

[Home](#) > Ireland - High Court, 25 June 2012, W.A. [DRC] v Minister for Justice and Equality, Ireland and the Attorney General, [2012] IEHC 251

Ireland - High Court, 25 June 2012, W.A. [DRC] v Minister for Justice and Equality, Ireland and the Attorney General, [2012] IEHC 251

Country of Decision:

Ireland

Country of Applicant:

Congo (DRC)

Date of Decision:

25-06-2012

Citation:

[2012] IEHC 251

Additional Citation:

2011 No. 734 J.R.

Court Name:

High Court (Cooke J)

Keywords:

Individual assessment
Credibility assessment
Previous persecution
Actor of persecution or serious harm
Non-state actors/agents of persecution
Protection
Refugee sur place
Subsidiary Protection
Individual threat
Political Opinion
Serious harm
Non-refoulement
Procedural guarantees

Headnote:

This case concerned the assessment and reason given that the Applicant had not been subjected to 'serious harm' in the past, in circumstances where the decision was unclear as to whether the finding was to the effect that his account was not believed, or whether, if believed, the harm was not inflicted by persons who were "actors of serious harm". The Court also considered the definition of 'actors of serious harm.' Thirdly, the Court considered whether the decision-maker ignored the specific claim made in the application that returned asylum seekers face a risk of detention, interrogation and torture such as would amount to "serious harm".

Facts:

The Applicant applied for asylum and subsidiary protection based upon his membership of, and activities associated with, the MLC in DR Congo. In particular he claimed that he was arrested and detained, interrogated and tortured for two and a half years in a prison camp because of his involvement in a protest in March 2007 following the refusal of the incumbent President Bemba to concede the election. It was also claimed that returned asylum seekers were at risk of serious harm in DR Congo. The decision-maker in the challenged decision found that the Applicant was not at risk of State sanction by way of imprisonment on foot of his political beliefs on the basis firstly that his account was found to have lacked credibility, and secondly, because the political conditions had changed. It was also held that the Applicant had not suffered 'serious harm' because the harm claimed was required to have been carried out by 'actors of serious harm' in order to meet that definition, and no evidence was found that this was the case. No reference was made in the challenged decision to the submission that the Applicant was at risk of serious harm as a returned asylum seeker.

Decision & Reasoning:

The Applicant had relied on thirteen grounds to challenge the subsidiary protection decision and the subsequent deportation order. However, because many of those grounds had already been the subject of decisions of the High Court of Ireland before this case came on for hearing, nine of the grounds were disposed of summarily and in the negative by the Court.

By way of preliminary observation, the Court accepted that the Minister may use a system of standardisation to ensure efficient, thorough and consistent decision-making, but warned of the dangers of decision-makers relying on a system to the detriment of their obligation to adequately address the details of the specific case being made to them.

The subsidiary protection decision found that the Applicant was not at risk of State sanction by way of imprisonment on foot of his political beliefs on the basis firstly that his account was found to have lacked credibility in his asylum claim, and secondly because the political conditions had changed to the effect that the MLC were politically stronger and that more legal protections could be accessed. The Applicant challenged the reasonableness of this finding, but the Court held that the finding was legally sound.

The subsidiary protection decision also set out that non-State actors can only be considered to be actors of serious harm if it can be demonstrated that the State, or those controlling the relevant

portion of it, are unable or unwilling to offer protection, and that the Applicant had not shown that this was the case. The decision-maker stated that they could not find any evidence that the Applicant had suffered treatment in DR Congo which came within the definition of "serious harm." The Applicant was granted permission to seek judicial review of this finding on the basis that it was arguable that the decision-maker erred in the assessment made of, and the reason given for, concluding that the Applicant had not been subjected to "serious harm" in the past in circumstances where the decision was unclear as to whether the finding was to the effect that his account of imprisonment and torture was not believed, or whether, if believed, it was not inflicted by persons who were "actors of serious harm". The Court accepted that the definition of "actors of serious harm" as part of the definition of "serious harm" was appropriate, but that the logical connection between the definition and the finding in the case was not clear.

Permission to seek judicial review was also granted on the basis that it was arguable that the determination could be said to have ignored the specific claim made in the application that, based on country of origin information as cited, returned asylum seekers face a risk of detention, interrogation and torture such as would amount to "serious harm".

Thirdly, permission was given to seek judicial review of the Deportation Order issued against the Applicant on the basis that it would be unlawful in the absence of a previous, valid decision having been made on his application for subsidiary protection.

Outcome:

Leave to seek judicial review of the subsidiary protection decision was granted on two grounds, and leave to seek judicial review of the deportation order was also granted as it would not be valid if the subsidiary protection decision was not also valid.

Observations/Comments:

The paragraph at issue in this decision which refers to previous "serious harm" being defined by it having been inflicted by "actors of serious harm," was upheld as correct in law in this decision (the nexus between the definition and the conclusion reached being the true issue). However, while the court noted that the case of *J.T.M v Minister for Justice and Equality* [2012] IEHC 99, adverted to a query over this issue, it did not explicitly note that the conclusion that this Court made was the opposite of the conclusion reached in that case. The facts of the J.T.M. case differed considerably to those before the Court, as did the effect of impugned definition. The differences in the two cases were noted in the subsequent case of *N.N. [Cameroon] v Minister for Justice and Equality & Ors.* [2012] IEHC 499 where the definition in *W.A. [DRC]* was preferred.

Attachment(s):

[WA \[DRC\] \[2012\] IEHC 251.pdf\[1\]](#)

Other sources cited:

Hathaway, *The Law of Refugee Status* (Butterworths, 1991) p.133.

McAdam, *"Complementary Protection in International Refugee Law"* (Oxford University Press,

Links:

[1]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/WA%20%5BDRC%5D%20%5B2012%5D%2>