Neutral Citation: [2015] IEHC 82

THE HIGH COURT

JUDICIAL REVIEW

[2013 No. 338 J.R.]

BETWEEN

K.A. (NIGERIA)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Eagar delivered on the 18th day of February 2015

1. This is an application by way of judicial review seeking an application of *certiorari* to quash the decision dated the 19th April 2013 of the Respondent affirming a deportation order dated the 12th March 2012 in respect of the Applicant and further a declaration that the Applicant is entitled to a reasonable period of notice of any precise arrangements to be made for his deportation and to be informed of such precise arrangements in advance thereof.

History of the proceedings

2. The Applicant is a citizen of Nigeria and arrived in the State on or about the 21st January 2008 and applied for asylum. His application for asylum was the subject of a negative recommendation by the Refugee Applications Commissioner. He appealed to the Refugee Appeals Tribunal and his appeal was refused by the Refugee Appeals Tribunal. The Applicant was notified that the first named Respondent was refusing to grant him a declaration of refugee status by letter dated 10th February 2010.

3. The Applicant applied for temporary permission to remain in the State under s. 3 of the Immigration Act 1999 by letter from the Refugee Legal Service dated the 3rd March 2010. Enclosed with that letter was a letter from Dr. Corina McMahon, Consultant Paediatric Haematologist of Our Lady's Children's Hospital, Crumlin dated 22nd February 2010 and confirming that the Applicant suffered from Sickle Cell Anaemia. If the Applicant had been refused leave to remain in Ireland there was no doubt that it was in the Applicant's best interest to remain in this country where his Sickle Cell disease could be managed appropriately with the most up to date management strategies for Sickle Cell disease.

4. By letter dated the 12th August 2010 the Refugee Legal Service subsequently submitted character references under the cover of a letter of the 12th August 2010 and further correspondence was received from the Dun Laoghaire Refugee Project dated 7th February 2011.

5. The representations made and the other documents on the Applicant's file were examined by an executive officer in the Repatriation Unit and a lengthy report was prepared for the purpose of s.3 of the Immigration Act 1999 in respect of the Applicant. This report was dated the 7th February 2010. The report found that the repatriation of the Applicant would not offend the statutory prohibition on "refoulement" in s. 5 of the Refugee Act (as amended), and that his deportation would not constitute a breach of Articles 3 or 8 of the European Convention on Human Rights. It recommended that the first named Respondent should make a Deportation Order in respect of the Applicant. Included in that report were issues relating to the representations made on behalf of the Applicant and there was substantial reference to Country of Origin Information including the issue of Sickle Cell disease and on the 6th March 2012 a higher executive officer in the Repatriation Unit having read and considered the report recorded her grievance with the recommendations made by the executive officer in respect of her lengthy report. The first named Respondent had authorised the Director-General of the Irish Naturalisation and Immigration Service to exercise his powers under s. 3 of the Immigration Act 1999 including the decision of whether or not to make a Deportation Order in respect of the Applicant. The report and other documents on the file of the Applicant were furnished to the Director-General and considered by him and on the 12th March 2012. The Director-General followed the recommendation to make a Deportation Order and signed such an order on behalf of the first named Respondent.

6. The Applicant was notified of the making of the Deportation Order by a registered letter to his recorded address in Francis Street in Dublin by notice under s.3(3)(b)(ii) of the Immigration Act 1999 dated the 23rd March 2012. The said correspondence contained the following:

> 1) It required the Applicant to leave the State by the 9th April 2012 and confirmed that if he did not leave the State by the 9th April 2012 he was liable to be deported and was required to present himself to the Member in Charge, Booth Number One, Garda National Immigration Bureau, 13-14 Burgh Quay, Dublin 2 on the 10th April 2012 at 10am to make arrangements for his removal from the State.
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> 2) The Applicant was required to produce at that appointment, any travel documents, passports, travel tickets or other documentation in his possession which might facilitate his removal from the State.
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> 3) The Applicant was required to cooperate in any way necessary to enable a member of An Garda Siochana, Immigration Officer to obtain a travel documents, travel ticket or other document required for the purposes of such removal
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> 4) The Applicant was required to reside at the address in Francis Street pending his removal from the State.

7. The said correspondence also informed the Applicant that failure to leave the State by the 9th April 2012 was a failure to comply with the provision of the Deportation Order that as a result an Immigration Officer or a member of An Garda Siochana might arrest and detain him without warrant under s. 5 (1) of the Immigration Act 1999 (as amended).

8. The said correspondence also advised that when satisfactory documentation had been organised, arrangements would be put in place to affect his removal from the State. The correspondence also stated that if the Applicant failed to comply with any provisions of the Deportation Order or with a requirement in the correspondence, an Immigration Officer or member of An Garda Siochana might arrest and detain him without warrant in accordance with s. 5 (1) of the Immigration Act (as amended). The correspondence was copied to the Refugee Legal Service and to the Garda National Immigration Bureau. It is worth noting for the purpose of arguments that were raised that this correspondence was dated the 23rd March 2012 and the Applicant was given until the 9th April to leave the State. This was a period of 17 days, 12 of which were ordinary working days. Enclosed with this letter was a copy of the Deportation Order signed by the Director-General and a copy of the Minister's considerations pursuant to s. 3 of the Immigration Act (as amended) and s.5 of the Refugee Act 1996 (as amended).

9. By letter dated the 3rd April 2012 to the Acknowledgments Unit of the Irish Naturalisation and Immigration Service the Refugee Legal Service enclosed by letter academic credentials and asking that they be considered in support of the Applicant's leave to remain in the State. This was acknowledged by letter from the first named Respondent on the 18th April 2012.

10. The Refugee Legal Service wrote a letter dated the 5th April 2012 requesting that the Minister should revoke the Deportation Order that had been made. The Refugee Legal Service referred to the Applicant's Sickle Cell Anaemia and recent surgery. The Repatriation Unit acknowledged the correspondence by letter of the 20th April 2012 and also advised the Refugee Legal Service that the Applicant had failed to present at the offices of the Garda National Immigration Bureau on the 10th April 2012 as required. The Refugee Legal Service were informed that he was therefore classified as an evader and liable to arrest. He was asked to present immediately to the Garda National Immigration Bureau and that an up to date address was requested.

11. The Refugee Legal Service wrote by letter dated the 17th April 2012 (and received by the Repatriation Unit on the 25th April 2012) enclosing information in relation to the treatment of Sickle Cell Anaemia. The Repatriation Unit acknowledged that correspondence by letter of the 26th April 2012. The letter advised the Refugee Legal Service that the Applicant had failed to present at the offices of the Garda National Immigration Bureau on the 10th April 2012 as required. He was therefore classed as an evader and liable to arrest. He was asked to present immediately to the Garda National Immigration Bureau and an up to date address was requested. This letter was now more than a month since the Deportation Order had been made.

12. The Applicant did not attend at the premises of the Garda National Immigration Bureau but sent a letter dated the 31st May 2012 (without a forwarding address) stating that he had a series of health issues and inviting "To whom it may concern" to "Please fil (sic) free to contact me".

13. The Garda National Immigration Bureau sent the Applicant a letter dated the 23rd June 2012 requiring him to present at its premises on the 17th July 2012. This requirement to the Applicant was to present himself at the Garda National Immigration Bureau more than three weeks after the date in which that letter was sent. By letter on the 29th June 2012 the Refugee Legal Service submitted a statement from a Reverend Conrad Hicks and a letter of the 8th June 2012 by Professor Austin Leahy. The letter from the Professor Austin Leahy, a consultant general and vascular surgeon, confirmed that the Applicant was under his care recently for a "laparoscopic cholecystectomy" and confirmed that he had a background history of Sickle Cell Syndrome. This was acknowledged by a letter from the first named Respondent and a personal statement by the Applicant. Doctor Kirk Levins was the Senior House Officer to Professor Leahy. This letter was acknowledged by the first named Respondent by the Repatriation Unit by letter of the 20th July 2012. The response also indicated that the Applicant had failed to present at the offices of the Garda National Immigration Bureau on the 17th July 2012 as required. They were again informed that he was classified as an evader and "is liable for arrest and detention". The Applicant was required to attend the Garda National Immigration Bureau immediately.

14. By letter dated the 26th July 2012 the Refugee Legal Service on behalf the Applicant submitted:

> 1) A personal statement of the Applicant
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> 2) A letter from Our Lady's Children's Hospital dated the 2nd May 2012 noting an appointment for the 8th August 2012 for Dr McMahon
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> 3) A letter from Beaumont Hospital dated the 26th June 2012 noting an appointment for the 14th August 2012 for "Ambulatory Blood Press".
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> 4) An appointment letter from Beaumont dated the 10th May 2012 for the fitting of a holster monitor on the 5th October 2012.
>
> 5) A personal statement of the Applicant dated the 7th July 2012
>
> 6) A request to revoke the Deportation Order.

This was acknowledged by letter dated the 31st July indicating that the contents of that correspondence were noted, that the Applicant had failed to appear at the Garda National Immigration Bureau on the 17th July 2012 in order to make arrangements for his removal from the State, but had failed to attend. The Applicant was now classed as an evader and was liable for arrest and detention and a request that he attend the Garda National Immigration Bureau immediately. This correspondence was sent to the Refugee Service 13 weeks after the Deportation Order had been signed by the Director-General. It is noted that the Applicant had not been arrested nor any attempt made to deport him in that period of time.

15. By letter dated the 14th August 2012 the Refugee Legal Service sent a further letter referring to the representations to date and included a letter from Ms Emma Murphy confirming that the Applicant was admitted to St Michael's Ward in Our Lady's Children's Hospital on the 25th July until the 26th July 2012. It is noted that the above named was a child although at this stage the Applicant was 19 years of age. There was a request to revoke the Deportation Order. The Repatriation Unit acknowledged the correspondence by letter of the 23rd August 2012. This correspondence also confirmed that the Applicant had failed to attend at the Garda National Immigration Bureau on the 17th July 2012 and that he was classified as an evader and liable for arrest and detention. The Garda National Immigration Bureau by letter dated the 15th August 2012 sent correspondence to the Refugee Legal Service indicating that the Applicant should present on the 6th September 2012 at 11am and a further letter of the 26th September 2012 requiring the Applicant to present on the 4th October 2012 citing that he had failed to present himself on the 6th September 2012. On the 12th September 2012 an executive officer of the Repatriation Unit examined the application to revoke the Deportation Order made by the Refugee Legal Service and the documents on the Applicant's file. She found that medical treatment would be available for the Applicant if returned to Nigeria and found there was nothing in the information submitted that would warrant the revocation of the Deportation Order. She therefore recommended that the Deportation Order should be affirmed. On the 14th September 2012 a higher

executive officer recorded her agreement with the recommendations made by the executive officer on the report and the Applicant was advised of this decision by a letter dated the 27th September 2012 and required him to attend at the offices of the Garda National Immigration Bureau on the 4th October 2012 to make arrangements for his removal from the State. This letter was copied to the Refugee Legal Service and the letter addressed to the Applicant (which had been sent by registered post) was returned marked "Gone Away" on or about the 2nd October 2012.

16. The Applicant submitted a letter notifying the first named Respondent of his change of address to 28 Hatch Street, Dublin 2 which was received on the 4th October 2012. The Applicant did not attend at the premises of the Garda National Immigration Bureau on any occasion as required in the course of 2012. No attempt appears to have been made to execute the Deportation Order or to arrest the Applicant for nearly a year when the Applicant's present solicitors, Messrs Williams Solicitors wrote to the Department asking the first named Respondent to revoke the Deportation Order. Included in the correspondence was the following:

1) An independent confidential psychiatric assessment report prepared by Dr Patrick J Devitt, a Consultant Psychiatrist recording that the source of information which were a psychiatric interview with the Applicant on the 13th February 2013

2) A referral letter from Ivan Williams Solicitors dated the 11th February 2013,

3) The Applicant's application for leave to remain in Ireland under s.3 of the Immigration Act,

4) The Minister's refusal of the Applicant's application,

5) The Applicant's application to revoke the Deportation Order,

6) The first named Respondent refusal to revoke the Deportation Order

7) Various medical records and letters re the Applicant

17. The conclusions of the psychiatric report were:

1) The Applicant's life has been very stressful since he came as an unaccompanied minor seeking asylum in Ireland five years ago.

2) It is his steadfast wish to remain in Ireland.

3) Return to Nigeria from his perspective is full of uncertainty and significant anxiety-provoking. In the context of attempting to prevent his deportation the Applicant has also become depressed and experienced lack of energy and ongoing suicidal thoughts.

4) He has had two recent suicidal attempts and thus must be regarded as at some risk of completing suicide.

5) It is an indication of his subjective level of distress at present that he is engaging in such suicidal behaviours.

6) While the possibility that these behaviours are manipulative in nature an order to prevent his deportation must be considered, the level of his distress does not appear to be commensurate with his sucidality.

7) At this difficult time of uncertainty for the Applicant it is important that he engage urgently in psychiatric treatment with specific emphasis on helping him cope with his current situation.

8) His prognosis is uncertain and largely depends on his ability to cope with the deportation.

9) At present it appears that his coping abilities in that regard are poor and some suicidal risk exists.

18. Messrs Williams Solicitors wrote again on the 4th March 2013 noting that they had not received any correspondence and in particular a substantive response and indicated it was they were advising the first named Respondent that they would apply for any appropriate injunctive relief without further notice.

19. The Repatriation Division of the first named Respondent replied by letter dated the 5th March 2013 seeking a letter of authority signed by the Applicant in the light of the fact that Williams Solicitors were not on record as acting for him. A further letter was sent on the 8th March 2013 in this regard from the Repatriation Unit addressed to Messrs William Solicitor sought again a letter of authority signed by the Applicant. The correspondence proceeded to indicate that the Applicant had failed to comply with the requirement to attend at the Garda National Immigration Bureau on the 4th October 2012 in order to make arrangements for his removal from the State and that therefore he was classed as an evader and liable to arrest and detention. He also indicated that an application pursuant to s. 3 (11) of the Immigration Act 1999 (as amended) for revocation of the Deportation Orders while an application has been made this should be done from outside the State and such an application must reply on new and changed circumstances. The correspondence further indicated that the first named Respondent would proceed to consider the application for a revocation of the Deportation Order if the Applicant had removed himself from the State or that the Applicant presented himself to the Garda National Immigration Bureau at Burgh Quay within five working days of the date of this letter (which would have been the 13th March 2013).

1) The correspondence also requested that the Applicant if he was still in the State should provide a current and true address

2) The first named Respondent intended to consider the Applicant's immigration history in the State prior to making any decision on an application to revoke the Deportation Order

3) The enforcement of the Deportation Order was an operational matter for the Garda National Immigration Bureau

4) The consideration of an application under s.3 (11) of the Immigration Act (as amended) was not suspensive of the removal process.

20. The Applicant presented himself at the office of the Garda National Immigration Bureau on the 15th March 2013 which was nearly a year from the time that the Deportation Order had been made by the Director-General.

21. The Applicant applied in proceedings 208 J.R. of 2013 for an interim injunction to restrain his deportation. By order of the 22nd March 2013 Clark J. ordered that the first named Respondent be restrained from deporting the Applicant until the expiry of 14 days after the first named Respondent's decision on the application of the 27th March 2013.

22. In his oral evidence before Clark J. on the 22nd March 2013 the Applicant gave evidence that he had been living in an address that he claimed to be unable to remember in Waterford since June 2012 up until December 2012 when he moved to another address in Rathmines, Dublin 6. The Applicant never notified the first named Respondent of the Garda National Immigration Bureau of this address and failed to continue to reside at the addresses provided to the Garda National Immigration Bureau by him. The executive officer of the first named Respondent's Department prepared a report on the Applicant's application for revocation of the Deportation Order.

23. At this point it is important to consider the letter prepared by Messrs William Solicitors dated the 27th February 2013. That letter as well as including the report of the consultant psychiatrist Dr Patrick Devitt included a request that the Minister consider whether to revoke the Deportation Order issued in respect of the Applicant. They suggested that it was apparent from the report of Dr Devitt that the threat of deportation (and/or any actual deportation) might expose the Applicant to a risk of death through suicide. They requested that the Deportation Order should be revoked given the stark contents of the report and the ongoing risk to the Applicant's life. They indicated that it was wholly inappropriate to operate a regime where a proposed deportee is required to "sign on" at intervals never knowing whether upon one of these "sign ons" he would be brought to the airport and deported. They further made the point that they were of the view that the failure to revoke the Deportation Order would amount to a breach of its obligations under Article 40.3 of the Constitution "to defend and vindicate the personal rights of the citizen and particularly its duty under paragraph of that Article "to protect from unjust attack and to vindicate in the case of injustice done the life and person of an individual".

24. I have set out the history and detail as it is relevant to the two grounds on which the Applicant is seeking an order of *certiorari*.

25. The final chapter in the history is that on the 3rd April the executive officer of the Repatriation Unit prepared a report on the Applicant's application for the revocation of the Deportation Order. Having examined the medical evidence furnished and considering the availability of treatment in Nigeria, the executive officer recommended that the application for revocation should be refused. The principal officer of recorded her agreement with that recommendation on the said report on the 9th April 2013.

26. This decision was communicated to the Applicant and his solicitors by letters of the 23rd April 2013 and in the letter to the Applicant he was required to present himself to the Member in Charge, Garda National Immigration Bureau on Thursday 25th April 2013 in order to make arrangements for his removal from the State.

27. This gave the Applicant two days in which to present himself at the Garda National Immigration Bureau and was more than a year from the date of the Deportation Order made by the first named Respondent on the 23rd March 2012. As a result of that decision these proceedings were initiated.

28. The first ground argued on behalf of the Applicant was that the Applicant was entitled to have his application considered upon the basis that was relied on. Counsel on behalf of the Applicant stated that the letter from Messrs Williams Solicitors dated the 27th February 2013 at para. 8 of that same indicated that the failure to revoke the Deportation Order would amount to a breach by Ireland of its obligations under Article 40.3 of the Constitution to defend and vindicate the personal rights of the citizen and particularly its duty under paragraph 2 of that Article "to protect from unjust attack and to vindicate in the case of injustice on the life and person of an individual". Counsel contended that because the solicitor's letter had relied upon Article 40 of the Constitution that the first named Respondent's consideration of the application for revocation did not deal with the issues that arise in Article 40 of the Constitution but instead relied on consideration of Article 3 and Article 8 of the European Convention on Human Rights (ECHR). Counsel said that the consideration of the failure to consider the rights arising out of Article 40.3 of the Constitution he cited in support of this contention *M.E.O. (Nigeria) v. The Minister for Justice Equality and Law Reform* [2012] IEHC 448. This was the decision of Cooke J. to certify that his decision in this case that a point of law of exceptional public importance arose and that it was desirable in the public interest that an appeal should be taken to the Supreme Court. This appeal appears to be pending before the Supreme Court but no date has been fixed for the hearing of this case.

29. In para. 7 of that judgement Cooke J. said:-

> "*"Does the guarantee of the State under Article 40.3 of the Constitution to defend and vindicate the personal rights of the citizen and particularly its duty under para. 2 of that Article "to protect from unjust attack and to vindicate in the case of injustice done the life and person of an individual," impose upon the State a positive duty to safeguard an individual from the consequences of a life threatening medical condition and a duty to refrain from acts which would interrupt or terminate medical treatment currently made available by the State which prevents the condition deteriorating to a critical one?*
>
> *If the obligation of the State under the Article does so extend, is it also applicable to a non-citizen of the State or of the European Union who is present in the State without lawful permission?*"

30. In *M.E.O* the Applicants challenge to the Deportation Order was essentially based upon the humanitarian considerations raised by her medical condition and her personal circumstances. Shortly after her arrival in the State the Applicant was diagnosed as HIV positive and she had been receiving anti-retroviral (ARV) therapy and care in the State since 2006.

31. Counsel on behalf of the Respondent stated that the application made to the first named Respondent by the Applicant did not entitle the Applicant to engage in legal debate with the first named Respondent. The Applicant was entitled to bring new matters of fact to the attention of the first named Respondent which had arisen since the previous decision not to revoke the Deportation Order. The first named Respondent was required to consider those new matters of fact but was not under an obligation to generate an extensive narrative statement of the reasons for the decision.

32. Counsel on behalf of the Respondent cited a number of decisions and in particular that of *K.I. v. The Minister for Justice Equality and Law Reform* [2014] IEHC 83, a decision of McDermott J. At para. McDermott J stated:-

> *"It is important to identify what relevant new fact, apart from the Zambrano decision, was being relied upon in the s. 3(11) application. The Minister is only obliged to consider genuinely new facts or facts, which for some special and compelling reason, could not have been advanced at the deportation stage. The focus of any judicial review in respect of a s. 3(11) determination must focus on how that new material was considered."*

33. Counsel also relied on a decision of Clarke J. in *Smith and Smith v. The Minister for Justice Equality and Law Reform* [2013] IESC 4 where Clarke J. stated... *"it seems to me…that it only where a relevant Applicant can point to some significant feature, not present when the original deportation order was made, that there can be any obligation on the Minister to give detailed reconsideration to the question of deportation. It likewise follows that a similar situation arises where, as here, there is a second or subsequent application for revocation of a deportation order. Where, as here, neither the original deportation order nor the first or earlier application for revocation was challenged in the courts by judicial review (or where any such challenge failed), it must be assumed that the analysis of the Minister, on the basis of the facts, materials and considerations then before the Minister, was correct. It follows that the only basis on which a challenge to a second or subsequent refusal on the part of the Minister to revoke a deportation order can be brought is where reliance is placed on a suggestion that there were new circumstances not before the Minister when the deportation order or any previous decision not to revoke same was determined and where the challenge is directed to the consideration by the Minister of the application in the light of such new circumstances*."

34. Article 40.3.1:;

> *"The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen".*

Article 40.3.2:-

> *"The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen".*

35. Counsel cited *M.E.O (Nigeria) v. The Minister for Justice Equality and Law Reform* [2012] IEHC 448, where Cooke J states:-

> *"In the context of proposed deportation of non-citizens it is also necessary to distinguish between those cases where the impediment to deportation is the exposure of the prospective deportee to probable risk to life or persons at the hands of forces or individuals in the country of destination. In the judgment of the Court, if a third country national illegally present in the State faces a genuine risk of a threat to life at the hands of a foreign state, of state actors or third parties in the foreign state, the obligation of this State so far as protection of the individual is concerned is that which arises under s. 5 of the Refugee Act 1996, s. 4 of the Criminal Justice (UN Convention against Torture) Act 2000 and Article 3 of the ECHR. It does not arise under Article 40.3.2 of the Constitution. Thus, in the judgment of the Court, the response to the query raised by Hogan J. at para. 25 of the leave judgment is that Article 40.3.2 obliges the State to protect the life and person of citizens from unjust attack in the sense of wrongful conduct at the hands of third parties. It does not oblige the State to undertake the positive task of protecting citizens, and, a fortiori non-citizens, from the natural consequences of illness or disease. In the absence of some circumstance of direct or vicarious responsibility on the part of the State for such a condition or person, Article 40.3.2 does not impose upon the State a positive obligation to ensure a particular level of health treatment to individuals (whether citizens or not,) who suffer from a life threatening condition."*

The decision on ground one
36. I now wish to set out the basis of Article 3 and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:

a) Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states:-

> *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment".*

b) Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states:-

> *"1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
>
> *2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".*

37. It is my view that the obligation on the first named Respondent was to consider new matters of fact which were brought to the attention of the first named Respondent since the previous decision not to revoke the Deportation Order was made. There is no obligation on the Minister to enter legal debate as to the relevant concerns of Article 40.3.2 or any other issues cited.

38. The duty on this court is to consider whether or not the decision of the Minister was reasonable in all the circumstances, despite the opinion of the Consultant Psychiatrist which lacks detail as I have stated above but was clearly analysed by and on behalf of the first named Respondent.

39. It is also noticeable that the Applicant has misconducted himself in his interactions with the authorities of the State and the threat of suicide in my view is a further attempt to frustrate the State in its duty to regulate the lawful operation of immigration control of the State.

The decision on the second ground
40. The second ground was that the Applicant submitted that he was entitled to a constitutional right of access to the courts to seek to vindicate his rights. The position is that under the present situation if he is arrested he may be prevented from consulting solicitors prior to being brought to the airport for deportation in an attempt to exercise a right of access to the courts.

41. Counsel on behalf of the Applicant suggested that the appropriate amount of time was 72 hours to include one of the 24 hours being a working day. He quoted from the decision of In *R.(On the Application of Medical Justice) v. the Secretary of State for the Home Department* [2010] EWHC 1925 (ADMIN), a decision of Silber L.J dated 26th July 2010. The case relates to individuals who fall into certain categories and who are not obliged to be notified of the fact that they are going to be deported within a period of time. This was the statutory position that existed in United Kingdom save for these exceptional cases.

42. In the United Kingdom the Immigration and Nationality Directorate (IND) agreed with the Administrative Court Office that there

would be a minimum period of 72 hours between the setting of the removal direction and the actual removal during which time an application for judicial review might be made within two working days included in the 72 hours. This became a Practice Direction under the civil procedure rules in the United Kingdom.

43. Counsel for the Applicant argued that if a person was arrested and detained for the purpose of deportation and was brought to an airport they would not have an opportunity to obtain legal advice and entitle their lawyers to make applications to the High Court to prevent their removal. In response counsel for the first named Respondent said there had been no interference with the Applicant's rights of access to the courts in this case. He had previously maintained proceedings in which he was granted an injunction restraining his deportation until 14 days after the determination of the application made on the 27th February 2013 and also obtained an interlocutory injunction until the conclusion of the present proceedings. The arguments, he suggested, were academic and irrelevant to the case. The position in relation to Deportation Orders is clearly regulated by the relevant acts which are operative namely the Immigration Act 1999 (as amended), the Illegal Immigrants (Trafficking) Act 2000 and the Refugee Act 1996(as amended). The history of this case would show that no sudden decision was taken to deport the Applicant. That is the experience of this court that persons against whom a Deportation Order has been made are usually required to attend at the Garda National Immigration Bureau at a time they are required to attend for the purpose of making arrangements for their removal. Even in the event of a person being arrested it is the experience of this court that solicitors will make applications to the court for the purpose of obtaining an injunction to prevent the removal of the person and in this regard I refer to the decision of *Fakih, Hamdan and Slim v. The Minister for Justice Equality and Law Reform* [1994] ILRM 274 in which an application was made to Carney J. whilst they were in the Bridewell Garda Station prior to their removal that evening to Switzerland from whence they had come and the case of *Gutrani v. The Minister for Justice Equality and Law Reform* [1993] 2IR 427 where the Applicant was in Dublin Airport awaiting transfer to the United Kingdom from whence he would be returned to Libya when Denham J. (as she then was) made an order restraining the removal of the Applicant.

44. The existence of the Scheme of Legal Aid formerly known as the Attorney General's Scheme provides for payment for solicitors and counsel in these cases.

45. In those circumstances the decision in this case is to say:

> 1) The Minister is only obliged to consider new facts and it cannot be dictated to as to how he or she acts or as to what issues she takes into consideration apart from new facts which she must consider.
>
> 2) There is no suggestion that the Applicant is not entitled to right of access to the court to seek to vindicate his rights. There is no evidence at the moment that the enforcement of Deportation Orders is taking place at any time soon after a Deportation Order is made.

46. I also take into account the misconduct on behalf of the Applicant in his interactions with the authorities of the State.

47. In those circumstances I refuse the applications sought in this case.