

**THE HIGH COURT**  
**IN THE MATTER OF SECTION 5 OF**  
**THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000, AS AMENDED**

[2024] IEHC 296

2023 381 JR

**BETWEEN:**

**J.R. (ALGERIA)**

**APPLICANT**

**AND**

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND**

**THE MINISTER FOR JUSTICE**

**RESPONDENTS**

**JUDGMENT of Ms .Justice Mary Rose Gearty delivered on the 23<sup>rd</sup> of April 2024**

**1. Introduction**

- 1.1 The decision makers involved in the asylum process must consider a large amount of material and assess applicants who may be suffering from trauma. A large workload makes the job more difficult but does not relieve the Respondent of the duty to set out her decision clearly, a duty which is even more important when the applicants may be very vulnerable. The essence of decision making is that the decision must be clear. In this case, it is difficult to understand what, exactly, was decided as a matter of fact in respect of each allegation. The Respondent must reconsider the application.
- 1.2 This Applicant seeks to quash a decision that he should not be granted international protection. The initial determination by the International Protection Office (“the IPO”) to refuse protection was appealed to the

International Protection Appeals Tribunal (“the Tribunal”) which affirmed the recommendation of the IPO, setting out its own reasoning.

1.3 The Applicant’s grounds of challenge can be summarised as follows:

- (i) That the decision was irrational and failed to take into consideration material facts or considered matters which were irrelevant.
- (ii) That the Tribunal unfairly rejected a claim of rape.
- (iii) That the Tribunal failed to refer the Applicant to a medical doctor.
- (iv) That the Tribunal failed to consider submissions dated August 2022.

## **2. The Applicant and the Allegations**

2.1 The Applicant is Algerian and was born in the mid-90’s. He came to Ireland via the UK, France and Spain and arrived in Ireland in mid-2021.

2.2 The Applicant’s claim for protection appears to be based on three factors: the actions of his uncle, the position of his uncle, and the response of the police in Algeria to alleged events. He claims that his uncle has threatened to kill him because of a family dispute over property. The Applicant described this uncle making threats to his father and mother, including beating his father physically, all said to be the result of the same family dispute about property.

2.3 The Applicant claims that he went to the police, but it is not clear from the papers before me what exact complaints were made to the police. He further claims that the police ignored his complaints because they “*do not help the poor.*”

2.4 In an interview in June of 2022, the Applicant claimed for the first time that he had been sexually assaulted by this uncle, on a single occasion, when the Applicant was a child of 9 years. He described being grabbed on a stairway at the building where he lived and being “*sexually abused.*” He later referred to the same incident as a rape. No other details were provided. He did not report this to the police at the time nor did he disclose it before he left Algeria in 2018. He

did not seek medical help and did not mention the incident in a questionnaire, filled out in 2021, as part of his application to the Respondent.

2.5 The Applicant has described his uncle as a powerful man, with connections to a named terrorist organisation. He gave a general background of being victimised by this uncle when he, the Applicant, was a child. He claims that his uncle told the Applicant's mother that he would kill the Applicant, after the Applicant arranged to sell some of the land the subject of the family dispute.

2.6 The Applicant produced a medical report in respect of each parent and one referring to himself. The latter report was dated in the original, but not in the English translation. The report on the Applicant confirmed treatment for anxiety arising out of his involvement in a family dispute. The Applicant also claimed he had epilepsy but the only report referring to this was in respect of his father and did not refer to the Applicant. The medical report in respect of his mother described various mental health issues and other ailments. Her doctor notes that she is concerned about the situation of her son [the Applicant].

2.7 The Applicant replied "yes" to all categories of serious harm when asked to identify which risk he feared on arrival in Ireland: death penalty or execution, torture or degrading treatment, and threat to life or person due to indiscriminate violence in a situation of international or internal conflict.

2.8 This summary of his claims suggests a list of issues to be determined so that the Tribunal can make a rational decision in respect of this Applicant. These are primarily questions of fact, which must be addressed before deciding whether he should be granted international protection. It is for the Applicant to make his case but, having done so, it is for the Tribunal to set out what is accepted as a matter of fact, the reasons for its decision, and the legal consequences.

### 3. The Statutory Framework and relevant Cases

3.1 The purpose of the 2015 International Protection Act, as amended, (“the 2015 Act”) is to provide for the entry into Ireland of those who are neither Irish nor EU citizens and who need international protection. The legislation sets out the process whereby the status of applicants in this State may be determined. One of the bases on which a claimant may be granted refugee status is if he establishes that he has a well-founded fear of persecution or adduces evidence of a real risk that he will suffer serious harm if he is returned to his country of origin. A successful applicant who claims fear of serious harm from a family member, as is the case here, must show an inability or unwillingness of the country of origin to protect the person from serious harm.

3.2 Section 7(1) of the 2015 Act states that acts of persecution must be: “(a) *sufficiently serious by their nature or repetition to constitute a severe violation of basic human rights...*” This suggests that a single act, if there is credible evidence of an act of sufficient seriousness, could constitute persecution. Section 30 of the 2015 Act provides that actors, for the purpose of proving persecution, include the state, parties controlling part of a state and “(c) *non-state actors, if it can be demonstrated that the [state] actors ... including international organisations, are unable or unwilling to provide protection against persecution or serious harm.*”

3.3 Looking at the circumstances of this case, the Applicant’s uncle could be considered an actor for the purposes of this claim if there is credible evidence that the police are “*unable or unwilling to provide protection*” to the Applicant against acts of his uncle. Further, if there is credible evidence of threats or of rape, one or both could be sufficiently serious as to constitute persecution.

3.4 Section 28(6) of the 2015 Act provides as follows:

*“(6) The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such serious harm, is a serious*

*indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."*

3.5 This Court was referred to a decision of Ferriter J., *M.Y. v. IPAT* [2022] IEHC 345, which also concerned an Algerian applicant's claim for asylum. In *M.Y.*, at paragraph 21, there is a reference to *I.L. v. IPAT* [2021] IEHC 106. In *I.L.*, Burns J. held that once the Tribunal, expressly or impliedly, finds that an applicant has been subject to threats of serious harm, there is an obligation on the decision maker to engage with s.28(6), which amounts to a rebuttable presumption that the applicant has a well-founded fear or is at real risk of suffering serious harm. If, having found that an applicant was threatened with serious harm, there is no reference in its decision to this subsection, that in itself is an error on the part of the Tribunal. This logic is compelling and has implications for this case.

3.6 There was no dispute in relation to the general law applicable in these cases: the Applicant must prove his case, credibility must be established on a holistic view of the evidence and the decision must not be irrational. The Court does not step into the decision maker's shoes; once the Tribunal sets out a rational, *intra vires*, basis for the decision, the High Court will uphold that decision.

#### **4. Decision of the IPO**

4.1 The decision of the IPO was to refuse to grant the Applicant refugee status or subsidiary protection. That decision is mentioned here as one aspect of that decision arose in the submissions made by the Applicant.

4.2 The IPO did not accept that the Applicant had been raped, on the balance of probabilities. The IPO accepted that this was a claim that might not be made immediately, or even in the questionnaire, due to concerns about privacy. The

claim was rejected nonetheless, due to the lack of specificity in the claim and the fact that it was not corroborated.

## **5. The Tribunal's Decision**

5.1 The Tribunal rejected the Applicant's request for international protection in a written decision dated 7<sup>th</sup> March, 2023. The material considered by the Tribunal is set out and includes the questionnaire he filled out on arrival, his later interview, the report of the IPO and an audio-visual hearing with the Applicant and his solicitor which took place on the 13<sup>th</sup> of January 2023.

5.2 At paragraph 2.10 of the decision, the documentation on which the Tribunal relied is listed, including medical certificates, a legal notice referring to the Applicant's mother, references, identity documents (one genuine, one false) and a deed of sale referring to land, said to be the subject of the dispute.

5.3 Information on the country of origin, from 2021 and 2022, was available. The Tribunal confirmed that all this material *"and submissions have been fully considered."* The reference to submissions will be examined separately.

5.4 The decision begins with a recitation of the Applicant's background and a note of his fluency in three languages. The Tribunal set out the Applicant's claims: that he had been threatened by an uncle whom he had challenged in a dispute relating to property; that he had been raped, when he was nine years old, by the same uncle; that his uncle threatened the Applicant when part of the land under dispute was sold; that the threats were reported to Algerian police who failed to help because they *"do not help the poor."*

5.5 The Applicant left Algeria in 2018, with his father. The Applicant described his route to Ireland, which included relatively lengthy periods working in three other countries. He did not seek asylum in any of these three countries. The Applicant also claimed to have epilepsy and said that he forgets a lot of things. One of the last items in this introductory summary by the decision maker, is

the claim that the Applicant fears his uncle as this man *“has links with the Mafia.”* Elsewhere, the group is described differently but the allegation remained one of affiliation with a criminal organisation.

5.6 The Tribunal correctly identified that it was required to assess credibility in the round, looking at all facets of the evidence and not coming to a conclusion until the evidence had been reviewed. It listed UNHCR factors such as consistency and specificity as indicators of credibility. The principles set out in *O.N. v. Refugee Appeals Tribunals* [2017] IEHC 13 by O’Regan J. were outlined: the standard of proof to be met by an applicant is proof of facts supporting his claim on the balance of probabilities, coupled with the benefit of the doubt, which is afforded to an applicant once his overall credibility is accepted.

## **6. Issues Identified and Claims Conflated**

6.1 The Tribunal identified two issues for determination, first, whether the Applicant’s family had been threatened by the named uncle due to a family dispute and, second, whether the Applicant had been “raped and sexually abused by his uncle when he was underage and threatened with death *“upon his reporting the matter to the police.”* Unfortunately, this statement of the issues is factually flawed, and the subsequent analysis does nothing to assist in clarifying the issues that do arise in this case.

6.2 The first question relates only to the Applicant’s family; were they threatened? There is no clear answer to this question in the written decision. The second question conflates the issues of threats to the Applicant, sexual assault of the Applicant, and the police response. It is never clear, in the decision, whether there was a threat and what, exactly, was reported to police.

6.3 The issues identified by the Tribunal conflate the claims he makes. This might not be fatal to a decision if all claims were rejected but that is not what happened here. The broad picture is that the Tribunal accepted that there was

a family dispute and that something was reported to the police, but the police did nothing. The Tribunal did not accept that the Applicant's uncle raped him, nor did they accept that his uncle was a member of a terrorist organisation.

6.4 Most notably, there is no finding of fact as to whether the Applicant's uncle threatened to kill him. Nor was there any decision on whether his family had been threatened, although this was the first issue identified by the Tribunal. If both of these were accepted, this presents a real problem where there was also a finding of fact that the police had ignored complaints made to them.

## **7. What Threats, if any, Were Made by the Applicant's Uncle?**

7.1 The Tribunal concludes that the Applicant's uncle "*sought to frustrate the sale of property*". This was found to be credible, and the Tribunal also accepted that the Applicant "*was angry and reported the matter to the police who ignored it*". This, again, is a flawed conclusion. It is not clear what is meant by "*sought to frustrate*". It is not clear what "*the matter*" refers to. Is it the dispute, the alleged threat to the Applicant's father, to his mother or the death threat to himself? Or all of the above? These are crucial issues: if there were multiple or repeated threats, this could amount to persecution. As is set out below, however, the determination about whether or not there was persecution is equally unclear.

7.2 In a statement relevant to this finding, the conclusions at the end of this section state, again confusingly, that the Applicant left Algeria "*arising from alleged threats to his life from his relative, over a property issue*". The final conclusion at paragraph 4.16 is, again, that "*the Applicant left Algeria in 2018 arising from alleged threats to his life.*" This conclusion does not help clarify whether or not the Tribunal found that threats had actually been made and, if so, to what extent and to whom. The use of the word "*alleged*" in this context is unsatisfactory. The function of this decision maker is to decide whether the allegations are true, not to avoid deciding the issue by referring to the threats as "*alleged*".



7.3 For these reasons, the application must be reconsidered by the Respondent so that the factual findings can be made and set out clearly to allow the Applicant to consider the logic whereby each decision was made. If the Tribunal accepted that death threats were made to the Applicant, according to s.28(6) of the 2015 Act and *I.L.*, this is good evidence that the Applicant has a well-founded fear of persecution or is at real risk of suffering serious harm. There is no mention of this subsection in the decision. It is not clear if this is because the Tribunal did not accept that the death threats were made or if, having accepted that they were made, it considered that they could be met or mitigated in some way. As set out in *I.L.*, there is an obligation to consider s.28(6) if a threat of serious harm is established. It is not possible for this Court to decide whether the subsection arises as there is no clear finding of fact on this issue.

7.4 The main stated basis for the Tribunal's decision was that the Applicant "*has not fulfilled the first credibility factor*", in that he has not made an effort to supply vouching documentation. The criticism of the documents is that two of the medical certificates refer to his parents, not to him, and that two are undated.

7.5 The following paragraph concludes that he has failed "*to substantiate his case from Algeria.*" It is not clear which elements of his case are referred to here, and the preceding paragraph refers only to various documents which are criticised as being irrelevant or undated. If this decision refers to the threats he has alleged relating to himself, or to his parents, or if the decision is in relation to his fear of harm, this is not stated.

7.6 Three remaining issues are also discussed below, although they do not form part of the reasoning for this judgment. Some consideration of these issues may be of assistance to the parties as the matter will have to be determined again.

## 8. The Tribunal's Conclusions: Sexual Assault or Rape?

8.1 As already noted, one expects a conclusion on the claims that he was in fear of his uncle, that he was threatened with death or that his father and his mother were threatened or assaulted. There is no statement of the specific claims that are rejected or accepted save as regards the allegation of rape and his uncle's membership of an unlawful organisation. These two decisions, while clear as to what was decided, are insufficient to decide the overall application and are themselves problematic when one examines the grounds for the decisions.

8.2 The Applicant has alleged one incident of sexual offending. This is unlikely to amount to both rape and sexual abuse and it was never clarified which was in question. "Abuse" in this context usually refers to more than one incident. The offence of indecent touching is "sexual assault", unless penetrative sexual assault is involved, in which case the term "rape" is usually used. Interchangeable use of these terms is confusing and should be avoided.

8.3 There was no finding of fact as to what, exactly, had been alleged. Instead, the finding was that the allegation of "rape and sexual abuse" had not been proven. The Applicant argued that this was unfair. In fact, there was ample material to support this finding but the stated basis for the conclusion was weak. The premise for the conclusion was also incorrect. The Applicant did not allege both rape and sexual abuse. He appears to refer to one incident only. If there is confusion over terminology, without further details being offered in evidence, this is a reason to reject the account, but that should be clearly stated.

8.4 The Tribunal found that the Applicant's "evidence that [his uncle] raped and sexually abused him as a minor cannot be corroborated." The Tribunal accepted that he might be afraid to disclose the fact of being raped to his medical consultant in Algeria but decided that he was inconsistent insofar as the allegation was not mentioned in his questionnaire. The Tribunal concludes that the evidence is not credible, on the balance of probabilities.

8.5 The finding that the Applicant was not credible was a finding that was open to the Tribunal insofar as an allegation of sexual assault or rape is concerned, but the reasons stated in the written decision provide an unstable foundation for this conclusion. The only two reasons given are that evidence of the rape was not corroborated and that he did not mention it in his questionnaire. In an analysis of a claim of historic rape, it is imperative that it is clarified what, exactly, is claimed. There is nothing in these papers to explain whether the Applicant was describing a rape or a sexual assault. But this was not a reason offered by the Tribunal, instead it relied on the reasons stated above. Interestingly, the IPO offered the reason that the claim of rape was insufficiently specific, but the Tribunal was silent on this matter.

8.6 Examining the reasons given: firstly, it is extremely rare for such evidence to be corroborated. The problem may lie in the use of the word "corroboration". That word has a specific legal meaning: it is evidence, independent of the complainant, which tends to support the complaint. There is rarely independent support for a complaint of rape. Corroboration usually consists of a witness to the event, a confession by the accused or perhaps medical evidence which, although on the body of the complainant, is invariably accepted as being independent, in the sense that it is independent of his testimony. When one considers the likelihood of corroboration of a sexual assault in recent history, let alone in childhood, it may not be fair to reject a claim on this basis alone.

8.7 The second reason, that he did not mention it in his questionnaire, has almost as slim a foundation. While the IPO had accepted that an applicant might not want to address such an issue in a questionnaire, the decision maker was entitled to consider that this was a factor that reduced the credibility of the Applicant. The Tribunal was not inclined to overlook the fact that the claim was one that was never reported and that was first made at interview, relying on the decision of Faherty J. in *P.R.T. v. Refugee Appeals Tribunal* [2015] IEHC 447 and her endorsement of the primacy of the information set out in the initial

questionnaire. However, there is no mention of any other inconsistency and no mention of the non-specific nature of the complaint.

8.8 The very fact that the words rape and sexual abuse were used interchangeably, though apparently on every occasion referring to the same, single, incident on a stairway, demonstrates the lack of clarity surrounding this allegation. The decision of the Tribunal, based on the lack of corroboration and the failure to mention the allegation in a questionnaire, was a decision with minimal support. It is not the function of this Court to substitute its own view for that of the decision maker. The Tribunal was entitled to find that rape was not established, but its stated grounds struggle to carry the weight of this finding. An uncorroborated claim, never been made before, might yet be credible. No other basis for this finding is outlined and there is no mention of the Applicant's description of the relevant event.

## **9. Negative Credibility Findings**

9.1 The decision includes the conclusion that, because there is no specificity in the claim that the Applicant's uncle belongs to a terrorist organisation, the Tribunal "*finds that this is a negative credibility factor in [his] narrative*". This is an unexplained and seemingly unnecessary step. A finding that he had not established a fact is one thing, but it is another to decide that it is a negative factor i.e. that it makes the Tribunal less likely to believe him. Again, it may be that there were reasons to reject the allegation and to find that the way in which it was made led the Tribunal to question his overall credibility, or even proof that he was fabricating an account, but these reasons are not specified here.

9.2 Even if the Tribunal rejected the claim that his uncle was in a criminal organisation, it is important to set out what threats were made to the Applicant and his family, if any. If threats were made, the decision should address whether the police were unable or unwilling to protect him from his uncle. The Applicant argued that it was implicit in the decision that this uncle had

frustrated a property sale and that he had made threats, but I do not agree, and the use of the words “*alleged threats*” suggests otherwise. But, if the Applicant is right about that implicit finding, then the decision must be reconsidered due to the effect of s.28(6), as set out above.

## **10. Written Submissions and Dates**

10.1 The applicant claimed that the Respondent did not consider submissions that were handed into the Tribunal on the hearing date in January of 2023. The basis for this claim appears to have been that the words “*written submissions*” did not appear in the list of material considered by the Tribunal, although the word “*submissions*” did appear. In the pleadings, the submissions are referred to as submissions dated August of 2022. At a contested leave hearing Counsel for both sides referred to this date, August of 2022, leading the Respondent to argue that there were no submissions bearing that date. The Applicant, although it is his case to make, did not exhibit these submissions and they were not available to the Court. I was invited to consider this point, nonetheless.

10.2 There are two reasons why this argument must be rejected: first, the Respondent was presented with an entirely different argument until the hearing date. On that date, for the first time, the Applicant submitted that the submissions were in fact submissions from January of 2023. Second, and equally significantly, these submissions were never presented to the Court as an exhibit or otherwise.

10.3 It is impossible for any decision maker to consider whether submissions were ignored or taken into account if a copy of those submissions is not made available to the decision maker. That is the simple answer to this argument.

10.4 It is also important to note that the two parties had argued this case on an entirely different basis in an earlier hearing and the factual position was never corrected: there were no written submissions from August of 2022 so the

Tribunal could not have considered them. If I had been asked to receive copy submissions, in a motion on notice to the Respondent with an explanation as to why the wrong date has been repeatedly used in previous hearings and in the pleadings, I might have considered doing so but this is a hypothetical issue: I could not consider them at all as they were not produced to the Court.

10.5 There were submissions about the fact that a medical report, thought to be undated, was in fact dated 2022, but this was not a significant issue. It was perfectly clear from the context of that report that it was written at a time when the Applicant was in Ireland and was not a contemporaneous report.

## **11. Conclusions**

11.1 The Applicant argued that the impugned decision was irrational in that the Tribunal appeared to make no determination as to whether the alleged threats amounted to persecution. In my view, the error is more fundamental as I cannot identify a decision as to whether or not this Applicant or his family were threatened by his uncle, as he says they were. There is confusion as to what was reported to the police, although the Tribunal has accepted that something was reported to the police and that they did nothing. There is no reference to the presumption under section 28(6) of the 2015 Act, probably as a result of there being no finding of fact in respect of the alleged threats.

11.2 In all of the circumstances, the decision must be quashed and the Respondent must reconsider the application.

11.3 My initial view is that the Respondent must bear the costs of this case, as costs should usually follow the event. If either party wishes to make written submissions on the issue of costs, please do so by contacting the Registrar on or before Tuesday the 7<sup>th</sup> of May.