-maker is entitled to take the evidence more broadly and as a whole, and is not under an invariable obligation to parse and analyse each individual micro-element of it piece by piece. Even the High Court does not invariably do that when evaluating the credibility of a particular witness.",*

**53.** As I understand their position it is accepted on behalf of the Applicant that these decisions represent correct statements of the law. The issue as identified on behalf of the Applicant is not that the Tribunal improperly disagreed with or gave insufficient weight to the conclusions set out in a medico-legal report but rather that there has been a failure to weigh the

medical evidence in the mix in making the findings regarding the core claims that the Applicant was subject to physical abuse and that the Applicant's account lacked credibility as recorded in the Decision.

**54.** It further appears to be accepted by both sides and was not disputed before me that there is a requirement to weigh medical evidence in the mix. Indeed, this is by now well-established and the older case-law is summarised in the decision of Faherty J. in *MM v. RAT* [2015] IEHC 158. In her judgment Faherty J. refers to the decision in *Khazadi v. Minister for Justice Equality and Law Reform* (Unreported, High Court, 19th April 2007) where Gilligan J. addressed the manner in which medical evidence should be considered as follows (para. 20):

> *"Now, I take the view in the circumstances that arise that the Tribunal Member is 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. ....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. Where had he conducted his reference to the medical evidence at the right forensic time it is, at least possible that he would have come to a different conclusion. "*

**55.** This approach was also adopted by Clark J. in *R.M.K. v. Refugee Appeals Tribunal* [2010] IEHC 367 where she stated (para. 20):

> *"The appropriate manner of assessment is to consider all facets of the evidence in context and not to come to any conclusion until all available evidence is reviewed. Where an applicant provides a story which might be true and the medical evidence tends to confirm his story then it is axiomatic that an overall assessment of the evidence should weigh in his favour. The difficulty however is when, notwithstanding very compelling and supportive medical reports which outline objective findings, the applicant's narrative is not found credible and is not supported by reliable COI. ....*

*..There is a long line of authority on the general subject of the weight to be accorded to medical reports in asylum cases. While it is always a matter for the decision maker to assess the probative value of the contents of such reports, it is incumbent on the decision maker to provide reasons for rejecting the contents. A report which is general in terms has obviously little weight requires no great explanation for its rejection. 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 higher probative value to those findings. Such reports are capable in an objective way of supporting the claim. Obviously, in such cases the need for reasons to be given for rejecting the probative value of the report must be more fully addressed.... "*

**56.** In *P.E. v. Refugee Appeals Tribunal* [2013] IEHC 253 Clark J. was satisfied to quash a decision on the basis that the Tribunal did not deal adequately with a SPIRASI report. The Learned Judge stated (para. 7):

*"Dr Bastible of the SPIRASI organisation is a specialist physician experienced in examining persons who claim torture injuries. She records in her report that the applicant was tearful at various points when providing her history. On physical examination she found scars on the applicant's forehead and nose which were "highly consistent" with cigarette burns; scars on her ankles, knees, thigh and shin which "could be consistent" with the trauma she alleged she received from her captors; a scar on her lower back which was "consistent" with a blunt injury such as a baton mark as she alleged; scars on her arms, elbow and wrist which were "unusual in their distribution and suggest multiple trauma from a person or persons unknown"; scars on her shoulder which were "again consistent with baton marks" and scars on her abdomen and feet which were "highly consistent with baton marks from the soldiers". The other findings related to her opinion of the applicant's mental health, which to a considerable extent derived from what she reported to the doctor. "*

**57.** She went on to state:

*"It appears to the Court that the Tribunal Member disregarded the corroborative potential of the medical evidence too readily simply because he had made credibility*

*findings based mainly on discrepancies in the applicant's evidence rather than putting the medical reports, especially the SPIRASI report, into the totality of the evidence to be assessed. The medical reports had not before the Commissioner and were capable of making a difference to the Tribunal assessment of credibility and of causing a fair minded assessor to pause and ask how else a young Hutu girl from Rwanda with her accepted history could have such a wide distribution of marks and scars, if not from the type of maltreatment described. The inconsistencies in her evidence were minor and some findings were made in error and must surely have been counterbalanced by the medical reports on the applicant's emotional state and the multiple scars on her body. For this reason alone the decision cannot stand."*

**58.** Having reviewed the case-law, including cases such as *O.B. Refugee Appeals Tribunal* [2011] IEHC 363 in which Hogan J. was satisfied that the Tribunal had weighed the evidence and concluded a SPIRASI report did not fundamentally assist the applicant since it did not tend to show that the perpetrators of the rape were police agents, Faherty J. concluded in *MM v. RAT* (para. 28) that the approach of the courts to the question of the discretion of decision makers as to how to deal with medical evidence will depend on the particular circumstances of each case. She added that some general principles emerge and gives a summary of her understanding of what the jurisprudence establishes as follows (also at para. 28):

*"• In considering any assessment of an applicant's credibility, decision makers are obliged to consider the medical evidence in total before them;*

*• The medical evidence must be put into the totality of the evidence to be assessed and must not be tangential or peripheral to such assessment;*

*• It is always a matter for the decision maker to assess the probative value of the contents of such reports;*

*• Where an applicant provides a story which might be true and the medical evidence tends to confirm his or her story then it is axiomatic that an overall assessment of the evidence should weigh in the applicant's favour;*

*• If medical evidence is to be rejected, it is incumbent on the decision maker to give reasons;*

*• A summary consideration of medical evidence by a decision maker may be upheld where the medical evidence uses phrases of low probative value;*

*• Where an examining physician reports on objective findings and uses phrases which*

*attach a higher probative value to those findings, the medical evidence should be treated as providing potentially objective corroboration of the claim;*

*• If such evidence is to be rejected, the reasons for rejecting the reports must be more fully addressed in the decision;*

*• The requirement to more fully address reasons for rejecting medical reports which attach a higher probative value to clinical findings may be less where the balance of the evidence is overwhelmingly in favour of a finding of a lack of credibility."*

**59.** I gratefully adopt this summary as representing a proper distillation of the principles. While I note the subsequent elucidation by Humphreys J. in *C.M. (Zimbabwe) v. IPAT* [2018] IEHC 35 to the effect that the qualification that negative credibility factors must be overwhelmingly made out might be better expressed as a finding on credibility factors on the balance of probabilities, it seems to me that what is captured through the use of the word "*overwhelmingly*" in the principles identified by Faherty J. is not a change in the standard of proof but a need for findings made without a proper weighing of the medico-legal report in coming to those findings to be standalone, compelling findings which are so independently strong having regard to the grounds advanced for the conclusions arrived at that they cannot reasonably be considered to be undermined by a flawed approach to the assessment of the totality of the evidence including the medical evidence.

**60.** Whilst maintaining that the SPIRASI Report was considered by the First Respondent, the Respondents rely on the principles identified by Faherty J. and point to the low probative value of the evidence in this case as excusing a summary consideration of the medical evidence. Applying the principles identified by Faherty J. as emerging from the case-law, however, it seems to me that while medical evidence of low probative value may properly be amenable to summary consideration, the primary requirement is that in any assessment of an applicant's claim, decision makers are obliged to consider the medical evidence before them and the medical evidence must be put into the totality of the evidence to be assessed and must not be tangential or peripheral to such assessment.

**61.** In response to the claim that that there has been a failure to weigh the medical evidence in the mix other than in a compartmentalized manner at the end when conclusions had already been arrived at in making the findings that the Applicant's account lacked credibility as recorded in the impugned Decision I am referred on behalf of the Respondents to the judgment

of Stewart J. in *H.A.A. [Sudan] Refugee Appeals Tribunal & Ors.* [2015] IEHC 144 where it is stated (at para. 25):

> *'With regard to the medical reports it seems to me that the tribunal member did consider the medical reports and considered them in the context of determining the applicant's credibility. It is established law that the probative value to be attached to medical reports is a matter for the decision-maker. The function of this Court is to ensure that the process adopted by the tribunal member was fair and that the evidence was considered. I have no doubt and it is apparent from the decision that the tribunal member did have regard to the medical reports but having considered the totality of matters did not attach any probative value to the reports.*'

**62.** Addressing the *H.H.A.* case, amongst others cited, the Respondents point to the fact that findings of "*highly consistent*" as well as "*consistent*" had been made in the medico-legal report in that case yet the Tribunal did not find the medical evidence persuasive and found that the difficulties complained of could have been caused by non-State agents and for reasons other than those given in advancing the protection claim. It is apparent from the judgment in *H.H.A.*, however, that the issue taken with the treatment of the medico-legal report in that case was not that it was not weighed in the mix at all but rather that it was not considered in adequate detail or given sufficient weight. A distinguishing feature with this case and many other cases cited on behalf of the Respondents, therefore, appears to me to be that the central complaint in this case is that the evidential value of the medico-legal report was not considered at all in assessing the claim and the Applicant's credibility in respect of core elements of the case he made on the basis that the claim was otherwise found not to be plausible.

**63.** It is not disputed that the findings in the medico-legal report are of low probative value but it is maintained that they still have a probative value which requires to be weighed. Humphreys J. at para. 6 of his judgment in *J.U.O. (Nigeria) v. International Protection Appeals Tribunal* [2018] IEHC 710, says that;

> *"Whether a report says that injuries or harm are consistent, or even as here highly consistent, with the account given, that does not mean that the harm was caused by the matters complained of in the account. It is a piece of evidence to be put in the balance with all other elements. It is not appropriate, or indeed lawful, for the tribunal to*

*compartmentalise an assessment of the evidence by artificially divorcing the evidential ramifications of a medical report from all other evidence: see R.S. v. International Protection Appeals Tribunal (No. 2) (Unreported, High Court, 3rd December, 2018). Guidelines prepared by the European Asylum Support Office and drafted by the International Association of Refugee Law Judges-Europe, 'Evidence and Credibility Assessment in the Context of the Common European Asylum System', 2018, citing Mibanga v. Secretary of State for the Home Department [2005] EWCA Civ 367, make clear that compartmentalisation is a legally erroneous approach. The error in Mibanga was to form a definite view of credibility first without reference to the medical evidence and then to ask whether that view should be shifted by reference to the medical evidence. That is certainly not what the tribunal did here. The applicant's submissions simply do not engage with that distinction."*

**64.** What clearly emerges from the weight of authorities cited is that there is a requirement to consider the medico-legal evidence in arriving at findings of credibility whether the evidence is of low or high probative value. The extent of the duty to explain why evidence is not accepted will, however, vary depending on the evidential value of the evidence, in this case admittedly low.

**65.** From my reading of the Decision, I agree with the Applicant's characterisation of the approach taken by the First Respondent as one of compartmentalisation. It seems clear that the First Respondent did not weigh the medico-legal evidence at all in arriving at findings in relation to the occurrence of incidents of abuse as described or the credibility of the account given. Insofar as the First Respondent addresses the medico legal report, it is only to observe that a finding of consistent is the lowest positive level and of the least probative value, meaning that the injuries could have been caused in the manner claimed, but that there are numerous other possible causes. This is a statement of fact which is clearly correct. However, instead of then proceeding on the basis that the evidence has only a low probative value and weighing it in the mix in arriving at conclusions on that basis, the First Respondent states that the Applicant's presentation and reported symptoms, both physical and mental, in the report are based on the claim he made and if his claim is not otherwise credible, the conclusions reached in the SPIRASI Report, on the basis of those claimed events, cannot be seen as reliable. The language used confirms to me that the medico-legal report was not weighed as evidence in determining whether the Applicant was subjected to the treatment he complained of because

the complaint was not considered otherwise credible. Instead, the First Respondent formed a definite view of credibility first without reference to the medical evidence and then asked whether that view should be shifted by reference to the medical evidence, the very approach condemned in *Mibanga v. Secretary of State for the Home Department* [2005] EWCA Civ 367 as cited by Humphreys J. in *J.U.O. (Nigeria)* in the extract quoted above.

**66.** It is further clear from the terms of the Decision that the First Respondent proceeds on the basis that the medico-legal report had no objective value whatsoever because it was based on the account given. While medico-legal reports are often dependent on the account given, in this case the report contained physical findings which it documents and which it is not fully true to say depend on the account given. Insofar as the conclusions arrived at in the report regarding these physical injuries are concerned depend on the Applicant's account, it is only as to the explanation for how they were sustained and not as to the existence of the injuries. The report independently and objectively evidences the existence of the physical injuries which have been both recorded in x-ray and on physical examination. The existence of physical evidence of injury, whatever the cause, is not dependent on the Applicant's account.

**67.** The fact that there are potential other explanations for these objective findings clearly affects the probative value of the findings that the physical injuries exist but that is not to say that they constitute evidence based entirely on the account given, as the Tribunal has stated. Insofar as the medical evidence is that they could have been caused in the manner described by the Applicant, then this is evidence which is weakly supportive of the Applicant's claim and it should be weighed by the decision maker with all of the other evidence in the case when assessing both the claim and its credibility. It seems to me that the First Respondent erred in failing to approach the assessment of this evidence properly.

**68.** There is a thread through the case-law referred to above that a failure to weigh medical evidence of low probative value might be excusable where it is clear that had the Tribunal referred to the medical evidence at the right forensic time, it can nonetheless be safely ruled out that it would have come to a different conclusion. This is in circumstances where it is clear having regard to the nature and strength of the adverse credibility findings made that they would not be affected by the medical evidence. This thread emerges from various dicta including that of Gilligan J. in *Khazadi v. Minister for Justice Equality and Law Reform* where his ruling relies on it being at least possible the Tribunal would have come to a different

conclusion had the medico-legal evidence been properly considered. Similarly, in *P.E. v. Refugee Appeals Tribunal*, orders were granted in circumstances where the reports were "*capable of making a difference to the Tribunal assessment of credibility and of causing a fair-minded assessor to pause*".

**69.** There is no doubt that the Decision in this case stands largely un-assailed and I have considered whether its strength is otherwise such that I should not interfere with it on the basis that the medico-legal evidence is so weak and the other findings with regard to a lack of credibility so strong and so clearly unaffected by the medico-legal evidence that it can safely be concluded that a proper weighing of the SPIRASI Report could not affect the credibility findings made. Recalling that it is not for me to assess the evidence, I have considered the nature of the credibility issues identified which in turn led to a finding that the benefit of the doubt should not be afforded to the Applicant in respect of uncertain elements of his claim because of a lack of general credibility. When these factors are combined with the equivocal position of the First Respondent with regard to several areas where he did not find the case implausible but instead described them as "*uncertain*" with the express acknowledgment by the First Respondent that it may have been appropriate to overlook certain issues identified as undermining of the Applicant's claim had the Appellant's general credibility been otherwise established, it seems to me that the Decision in this case did not contain such compelling findings as to the Applicant's credibility as would establish that the failure to consider the SPIRASI Report was of no consequence to the overall conclusions reached.

**70.** I have concluded that I cannot be sure that a proper consideration of the medico-legal report, notwithstanding the low probative value attaching to it, would have made no difference in arriving at conclusions both as to the occurrence of abuse and the Applicant's credibility. It does not seem to me that a threshold has been reached whereby I can conclude that the balance of the evidence was so "*overwhelmingly*" or cumulatively in favour of a finding of a lack of credibility that a proper consideration of the medico-legal report could not change the outcome.

**CONCLUSION**

**71.** The First Respondent attached no weight to the SPIRASI Report in arriving at findings as to the occurrence of incidents of torture or ill-treatment but addresses it only having already reached adverse credibility findings in relation to these events without reference to the contents

of the Report. Having already reached an adverse conclusion as to the Applicant's general credibility in relation to the claim advanced, the First Respondent then discounts the SPIRASI Report because it is otherwise dependent on the Applicant's credibility in the account given, in circumstances where the findings contained in the Report are not weighed as part of the evidence relevant to establishing the Applicant's credibility in the account he gives and his injuries as documented in the Report are not considered at all in deciding whether the assaults he describes might have happened.

**72.** Despite the obvious strengths of the Decision which include a range of coherent, rational and well-reasoned findings made as regards the plausibility of the Applicant's underlying account of his treatment in Sierra Leone and the fairness of approach displayed in not reaching adverse conclusions in respect of certain elements of the claim and notwithstanding that the medico-legal evidence is, at best, weakly probative, I cannot conclude that the error in the approach to the medico-legal evidence does not undermine the Decision. I am not satisfied, in view of the nature of the findings made in the Decision, that properly weighed this evidence could make no difference to the outcome.

**73.** In the light of the conclusions I have reached, I propose to make an order of *certiorari* quashing the Decision of the First Respondent made on the 9th of November, 2021 to affirm the recommendation of the IPO that the Applicant be given neither refugee declaration nor subsidiary protection declaration. I will hear the parties in relation to the terms of remittal and any other consequential matters.