

THE HIGH COURT

[2019 No. 442 JR]

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

BETWEEN

H

APPLICANT

– AND –

INTERNATIONAL PROTECTION APPEALS TRIBUNAL, MINISTER FOR JUSTICE AND
EQUALITY AND

CHIEF INTERNATIONAL PROTECTION OFFICER

RESPONDENTS

JUDGMENT of Mr Justice Max Barrett delivered on 12th December, 2019.

1. Mr H is an Albanian national who has sought international protection on the basis that he is the subject of a 'blood feud' in his country and that his life would be in danger if he returned there. He arrived in Ireland on 28.05.2017 and made an application under s.15 of the International Protection Act 2015. On 08.11.2018 he was refused refugee status and subsidiary protection. His appeal against this decision was refused by way of further decision (the 'Impugned Decision') on 25.05.2019. Mr H seeks, *inter alia*, an order of *certiorari* in respect of the Impugned Decision, on the basis that (1) the International Protection Appeals Tribunal ("IPAT") erred in the manner in which it dealt with the so-called '*Vertetiem*' documents (described hereafter), and (2) the IPAT erred in failing to assess certain Albanian-language documents provided by Mr H in support of his application, by failing to have same translated from Albanian to English and/or failing to give reasons for not doing so.
2. **Did the IPAT err in the manner in which it dealt with the '*Vertetiem*' documents?**
3. 'Yes'. Certain purported police certificates were provided by Mr H, which featured the word '*Vertetiem*' ('Attestation Letter') at the head. These certificates, if authentic, confirm, *inter alia*, that Mr H "*is involved in a blood feud*". In its conclusions, the IPAT concludes, *inter alia*, that "*on the balance of probabilities the Police Certificates cannot be accepted as genuine and authentic official police documents*"; in effect they are fake. At no point at the IPAT hearing or thereafter was the possibility put to Mr H that the *Vertetiem* documents might be fake, thus denying him any opportunity to make submissions in this regard. Yes, they were mentioned at the hearing, but just because a document is mentioned at hearing does not mean that an applicant would think it appropriate or necessary, by virtue of the fact that a document was mentioned, suddenly to set about establishing its veracity. As Clarke J., as he then was, observed in *Idiakheua v. The Minister for Justice, Equality and Law Reform* [2005] IEHC 150, at p. 9:

"If a matter is likely to be important to the determination of the RAT [and the IPAT is no different in this regard] then that matter must be fairly put to the applicant so that the applicant will have an opportunity to answer it. If that means the matter being put by the Tribunal itself then an obligation so to do rests upon the Tribunal. Even if, subsequent to a hearing, while the Tribunal member is considering his or her determination an issue which was not raised, or raised to any significant extent,

or sufficient at the hearing appears to the Tribunal member to be of significant importance to the determination of the Tribunal then there remains an obligation on the part of the Tribunal to bring that matter to the attention of the applicant so as to afford to the applicant an opportunity to deal with it."

4. There was, unfortunately, the clearest departure in this case from the standard identified in the just-quoted text. As a result, Mr H was denied fair procedures in the sense that he was never afforded an opportunity to address any issue perceived by the IPAT to present as regards the authenticity of the *Vertetiem* documents.

5. Did the first respondent err in law in failing to assess the media reports by failing to have same translated from Albanian to English and/or failing to give reasons for not doing so?

6. 'Yes.' It is a fundamental precept of fair procedures that an administrative decision (like a court decision in this regard) falls to be decided by reference to whatever evidence is placed before the decision-maker with good (and it would need to be good) reason being provided where it is not. Here some of the evidence supplied to the IPAT was in the Albanian language, it was never translated, and thus could not have been considered by the IPAT which, as constituted in the context of Mr H's appeal, has made no pretence to any knowledge of the Albanian language. The unconsidered evidence may be on a slight matter, it may be on a central matter, but it requires to be considered, with good (and it would need to be good) reason being offered where it is not. As Denham J., as she then was, observed in *Stefan v. The Minister for Justice, Equality and Law Reform* [2001] 4 IR 203, at p. 217, material "*which was not immaterial, was not before the decision maker [there] because of [a]...section [being] omitted from the translation. The application [thus] was not considered fully as a result of the omissions in the translated questionnaire. This was a breach of fair procedures*". In the within case, (a) the documentation has still not been translated, it has been described to the court but, with respect to counsel, the court cannot properly proceed to assess the materiality of documentation which it is not competent to read because it is written in a foreign language unknown to the court (though the court can note that, as described to it, the documentation does seem ostensibly to comprise relevant evidence); in *Stefan*, Denham J., at p. 217, was able to determine the non-immateriality of the information because of how it was deployed; this court is not placed in a like position; however what can be stated with certainty is that, (b) it just cannot be the case that the substance of the said documentation, documentation placed by Mr H before the IPAT and by reference to which he asked that his application be considered, was considered or understood, with no good reason being offered as to why the IPAT proceeded so. Unfortunately, another breach of fair procedures arises in this regard.

Conclusion

7. For the reasons stated above, the court will grant the order of *certiorari* sought and remit this matter to the IPAT for fresh consideration.