THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 770 J.R.]

BETWEEN

R.C. (ALGERIA)

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL,

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 3rd day of December, 2018

1. The applicant was born in Algeria in 1988. He claimed his brother was in a relationship with a Berber woman and was attacked, and claimed that he was also attacked as a result of trying to stop the attack on the brother in March, 2010. He says he left Algeria in November, 2012. He left on his own passport and on a tourist visa. He travelled to Spain, France and Belgium and arrived in Ireland on 7th April, 2014, applying for asylum on 9th April, 2014. That was refused by the Refugee Applications Commissioner and on appeal by the Refugee Appeals Tribunal. He applied for subsidiary protection on 25th October, 2016. That was refused by the International Protection Office and he was so informed by letter of 28th March, 2017.

2. Notice of appeal was delivered on 7th April, 2017, relying on, among other things, threats to returnees to Algeria, particularly failed asylum seekers, and on a previous tribunal decision said to be supportive of that argument. On 26th September, 2017, the tribunal rejected the appeal.

3. I granted leave in the present proceedings on 16th October, 2017, the primary relief sought being *certiorari* of the IPAT decision. Opposition papers were filed on 26th January, 2018. The applicant's submissions were delivered dated 25th February, 2018, with replying submissions from the respondents dated 9th March, 2018. I have received helpful oral submissions from Mr. Mark de Blacam S.C. (with Mr. Garry O'Halloran B.L.) for the applicant and from Ms. Eva Humphreys B.L. (with Ms. Sara Moorhead S.C.) for the respondents.

Grounds of challenge

4. The only challenge being pursued is to para. 6.2 and 6.3 of the IPAT decision, as embodied in grounds 7 and 9 in the statement of grounds. The applicant's written legal submissions do not cast a great deal of light on the points which were actually argued at the hearing on behalf of the applicant.

Lack of proper consideration of risk to returnees: Ground 7

5. Mr. de Blacam majors on the applicant being a failed asylum seeker rather than not having an exit visa as such. Insofar as leaving irregularly is concerned, on his own account the applicant appears to have left Algeria in an open manner, on his own passport with a tourist visa. The tribunal member said that it is well-established that the Irish authorities do not disclose the fact that returnees are failed asylum seekers. The applicant's pleadings, on the other hand, claim that the full file of failed asylum seekers are not uncommonly disclosed to state authorities from countries of origin. That is quite an inflammatory allegation and Mr. de Blacam accepts that no evidence has been put forward for this. The burden of proof requires the applicant to furnish some evidence for an allegation of this kind and that has not been done. The fact that the respondents have not specifically addressed this in their affidavit does not change that position. It is perfectly legitimate for the tribunal to have made itself aware that Irish authorities do not disclose the status of deportees as failed asylum seekers. There is no obligation on the tribunal to spell out reasons for it being aware of this well-known practice, a principal reason being that it is contrary to Irish law to do so: see s. 26 of the International Protection Act 2015. It is true that some country information refers to risks to failed asylum seekers, albeit of quite some vintage (see e.g. *U.K. Home Office Country of Origin Information Report - Algeria* (30th September, 2008)). But the tribunal took the view, quite reasonably, that the applicant was not going to be identified as such. Furthermore, the Home Office Report in itself links those concerns with suspicions of involvement in terrorism, which undermines to some extent the overall claim that deportees in general are at risk.

6. Submissions made to the tribunal relied on a relatively short private academic report dated May, 2015 about various countries, including Algeria. The more detailed section of that report dealing with Algeria specifically states at pp. 7 and 8 that "*there is no information on deportees in general*" as far as risks of imprisonment and violence is concerned apart from terrorist suspects. It is more specific regarding the lack of an exit permit. The more generalised statements in the body of the report refer to a risk of detention in various countries including Algeria, but that must be read in the context of the more specific country information in the appendix. Certainly it can be said that the report, the status of which is somewhat obscure in any event and does not appear to constitute mainstream country information, does not support the idea of there being any risk of detention or violence against this particular applicant. The report certainly was considered by the tribunal, even if not narratively discussed in a manner most favourable to the applicant, but it certainly cannot be said that the tribunal decision under this heading is irrational having regard to all of the information before the tribunal. The tribunal also notes that the applicant would be returned with no known profile and would be of no interest to the authorities. It is clear that sufficient reasons were advanced for the findings made under this heading.

Alleged improper distinguishing of a previous decision: Ground 9

7. *Stare decisis* does not apply to the tribunal. To say that some super-special weight has to be attached to previous decisions would create an irresistible levelling-up whereby any decision, however outlying, would have to result in a general grant of protection to persons that could in any way be viewed as similarly situated. That would amount to a one-way ratchet system that would rapidly render the asylum process unsustainable. It is not necessary for the tribunal to distinguish any previous different decision as each turns on its own facts under our system; apart, of course, from cases where the applicants are all part of the same transaction, such as being family members. For any given country there are bound to be some favourable decisions and some unfavourable. It is not a legitimate process for an applicant to try to gather together any favourable ones and cry foul if they are not "followed". That would be a massive distortion of the process and would compromise the statutory independence of the tribunal member as well as obscuring the inherent differences on the facts between different cases.

8. Having said all that, and notwithstanding that there is no obligation to distinguish any previous decision, the basis on which the previous decision was in fact viewed as different by the tribunal member was perfectly valid on its face and that has not been displaced.

9. Independently of the foregoing, given the onus of proof on the applicant, the applicant's failure to exhibit the other decision precludes granting relief on the grounds of failure to properly distinguish it; because acceptance of such a claim would be entirely dependent on an analysis of that other decision which, for whatever reason, the applicant has not seen fit to put before the court. One could assume that might inferentially be because a detailed analysis of its terms would not necessarily be entirely supportive of the point being made by the applicant under this heading, but either way that failure is fatal to granting relief under this heading.

Order

10. Overall, the tribunal's decision is intelligent, coherent, reasonable and lawful. The proceedings are dismissed.