

[Home](#) > Ireland - High Court, 11 October 2011, J.T.M. v Minister for Justice, Equality and Law Reform, [2011] IEHC 393

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## Ireland - High Court, 11 October 2011, J.T.M. v Minister for Justice, Equality and Law Reform, [2011] IEHC 393

**Country of Decision:**

Ireland

**Country of Applicant:**

Nigeria

**Date of Decision:**

11-10-2011

**Citation:**

[2011] IEHC 393

**Additional Citation:**

2010 No.1492 J.R.

**Court Name:**

High Court (Hogan J)

**Keywords:**

Actors of protection

Non-state actors/agents of persecution

Subsidiary Protection

Gender Based Persecution

Serious harm

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**Relevant Legislative Provisions:**

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 3](#) [2]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 6](#) [4]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 7](#) [4]

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**Headnote:**

This case concerned the meaning of the term 'serious harm' in the Qualification Directive (as

transposed into Irish law). The Irish state refused to grant the applicant subsidiary protection on the basis that the term imputes the absence of State protection, if the fear of harm is from non-state actors. The applicant argued that this was incorrect.

**Facts:**

The applicant fled Nigeria because of a fear of her husband, who abused her due to her infertility. She was subjected to a ceremony which involved a 'traditional healer' cutting her, rubbing medicine into the cuts, and raping her. She fled her village and went to Benin city, where she was trafficked to Ireland. On arrival she realised that she was going to be forced to work as a prostitute and fled from the car she was being transported in by the trafficker. She was refused asylum on appeal to the Refugee Appeals Tribunal on grounds that she could avail of internal protection.

The applicant then applied for subsidiary protection, and was refused by the Minister, on the basis that she had not shown that she was at risk of 'serious harm'. Although it was clear the applicant had been tortured, the Minister took the view that the term 'serious harm' means that an applicant must demonstrate that the harm feared emanates from the State, or from non-state actors (where the State cannot provide protection). The Minister was of the view that the applicant had failed to demonstrate this.

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**Decision & Reasoning:**

The Court held that the applicant had raised an arguable case that the Minister had misinterpreted the Regulations giving effect to the Qualification Directive. The Court stated that the matter is not entirely clear, as the Regulations are drafted in such a way as to be open to both the interpretation contended for by the applicant, and by the respondent, however the applicant could show an arguable case, and so leave for judicial review was granted on this 'difficult question'.

The applicant also advanced a second ground of challenge, based on her medical condition (sickle cell anaemia), however the Court noted that there was evidence of accessible treatment in Nigeria, and did not feel the situation came within the exceptional grounds of *D v UK* in the European Court of Human Rights.

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**Outcome:**

Leave for judicial review was granted in respect of the subsidiary protection point, and was refused in respect of the medical point.

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**Attachment(s):**

[J.M.T v MJELR 2011 IEHC 393.pdf](#)[5]

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**National / Other Legislative Provisions:**

[Ireland - European Communities \(Eligibility for Protection\) Regulations 2006 \(SI No.518 of 2006\) - Reg 2\(1\)](#) [6]

[Ireland - European Communities \(Eligibility for Protection\) Regulations 2006 \(SI No.518 of 2006\) - Reg 5\(1\)\(c\)](#) [7]

[Ireland - Interpretation Act 2005 - Section 2](#) [8]

[Ireland - Interpretation Act 2005 - Section 20](#) [9]

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**Links:**

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[2] [https://www.asylumlawdatabase.eu/node/195#toc\\_12](https://www.asylumlawdatabase.eu/node/195#toc_12)

[3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%206%20QD>

[5]

[https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/J.M.T%20v%20MJELR%202011%20IEHC%](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/J.M.T%20v%20MJELR%202011%20IEHC%2011%2011.pdf)

[6] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1517>

[7] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1693>

[8] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1539>

[9] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1540>