[2019] IEHC 840

THE HIGH COURT

[2019 No. 1403 S.S.]

BETWEEN

J.H. (ALBANIA)

APPLICANT

AND

THE GOVERNOR OF CLOVERHILL PRISON

RESPONDENT

AND

[2019 No. 641 J.R.]

BETWEEN

J.H. (ALBANIA)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 6th day of December, 2019

1. Before the court is an Article 40 application and a judicial review, heard together. Given that the State's defence to the *habeas corpus* consists of the adverse immigration decisions against the applicant, the appropriate procedure, and indeed that envisaged by the Supreme Court in *Re Illegal Immigrants (Trafficking) Bill 1999* [2000] IESC 19 [2000] 2 I.R. 360, is that the judicial review be determined first and then the Article 40, although of course both can be addressed in the one judgment.

2. I have received helpful submissions from Mr. Shane Kiely B.L. for the applicant and Ms. Fiona O'Sullivan B.L. for the respondents in each of the two proceedings. At the outset of the hearing, Mr. Kiely applied for an adjournment and conditional release. The basis for the adjournment was to enable him to appeal the decision refusing to accept the applicant's reapplication for international protection under s. 22 of the International Protection Act 2015. But he does not need an adjournment to prosecute such an appeal; and conditional release only arises if the case is adjourned, so neither application appears appropriate.

Facts

3. The applicant entered the State illegally from Albania on 2nd October, 2014 and applied for asylum. That application was refused at first instance by the Refugee Applications Commissioner and on appeal by the Refugee Appeals Tribunal. On 7th December, 2016 he applied for subsidiary protection, and that was refused by the International Protection Office and on appeal by the International Protection Appeals Tribunal. The latter decision was challenged in judicial review proceedings, which I dismissed in *J.H. (Albania) v. International Protection Appeals Tribunal* [2018] IEHC 752 [2018] 12 JIC 1408 (Unreported, High Court, 14th December, 2018). One of his main complaints in the judicial review was that death certificates of his relatives were not obtainable from an allegedly dysfunctional civil registration system in Albania and that the tribunal had acted unlawfully in holding the lack of such death certificates against him.

4. The applicant was refused permission to remain in the State on review and the prohibition on *refoulement* was considered in that context. A deportation order was made on 2nd August, 2019. The applicant was arrested on foot of that order on 21st November, 2019 and judicial review papers were filed on 22nd October, 2019 in which *certiorari* of the deportation order was sought along with an order requiring the IPAT and the Minister to reconsider the applicant's applications.

5. A s. 22 application was made on 5th December, 2019 and refused on 6th December, 2019, being the morning of the hearing of this application, and in the meantime the applicant also, as noted above, applied for release under Article 40 of the Constitution.

Grounds of challenge

6. Seven grounds of challenge are advanced in the judicial review. Grounds A to C deal with the risk to the applicant, but these were matters considered in the international protection process. Furthermore, the applicant has not managed to keep his story straight about deaths in the alleged blood feud. He conveniently produced four death certificates at the last minute, despite the fact that, as appears from the previous judicial review, his main complaint then was that such certificates were not obtainable, and indeed despite the fact that the dates of death are inconsistent with the applicant's account (see para. 8 of the affidavit of Gráinne Keane). Also, perhaps conveniently, the place and cause of deaths are, in each and every case, blank. Mr. Kiely is now saying that if the matter is adjourned he will be looking to make yet another reapplication if he can get death certificates stating the cause of death. Clearly the intention is that there cannot be allowed to be any end to this process.

7. Grounds D to F constitute a claim that the applicant's rights were not considered at all or adequately. Ground F does not make sense and indeed contradicts para. 2 of the applicant's written submissions, but either way there is no basis to say that the applicant's rights were not considered. They were not considered in a manner favourable to the applicant but that does not make the decisions unlawful.

8. Ground G relates to a lack of reasons but reasons were provided. There is just no basis to challenge the immigration decisions here. For completeness the applicant says he intends to appeal the s. 22 refusal, but such an appeal is not suspensive (see *P.N.S. (Cameroon) v. Minister for Justice and Equality* [2018] IEHC 504). There is insufficient material before the court to suggest any likelihood of success in any such appeal, or in any hypothetical future s. 22 application, such that the court should exercise an extraordinary jurisdiction to grant an injunction here notwithstanding the dismissal of the judicial review and the lack of any other legal right to remain.

9. The context here, of course, is that the applicant has lost at all of the ten procedural steps to date - the asylum first instance application, the appeal, the subsidiary protection first instance application, the appeal, judicial review of the IPAT decision, the permission to remain decision, the review of the permission to remain refusal, the making of a deportation order, the application for permission to make a reapplication for international

protection and now judicial review of the deportation order. The system has got to be allowed to work at some point; and in this case, that point has been arrived at.

10. The applicant's written submissions say that the deportation order should be set aside so that the Minister can consider the new evidence of his relatives' death certificates. Setting aside the deportation order is not a necessary precondition to the Minister considering anything and indeed the Minister has already considered them and refused to consent to the reapplication. The challenge to the deportation order and the other immigration decisions is utterly without substance and must be dismissed; and the lawful deportation order provides a complete answer to the Article 40 application.

Order

11. Both proceedings are dismissed.