THE HIGH COURT

[2022} IEHC 618

[2020/564 JR]

BETWEEN

T.G.

APPLICANT

AND

INTERNATIONAL PROTECTION APPEALS TRIBUNAL
AND
MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Ms Justice Bolger delivered on the 9th day of November, 2022.

Introduction

1. The applicant seeks an order of *certiorari* quashing the decision of 10 June 2020 of the Tribunal under s.46(3)(a) of the International Protection Act 2015 ('the 2015 Act') to affirm a recommendation that the applicant should not be given leave for a refugee declaration order and a subsidiary protection declaration. For the reasons set out below I am refusing this application.

Background

2. The applicant is a national of Zimbabwe who arrived in the State on 9 February 2019 and immediately applied for international protection. He claimed he had been overheard in a bar speaking in negative terms about the President after which he was taken away by some men unknown to him, detained and tortured over four days. He was accused of being a member of the Mthwakazi Republic Party ('MRP') which he initially denied but then falsely admitted to in order to leave. The men released him and ordered him to attend an MRP meeting, but he did not do so. He said he attempted to obtain treatment at hospital for his injuries but was refused because he did not have a police report. He received threatening phone calls and some days later his house was ransacked after which he fled Zimbabwe.

3. The applicant's application for international protection was refused and he appealed. On 10 June 2020 the Tribunal refused his appeal on the basis of adverse credibility findings. The Tribunal did not accept his evidence of torture and persecution.

Legal grounds

4. The applicant submits the following as the issues to be determined by the Court:

    a. Whether the Tribunal's finding at para. 4.30 of the decision, that it did not make sense that the applicant was accused of membership of the MRP when he had no previous connection to the party, was based on pure personal speculation and/or was irrational or unreasonable, or whether the Tribunal failed to take into account

the heated political climate in Zimbabwe, as apparent from relevant country of origin information ("COI").

b. Whether the Tribunal' finding at para. 4.33, that the applicant's statement that he was unable to receive medical treatment without a police report was not credible because it was not supported by reliable COI, and its direction to itself to accept this claim only if COI documenting that a requirement to produce a police report "was in effect in Bulawayo or Zimbabwe generally", was irrational or grounded on pure personal speculation.

c. Whether the Tribunal acted in breach of constitutional justice and in breach of s. 46(6) of the 2015 Act by failing to give any or any adequate reasons for rejecting the reliability of the 'Chronicle' newspaper report which referenced another person who had been refused hospital treatment because they did not have a police report, or whether its finding in this regard was irrational or unreasonable.

d. Whether the Tribunal breached constitutional justice and fair procedures in finding at para. 4.34 that the lack of medical evidence before the Tribunal undermined the applicant's credibility and his claim to have been tortured, and placed a disproportionate and erroneous burden of proof on the applicant.

The arguments made

5. The applicant only challenges some of the Tribunal's findings but says that each of the findings he challenges were material to the decision and that a single error or unlawful finding in a credibility assessment may be enough to invalidate a decision; *VW v Refugee Appeals Tribunal* [2017] IECA 296, [2018] 2 IRM 56.

6. The respondents argue that the applicant was afforded the opportunity to comment on the material, his responses were considered by the Tribunal, adverse inferences drawn by the Tribunal were based on the evidence before it and the probative weight to attach to documentary evidence is quintessentially a matter for the decisionmaker as per Birmingham J. (as he then was) in *ME v Refugee Appeals Tribunal* [2008] IEHC 192 (at para. 27).

7. I set out below each of the Tribunal's findings that are challenged by the applicant and the arguments made by both parties.

(i) That the Tribunal's finding on MRP membership did not make sense

8. The Tribunal found that it did not make sense that the applicant was accused of membership of the MRP when he had no previous connection to the party. The applicant condemns this finding as personal speculation based on the Tribunal member's own view and relies on the principles of credibility assessment set out by Cooke J. in *IR v Minister for Justice* [2009] IEHC 353, [2015] 4 IR 144 as approved by the Court of Appeal in *RA v Refugee Appeals Tribunal* [2017] IECA 297, in particular the fifth principle at para. 10 that: -

"A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding".

9. The applicant submitted that the Tribunal had failed to take account of the heated political climate in Zimbabwe from relevant COI. He relies on the decision of Finlay Geoghegan J. in *RA v Refugees Appeals Tribunal* that the Tribunal is obliged to assess an applicant's story in the context of relevant COI.

10. The respondents submitted that the Tribunal had regard to all of the documents and all COI and accepted the applicant's claim that political violence occurs in Zimbabwe. The decision notes the applicant's replies to having been asked at his second s.13 interview why he did not mention the MRP at his first s.13 interview and why he described himself in the s.13 interview as having been accused as being an anti-Mnangagwa activist and did not mention the MRP. The Tribunal, having heard from the applicant, was entitled to find that his account lacked the sufficiency of detail expected of someone who suffered those events, was vague and that his submissions did not make sense, which the Tribunal found undermined his credibility. This assessment was made in the round in compliance with para. 8 of the decision of *Cooke J. in IR v Minister for Justice* [2009] IEHC 353.

(ii) The Tribunal's rejection of the applicant's claim that he needed a police report for medical treatment

11. The applicant submitted a report from the Zimbabwean state-owned 'Chronicle' newspaper which refers to a different person being refused treatment at a hospital because they did not have a police report. The Tribunal referred to what it called "well respected sources of country information" that it expected would have made reference to such a requirement if it existed, given the number of people it would impact. Those sources did not refer to hospital treatment in Zimbabwe being dependent on production of a police report. The Tribunal therefore concluded that the single newspaper report was not reliable.

12. The applicant submits that this finding was reached by personal speculation and was irrational.

13. The respondents argue that the article was considered and the applicant has not discharged his obligation to demonstrate otherwise *GK v MGELR* [2002] 2 IR 418. The Tribunal was entitled to reject the credibility of the applicant's claim where it found his credibility had been undermined by the vague nature of his claim of torture by unknown people at an unknown place.

(iii) Failure to give reasons for rejecting the reliability of the 'Chronicle' newspaper report

14. The applicant submits that the respondent acted in breach of constitutional justice and in breach of s.46(6) of the 2015 Act by failing to give any or any adequate reasons for rejecting the reliability of the newspaper report. The respondents rely on the decision of Clarke C.J. in *Connolly v An Bord Pleanála* [2018] IESC 31 in setting out what a decision has to do to meet the obligation to give reasons and on the *dicta* of O'Donnell J. (as he

then was) in *YY v Minister for Justice* [2017] IESC 61 that a decision only need allow a party and a reviewing court to understand the reasoning process.

(iv) The Tribunal finding that the lack medical evidence undermined credibility

15. The applicant furnished a letter from the HSE of 26 April 2018 confirming that he attended for an appointment with a psychologist and presented with anxiety as a result of past experience and trauma. The Tribunal found that the applicant's failure to produce detailed medical evidence from either Zimbabwe or Ireland demonstrating that he was subject to torture undermined the credibility of his claim of torture. The applicant said his torture did not leave physical scarring and that it is rare that medical evidence can demonstrate that an applicant was tortured. He argued that the Tribunal had placed a disproportionate and erroneous burden of proof on him. The respondents submitted that the Tribunal had considered all the available evidence and information, had rationally analysed and fairly weighed it and given the vagueness of the applicant's evidence, it was entitled to reach the decision it did.

The impugned decision

16. Whilst the applicant limits his criticism of the decision to elements of it, the decision requires a more global consideration from this court in order to assess whether any flaws found in the paragraphs identified by the applicant require the entire decision to be set aside. The court's role is not to usurp the decisionmaker's jurisdiction to make a decision but rather is confined "to ensuring that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law" as per Cooke J in *IR v RAT* [2015] 4 IR 144.

17. At para. 2.4 the decisionmaker confirms that all the information and documentation provided "has been fully considered". That claim is accepted by this Court unless the applicant has established direct or influential evidence to the contrary; *GK v MJELR* [2002] 2 IR 418. I do not believe that he has done so.

18. Having considered all the COI before it the Tribunal was satisfied on the balance of probability that

> "there is a political party in Zimbabwe called the MRP. The Tribunal is also satisfied that members of that political party have been subject to threats by members of ZANU-PF. The Tribunal is also satisfied that the country of origin information demonstrates that political violence occurs in Zimbabwe. The above findings support the Appellant's claim".

19. The Tribunal went on to set out its criticisms of the applicant's account at para. 4.30, stating that they did so having had the benefit of hearing the applicant:

> "Having had the benefit of hearing the Appellant, the Tribunal did not find the Appellant's account to have the sufficiency of detail expected of someone who suffered these events. The Appellant's account of being in fear of unknown people who tortured him in an unknown place is vague. The submissions of the Appellant that he was accused of membership of the MRP when he had no previous

connection to that party does not make sense. The Tribunal is satisfied that these issues undermine the credibility of the Appellant's account and his general credibility".

20. They went on at para. 4.33 and 4.34:

> "The Tribunal has reviewed the country of origin information before it. There is no mention in the US State Department reports, the UK Home Office report, the Freedom House report or the Amnesty International reports that access to hospital in Zimbabwe is dependent on the production of a police report. In the event that such a requirement was in effect in [the applicant's village] or Zimbabwe generally, the Tribunal would expect these well respected sources of country information to make reference to it. Such a requirement would impact many people and would be widely reported. The Tribunal is not satisfied that the single report in the Chronicle newspaper of such an incident arising is reliable in the circumstances. The Tribunal rejects the credibility of the Appellant's statement that he was unable to receive medical treatment in Zimbabwe in the absence of a police report given it is not supported by reliable country of origin information.
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> When asked whether he had any medical evidence to support his claim at hearing before the Tribunal, the Appellant answered no. The only medical document before the Tribunal is the letter from the HSE dated 26 April 2018 which outlines the Appellant attended for one appointment with a psychologist where he presented with anxiety as a result of past experience of trauma. If the Appellant was subject to torture in Zimbabwe, the Tribunal would expect the Appellant to have produced some detailed medical evidence from either Zimbabwe or Ireland demonstrating that he was subject to torture. No adequate explanation was provided by the Appellant as to the absence of this documentation. The failure to produce such documentation undermines the credibility of his claim that he was in fact subject to torture in Zimbabwe and the general credibility of his claim".

21. Whilst the remaining paragraphs include findings challenging credibility that are not challenged in these proceedings, it is worth noting that at para. 4.35 the Tribunal rejected the applicant's explanation for returning to his family home after he had been tortured because he said he had nowhere else to go. The Tribunal rejected this explanation because they found he was immediately able to leave his house on 1 February 2018 after it had been ransacked and stay with someone else until he left Zimbabwe on 6 February 2018. The Tribunal also set out at para. 4.36 why they rejected the applicant's explanation that he was not in fear of the men because he was working for them, which was that the applicant did not attend the meeting he was directed to attend and continued to receive threatening phone calls from those men. The Tribunal concluded at para. 4.37 that it was not satisfied a reasonable explanation had been proffered for the applicant's decision to remain living in the same house after being subject to torture by men who knew where he lived and in circumstances where he did not attend the meetings of the MRP and continued to receive threatening phone calls from them. The Tribunal said

it would expect the applicant to have been in fear of further harm and to have attempted to relocate, and was satisfied that his failure to do so undermined his claim of being subject to torture and the general credibility of his claim. At para. 4.39 the Tribunal questioned why the applicant did not state during his s.13 interview, when asked for the basis for his application for international protection, that his wife and child were missing and when he was asked the location of his wife and child he simply replied "Zimbabwe". The Tribunal found that this undermined both the credibility that the event occurred and the applicant's general credibility. At para. 4.40 the Tribunal considered the actions of the applicant in the efforts he had made since February 2018 to locate his wife and child which included a tracing request to the Red Cross made on 10 December 2019 but was not satisfied that his actions were consistent with someone who genuinely believed that his family were missing. It found that this undermined his credibility that his family are missing as well as his general credibility.

22. The applicant's evidence which the Tribunal found undermined his credibility is summarised at para. 4.41 of the decision as follows:

> "The Tribunal is satisfied that the Appellant's narrative is supported by the fact that there is a party in Zimbabwe called the MRP and that political violence does occur in Zimbabwe. The Tribunal is satisfied that the credibility of the Appellant's claim is undermined by the vague nature of his claim that he was detained and tortured by unknown people at an unknown place. The illogical nature of the Appellant's claim that he was accused of membership of a party with which he had no connection on the basis that he made an anti-Mnangagwa comment also undermines the credibility of the claim. The Tribunal is satisfied that the decision of the Appellant to return and stay in his family home after being tortured undermines his claim of having been tortured. The Tribunal rejects the credibility of the Appellant's explanation for his failure to provide evidence of medical treatment in Zimbabwe. No adequate explanation has been provided by the Appellant as to the absence of any substantive medical or other evidence before the Tribunal that he suffered torture in Zimbabwe. The Tribunal is satisfied that the failure of the Appellant to state that his wife and child were missing at his section 13 interview undermines the credibility of his claim. Having regard to all of the above, the Tribunal is not satisfied that the Appellant is generally credible and the Tribunal is not satisfied it is appropriate to extend the Appellant the benefit of the doubt in the circumstances. Having considered the provision, the Tribunal is satisfied that section 28(7) of the 2015 Act does not apply to the Appellant's claim. The Tribunal is not satisfied on the balance of probabilities that the Appellant was tortured while being accused of membership of the MRP and his wife and child disappeared after his release, bearing in mind the negative credibility issues raised above. This material element of the Appellant's claim is rejected by the Tribunal".

Decision

(i) That the Tribunal finding on MRP's membership didn't make sense.

23. I am satisfied that these findings were made in the light of the evidence the Tribunal heard from the applicant, much of which was vague, including the evidence set out at paras. 4.17, 4.18, 4.19 and 4.20 of the decision. It is clear from para. 4.10 that the COI about political violence in Zimbabwe was considered by the Tribunal. Nevertheless and significantly in the light of having heard the applicant, the Tribunal found that the applicant's claim that he was accused of membership of the MRP when he had no previous connection to that party (which was common case) did not make sense. Not accepting explanations having considered them is neither irrational nor unreasonable as long as a decisionmaker can identify a basis for their rejection. I am satisfied that the Tribunal does identify a sufficient basis in the decision, i.e. that the applicant's evidence was vague and lacking in the detail expected of someone who had suffered the traumatic events described by him.

24. The COI was accepted by the Tribunal (which it confirms in particular at para. 4.10) and the applicant's account was properly assessed in the context of it in accordance with the requirements identified by Hogan J. in *RA v Refugee Appeals Tribunal*.

(ii) The Tribunal's rejection of the applicant's claim that he needed a police report for medical treatment.

25. The Tribunal found there was no COI in respect of individuals being refused admission to hospital in Zimbabwe without a police report. The Chronicle article was considered. The Tribunal was entitled to consider it unreliable as a single report relating to an unrelated incident and not supported by any of the available COI available. Its finding was neither speculative nor irrational.

(iii) The Tribunal finding that the lack medical evidence undermined credibility.

26. The Tribunal found that the applicant's credibility was undermined as he had not provided an adequate explanation for the absence of medical documentation from either Zimbabwe or Ireland. The Tribunal accepted that he had documentation confirming one attendance with a psychologist in Ireland but clearly did not consider that to be the detailed medical evidence it said it would have expected had the applicant been subjected to the torture described by him. Whilst a medical report might not confirm that symptoms were caused by torture, the difficulty here was the lack of adequate evidence of symptoms. The Tribunal was entitled to consider that had the applicant been subjected to the torture he described, he would have had more medical evidence of his resulting symptoms than he presented. That was not a disproportionate or erroneous burden of proof on the applicant. The Tribunal was entitled to have regard to the lack of medical evidence, other than a single psychologist appointment in Ireland, in assessing the account the applicant gave of having been subjected to torture over a period of four days.

(iv) General credibility

27. I do not consider the applicant has established grounds to condemn any of the three factors of the decision which he challenges. Had I have found any of them to be made out, it may have been necessary to consider whether a single impugned factor relied on to reject the applicant's credibility might be enough for the court to exercise its discretion to grant an order for certiorari. It is possible that where many factors are relied on by the Tribunal to reject credibility, some of them may be impugned without it being necessary

for the court to quash the entire decision, an approach that I adopted in my decision in *AKR v Minister for Justice & Equality* [2022] IEHC 325. There, I held that the decision of the Minister for Justice that the applicant failed to meet certain eligibility criteria under a special scheme, requiring the applicant to show he was living in the State continuously since his arrival in the State and that he could provide supporting documentary evidence of his continued presence in the State at least for a number of years, was lawful. I held that if I was incorrect in that, I did not consider it appropriate to exercise my discretion to grant the reliefs sought anyway having regard to a separate aspect of the relevant scheme, requiring evidence of having attempted to avoid being unlawfully in the State through engaging with the immigration authorities, as the evidence before the respondent was not so clear cut as to satisfy this Court that the applicant could ever have satisfied the respondent that he satisfied that requirement of the Scheme. Whilst I do not consider it necessary to make a determination on that type of situation in this case given that I am not impugning any of the grounds pleaded by the applicant, I do accept in general that the Tribunal should make an assessment in the round, as held by Cooke J. in *IR v Minister for Justice* [2009] IEHC 353 where he held at para. 8 that a credibility decision should "be read as a whole and the court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolate examination in this regard of the punitive impression made upon the decisionmaker".

Conclusion

28. I reject the applicant's application for *certiorari* as he has not satisfied me that legal flaws exist in the factors relied on by the Tribunal in concluding that the credibility of the applicant's claim was undermined and that his appeal should, therefore, be refused.

Indicative order as to cost

29. As the applicants have not succeeded in their application, my indicative view on costs is that costs should, in accordance with s.169 of the Legal Services Regulation Act, follow the cause and the respondents are entitled to their costs against the applicants.

30. I will list the matter for mention before me at 10:30am on 18 November to allow the parties to make such further submissions on costs as they wish to make and to hear whatever submissions the parties wish to make on the final orders to be made.