

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 774 J.R.]

BETWEEN

Y.Y.

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

(No. 10)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 11th day of February, 2019

1. The latest decision in this case under s. 3(11) of the Immigration Act 1999 refusing to revoke a deportation order against the applicant was notified on 22nd November, 2018. On 10th December, 2018 the applicant's statement of grounds was amended to allow for a challenge to this new decision. That challenge did not include a specific ground related to the issue of secret detention in Algeria. On 8th January, 2018 the applicant's submissions were furnished. Those submissions did not indicate an intention to seek to amend the proceedings regarding a specific ground under this heading.

2. Following my decision in *Y.Y. v. Minister for Justice and Equality (No. 9)* [2019] IEHC 27 (Unreported, High Court, 28th January, 2019), I indicated I would give the applicant an opportunity to consider whether to seek a further amendment to the proceedings regarding the issue of secret detention, and he has now done so. That amendment application has been opposed by the respondent and I have received helpful submissions from Mr. Michael Lynn S.C. (with Mr. David Leonard B.L.) for the applicant and from Mr. Remy Farrell S.C. (with Ms. Sinead McGrath B.L.) for the respondent.

3. Mr. Lynn relies as the basis for the amendment on the threefold test of explanation, arguability and lack of irremediable prejudice that arises out of *Keegan v. Garda Síochána Ombudsman Commission* [2012] 2 I.R. 570 [2012] IESC 29 and *B.W. v. Refugee Appeals Tribunal* [2017] IECA 296 [2018] 2 I.L.R.M. 56 and which I discussed most recently in *Habte v. Minister for Justice and Equality* [2019] IEHC 47 (Unreported, High Court, 4th February, 2019).

4. As regards explanation, that is set out on the applicant's solicitor's affidavit, which describes the failure to include the specific ground as an error. Mr. Farrell submits that the description of this as an error is new and that the affidavit had not explained why the matter was included in previous iterations of the proceedings but not in this iteration. Nonetheless, an error by lawyers can only be put in stark terms and was accepted as an explanation by the Supreme Court in *Keegan*, and on that basis I would accept it here.

5. No issue was made as to arguability and clearly the point is arguable.

6. As regards lack of irremediable prejudice, the only prejudice specifically identified is that the point is made outside the 28 day time-limit for judicial review, but that applies in every case. An important point which I discussed further in *Habte* is that the refinement of a challenge which was mounted in time is to be distinguished from the good and sufficient reason required to bring a challenge in the first place outside the time limit. The latter requires a considerably higher threshold of good and sufficient reason whereas the former only requires explanation.

7. So on that basis the criteria for allowing the amendment have been satisfied.

Order

8. The order will be that the applicant have liberty to amend his statement of grounds in accordance with the draft amended statement exhibited in the applicant's solicitor's affidavit.