# THE HIGH COURT

**[2023] IEHC 208**

**Record No. 2022/248JR**

**BETWEEN**

**AA**

**APPLICANT**

**- and -**

**THE MINISTER FOR CHILDREN, EQUALITY, DISABILITY, INTEGRATION AND YOUTH**

**- and -**

**THE MINISTER FOR JUSTICE**

**RESPONDENTS**

***EX TEMPORE JUDGMENT* of Ms Justice Hyland delivered on the 3 April 2023**

## Introduction

1. This is an application brought by way of judicial review in relation to the decision to transfer the applicant, who was at the material time an applicant for international protection, from a reception centre in Balseskin in Dublin to accommodation in Athlone on 11 March 2022.
2. At the time that leave for judicial review was sought on 29 March 2022, the applicant had been the subject of a vulnerability assessment within the meaning of the European Communities (Reception Conditions) Regulations 2018 (S.I. No.

230/2018) (the "2018 Regulations") on 17 August 2021. As part of the reliefs, the applicant sought an Order of *mandamus* directing that a further vulnerability assessment be carried out and declarations that the failure to carry out an up-to-date vulnerability assessment was a breach of her rights. An injunction was also sought. Those reliefs are now no longer being sought in circumstances where a vulnerability assessment was carried out on 28 April 2022. An Order of *certiorari* quashing the decision to designate the accommodation in Athlone as the accommodation at which the applicant's material reception conditions should be made available was also sought. Similarly, this is now no longer being sought because, on 28 April 2022 the applicant was granted refugee status, and therefore the Minister no longer has an obligation to provide reception conditions to her. That leaves two reliefs that are still being pursued by the applicant. The first is the declaration identified at paragraph 4 of the Statement of Grounds as follows:

> *"A declaration that the first respondent's decision to transfer the applicant to the Athlone accommodation centre on 11 March 2022 constituted a breach of her private and/or health rights as protected by the Constitution, the Charter and/or Section 3 of the European Convention on Humans Rights Act 2003."*

The second relief sought is damages.

3. It must be emphasised that the declaration sought does not assert that there was a breach of the 2018 Regulations. If one goes to the declaration in the Statement of Grounds it is clear that what is asserted is that the decision to transfer was a breach of her rights as protected by the Constitution, the Charter, and the European Convention on Human Rights Act 2003. There was in fact no claim that there is a breach of the Regulations, although certainly at the hearing an attempt was made to

make such a claim. However, that is not part of the declaration, and I will deal with the consequences of that situation below.

**Mootness**

4. First however, I should deal with the argument on mootness. The respondents argue that the entirety of the case is moot because the applicant is no longer a person seeking international protection and therefore any declaration can have no material effect because there is no live controversy between the parties. They say that because the question as to whether she ought, as an applicant for protection, to have been transferred to the reception centre is now entirely otiose because she is no longer such an applicant. She remains living in the mobile home in Athlone by the grace of the Minister and not because she is so entitled. Indeed, the respondent points out that in Greece, a similar situation pertained, when she was granted refugee status, she was evicted from the accommodation that had been provided to her.
5. The applicant on the other hand says that in particular, because she is still seeking damages, there remains an issue to be determined and the applicant has identified the Supreme Court decision of *MC v The Clinical Director of the Central Mental Hospital* [2020] IESC 28 in relation to this point. I have carefully read that decision and it appears that decision identified that a claim may in certain circumstances avoid being treated as moot where there is a damages claim in respect of a substantial breach of rights, even if the damages themselves may not be likely to be substantial or indeed may be nominal.
6. None of the conditions, in this case, that would be necessary for an award of damages to be successfully made have been identified or pleaded. For example, there is no

identification or plea of *mala fides* on the part of any of the respondents or any knowledge on the part of the respondents that the steps being taken were unlawful. In those circumstances the applicant has not in my view made out the conditions necessary to establish that she has an extant damages claim that warrants the Court determining the proceedings, despite the fact that she is no longer an applicant for international protection. In those circumstances it seems to me that the proceedings are moot.

7. However, in case I am incorrect about my conclusion in this respect, I have decided to proceed to determine the substantive matters in this case. The facts of the case are as follows.

**Factual Background**

8. The applicant is a Syrian national who arrived in the State with her son on 16 May 2021. They applied for international protection in the State on that date. On lodging the application for international protection in May 2021, the applicant and her son were brought to the National Reception Centre in Balseskin in Dublin. This provides supports and services and analyses the situation of the persons coming to it, after which they are dispersed to an appropriate accommodation centre.
9. On 16 June 2021, IPAS wrote to the applicant to tell her that, due to Covid-19 restrictions it was not possible to provide interpretative services so she was informed that a vulnerability assessment would be scheduled at a later date with an interpreter present.
10. On 10 August 2021 IPAS wrote to the applicant to inform her that she could avail of a vulnerability assessment in relation to accommodation and reception needs and a consent form was enclosed and, as I have identified in my introduction, that went ahead. On 17 August 2021 IPAS carried out a stage one vulnerability assessment in

accordance with Regulation 8 of the 2018 Regulations in respect of the applicant. It can be seen clearly from the form exhibited, called the stage one vulnerability assessment pilot, that the applicant was asked during her assessment whether she had any physical disability such as being unable to move freely, walk, dress, wash or climb the stairs. She answered no to those questions. She also answered no to the question regarding whether she was suffering from any non-physical disabilities. It was noted in the checklist that the applicant stated that sometimes she experienced some short-term memory loss but it was not serious and that she was otherwise healthy. She confirmed she understood the purpose of the assessment and that she understood and was happy with the answers given to the questions.

11. Following the assessment, the applicant was deemed to be a person not in need of special reception conditions. That has not been challenged by the applicant. During the course of the oral hearing there was some attempt to seek to undermine the conclusion in that respect, but because this is not the subject of proceedings and it has not been challenged, I cannot in any way entertain that attempt. I will therefore treat the first vulnerability assessment as an assessment that I must rely upon.

12. When one turns then to what happened next in relation to vulnerability assessments, the conditions in the Regulations identify that the obligation under Article 3 of the Regulations is to carry out a vulnerability assessment within thirty days of the application being made for international protection. For the reasons that I have already set out i.e. in relation to Covid, the first assessment was not done within thirty days. No complaint was made within that time and no complaint can be made now since as I have identified, the first assessment was not challenged.

13. Regulation 8(1)(a) provides for a mandatory assessment within thirty days. Regulation 8(1)(b) provides that the Minister may at any stage after the expiry where

he or she considers it necessary to do so, assess whether a recipient is a recipient with special reception needs and if so the nature of his or her special reception needs. That makes it clear that, contrary to the submissions made by counsel for the applicant, there is no obligation to carry out a second assessment or an additional or supplemental vulnerability assessment within thirty days. That obligation only applies to what I would describe as the first assessment. There is no question of a breach by the respondents of that obligation by reason of the fact that the second assessment was not carried out within thirty days. It is clearly a matter for the discretion of the Minister because Regulation 8(1)(b) says that the Minister may where he or she consider it necessary to do so assess the question of special reception needs. A second assessment is a discretionary matter that the Minister may or may not proceed with and in this case in fact the Minister did proceed with that particular step. However, there is no question of a breach of a time limit in respect of the second vulnerability assessment.

14. On 17 September 2021 Helena Stapleton of IPAS wrote to Dr. Niall O'Cléirigh enclosing a copy of medical correspondence received on behalf of the applicant. The letter requested Dr. O'Cléirigh to consider the documentation and to provide his advice in relation to the applicant and her son's request to be accommodated in Dublin on medical grounds.

15. On 30 September 2021, Dr. O'Cleirigh replied as follows:

> *"I have read the file you sent me on this lady. It is my opinion that the medical details do not require them to remain in Dublin. For medical issues she can be investigated at regional hospital level"*

16. Sometime in February 2022, the applicant was told that she was going to be transferred from Dublin to Westmeath with her son. Following that information, an

email was received from the Irish Refugee Council on 8 February to IPAS indicating that the applicant suffered from memory loss as well as mobility issues and attends regular medical appointments in Dublin in Beaumont Hospital and that she had an appointment in Beaumont the previous day. It was requested that the applicant and her son be transferred to accommodation in Dublin City to facilitate access to Beaumont.

17. The Refugee Council asked for confirmation that a vulnerability assessment had been conducted with respect to both applicants and that they be provided with accommodation appropriate to their special reception needs. That request suffered from a number of information deficits. The applicant's age was incorrectly stated as age 70., as was her place of residence. The author was clearly not aware or had not been told that the applicant had already had a vulnerability assessment and had not been assessed as somebody requiring special reception needs.

18. A move to County Westmeath was supposed to take place on 11 February but this was cancelled due to a medical hold. No further information has been provided to me by any party about that medical hold. Therefore, I cannot place any further reliance on it apart from simply knowing there was a medical hold in respect of that move.

19. The position in relation to the further assessment is set out in the second affidavit of Mr. Fay on behalf of the respondents. He identifies that the Irish Refugee Council asked for confirmation that vulnerability assessments had been carried out on both individuals and that the resident welfare team ascertained that assessments had already been carried out in August 2021 in respect of the applicant. However, there is an email of February 2022 provided to me that seemed to suggest that the IPAS team did indeed treat the February email from the Refugee Council as a request for

a further assessment and I will therefore treat the date of the request for further assessment as 8 February 2022.

20. On 10 March 2022 the applicant's solicitors asked for the transfer to Athlone, scheduled for the following day, 11 March, to be cancelled pending assessment of the specific reception needs of the mother and son. No reference is made to the previous assessment that had been carried out on the applicant. Rather it is stated that the applicant was a vulnerable applicant and her reception needs required to be assessed in accordance with the provisions of the Reception Conditions Directive. It should be noted that this was the first time that there was a request for cancellation, being the day before the move. An undated email had been sent to the applicant's son stating that, after liaising with the health centre in Balseskin, they could assure him that he and his mother would not be moved from the reception centre until a suitable centre that met his mother's health needs could be found. That date may have been 9 March 2022 as it appears to have been a reply to an email sent by the Ms. A's son on that date.

21. In any case, the position was altered as, on 10 March, an email was sent from the IPAS support team stating that due to the demand for accommodation they had no availability to offer in the Dublin area, that Balseskin was a reception centre, and that due to the increased amount of applicants they could not keep residents in the accommodation long term as it was required to assess new arrivals. It was stated that the accommodation proposed was an interconnecting unit and that the applicant and her son would be linked to the local health services. Again, I place no reliance and do not consider it relevant that there was an email initially suggesting that they would not need to be moved. From a legal point of view, it is difficult to see the significance of that.

22. The move took place the next day on 11 March 2022, following which complaints were made by the applicant and her son on the basis that she could not step into the shower due to vulnerability issues and the fact that there was a step up into the shower and secondly that she could not use the toilet with the assistance of her son who was her carer because of the size of the bathroom, or at least that there was great difficulty in using the toilet with the assistance of her son because of the size limitations.

**Proceedings issued**

23. On 29 March 2022 leave to apply for judicial review was obtained. On 26 April 2022 the applicant was granted refugee status. On 28 April 2022 the applicant had a second vulnerability assessment, and she was deemed "*vulnerable high*". The accommodation recommendations were that she required accessible accommodation with her son in the city where she could easily access geriatric services and it was recommended that as she had been granted refugee status, she could source independent accommodation outside of direct provision. The decision noted that IPAS does not transfer residents who have been granted refugee status but that it would recommend that on humanitarian grounds his mother be transferred.

**Medical Reports**

24. Before I consider the legal arguments, I want to look in some detail at the medical reports that were submitted by the Irish Refugee Council and by the applicant's solicitor in March 2022. These appear to be as follows.

25. A letter of 3 September 2021 from a Dr. O'Dálaigh to the Consultant Geriatrician in the Mater Hospital asking them to see the patient for assessment of memory loss. Dr. O'Dálaigh states that "[*Ms. A] looks quite vague - walked in holding son's hand, she*

*converses with her son in short sentences in Arabic*". That is the sum total of the letter. There was no diagnosis, and it is clearly a request for assessment.

26. Secondly, there is a letter of 21 October 2021 from the same doctor which states that the applicant has been referred to the geriatrician and has an appointment on 30 November 2021 to investigate the memory loss and possible dementia. It also states that she has mobility issues and walks with the support of her son. It is, in my view, fair to say that this is a relatively superficial report. It does not go into any detail. It does not describe any mobility issues. It does not identify any particular restrictions with the type of accommodation she can live in. It does not identify any issues, for example in relation to taking steps up, and there is simply no description of vulnerability issues of any sort, nor was there any identification of any tests being carried out in that respect.

27. There is a reference in an email to an appointment letter for the memory clinic in the Mater Hospital on 13 April 2022 but that letter does not appear to have been exhibited. However, there is a letter of appointment for February 2022 from Beaumont Hospital to the outpatient clinic in Raheny.

28. There are no complaints of any sort from the medical point of view between September 2021 and February 2022 made to any of the respondents. There is evidence of referral to consultants but most striking of all is that, despite consultant appointments being identified as being in November 2021 and February 2022, and indeed one to take place in April 2022, there is no medical evidence whatsoever arising from those consultations supporting the applicant's claim in respect of any medical condition. Given that the solicitors for the applicant were writing on 10 March 2022 seeking to restrain the move to Athlone, it is very difficult to understand why no up-to-date medical evidence was put before the respondents. Indeed, counsel

for the applicant now relies heavily on the second vulnerability assessment of 28 April 2022 and says this identifies that the applicant does indeed have mobility issues and other difficulties but still there is no medical evidence coming from any of the consultant's appointments. Given that there was such heavy emphasis on the applicant's need to stay in Dublin because of the referrals that had been made to Beaumont and to the Mater and to those consultant appointments, it is very difficult to understand why there is such a glaring absence of medical evidence in the case both before the respondents when the application for delay in moving was being made and indeed, before this Court.

**Legal Analysis**

29. I turn now to the legal analysis that I must carry out in respect of the challenge. In summary, this is a challenge to the decision to transfer the applicant on the basis that the transfer breached her private and/or health rights as protected by the Constitution, the Charter and the 2003 Act. As I have identified above, there is no allegation that there was a breach of the 2018 Regulations and therefore the applicant is not entitled to plead a breach of the Regulations.

30. Even if the applicant had pleaded it, I cannot see how the transfer would have been in breach of the Regulations and no case to that effect was made out. There was no failure to conduct a vulnerability assessment under Article 8. As I have identified that took place in August 2021. The second assessment was requested on February 8, less than five weeks before the transfer. There was a paucity of medical evidence supporting the application and as I said there was no explanation as to why there were no up-to-date medical reports after October 2021 and no consultant's reports.

31. The case appears to be made that she ought not to have been transferred until the second assessment took place. No provision of the Regulations has been invoked to

support that argument. There is no breach of Article 8 given that an assessment had already been carried out and that any second assessment is at the discretion of the Minister.

32. There was some argument that, given the material before the respondent, it was not entitled to transfer her pending further assessment. No legal basis for an obligation to delay transfer pending the second assessment has been identified. No case law has been cited in support of such an argument.

33. Moreover, the factual basis for such an argument is entirely absent. The material before the respondent was entirely insufficient to substantiate any such obligation even assuming such an obligation existed at all. The circumstances were as follows. The first assessment had not disclosed any vulnerability. No medical conditions had been identified at the assessment in August 2021. There is no substantive medical evidence put forward justifying the necessity for the applicant's transfer to be delayed pending the assessment. The applicant was in a reception centre that was needed to process new arrivals. The respondent did not have accommodation available in Dublin which was the applicant's preferred option. There was no identification by the applicant or her solicitor of any mobility issues such that she required accommodation of any particular dimensions or specification. In short, it does not appear to me that there was any factual reason why she should not have been transferred to Athlone at that point in time.

34. Turning to the legal framework, as identified above, no legal obligations have been identified that would have required the Minister to refrain from transferring her. Even assuming a breach of the Regulations had been pleaded, the height of the obligations of the Minister is to meet the recipient's basic human needs. In designating an accommodation centre under Regulation 7(4) of the Regulations, the

Minister is obliged to take account of any special reception needs of the recipient assessed in accordance with Regulation 8 where the recipient is a vulnerable recipient. The applicant did not have any special reception needs at the time of transfer given the outcome of the first vulnerability assessment, nor had she put before the Minister such evidence as to identify potential special reception needs that could only be met by a particular type of accommodation. She has not explained why she was not in a position to do so, given what she characterises as an extensive engagement with medical services in Dublin prior to her move. In those circumstances, the Minister's decision to transfer in advance of the second assessment, despite a request having been made to that effect, is not in breach of the Regulations and the factual basis for such a claim has not been made out.

**Breach of human rights**

35. As I note above, the applicant does not plead a breach of the Regulations. Rather she appears to make a much more general complaint that the accommodation she was provided with is a breach of her rights under the Constitution, the Charter and the Human Rights Act. That claim appears to have been based on the fact that the accommodation is not wholly suitable for her particular situation. However, that claim can only be made up until 26 April 2022, since after that date she had no obligation to remain in the accommodation and was entitled to look for accommodation in the same way as any other person enjoying her status as a refugee. Therefore the claim is made in relation to a period of six weeks from 11 March to 26 April 2022.

36. It is not asserted that there is no sanitation in the premises or that there is no hot or cold running water or that there is no heat. Rather it is asserted that she cannot use the shower and that the size of the bathroom makes it difficult for her to be assisted

by her son in using the toilet. She does not say that she cannot wash, but that she cannot use the shower. Undoubtedly, the conditions are less than ideal for her. Nonetheless it seems to me that these conditions fall very far short of the situations identified by the applicant's counsel in cases where there has been found to be a breach of fundamental rights. These cases referred to include *Haqbin v The Federaal Agentschap* Case C-233/18 (ECLI:EU:C:2019:956). In that case, the Court of Justice was concerned with the total withdrawal of material reception conditions to a minor asylum seeker who ended up sleeping rough and who had no access to any basic facilities.

37. That is markedly different from the present case. As I have identified, the applicant had full access to medical treatment in the Balseskin Reception Centre and indeed she had the same in Athlone. The mobile home was for her exclusive use and that of her son and there were private bathrooms, bedroom and kitchen facilities. As I have identified, she was then granted refugee status. This is simply not a case where the applicant was not granted access to basic personal hygiene facilities or where her entitlements were withdrawn.

38. Equally, no analogy can be drawn with the case of *Simpson v The Governor of Mountjoy Prison* [2019] 1 ILRM 81. I accept the submission made by the respondents that there is quite a difference where a case is brought by a detained prisoner who is alleging defective prison conditions. In that case, as is well known, the complaint was that the prisoners were required to slop out and that they had no private sanitation facilities and that this went on over a very extended period. In the circumstances one can understand the conclusion of the High Court and indeed the Supreme Court but the factual and legal context here is in my view entirely different. For the same reason that the applicant's reliance on *Price v UK* [2001] (ECHR

application no. 33394/96), Helal v France [2015] (ECHR application no. 10401/12) and Szafranski v Poland [2015] (ECHR application no. 17249/12) are in my view misplaced as they are concerned with persons who were detained in prison.

39. To conclude in this respect, I shall quote the decision of McMenamin J. in *O'Donnell v South Dublin County Council* [2015] IESC 28 where he says that:

> "A *consideration of the ECtHR caselaw demonstrates that, in fact, no judgment confers a right to be provided with a home of one's choice, nor are there any positive obligations to provide alternative accommodation of an applicant's choosing*".

40. In those circumstances it seems to me that the conditions in which the applicant found herself for the six weeks that I have identified, while not conditions that she would have herself chosen, and were conditions that undoubtedly did cause her some difficulty, nonetheless do not even in my view approach the type of fundamental breach of her human rights and privacy that would be necessitated in order to make out a breach either of the Constitution, the Charter or the 2003 Act.

**Conclusion**

41. In those circumstances, it seems to me that the applicant has failed to make out any case that the decision to transfer her was a breach of her rights as alleged at relief number four in the Statement of Grounds. In all the circumstances I must refuse the application for relief.