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## **Ireland - J.G. (Ethiopia) v Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform, Attorney General Ireland, 2015 No. 1175 JR**

**Country of Decision:**

Ireland

**Country of Applicant:**

Ethiopia

**Date of Decision:**

04-02-2015

**Citation:**

J.G. [Ethiopia] v Refugees Appeals Tribunal & Ors [2015] IEHC 49.

**Court Name:**

The High Court of Ireland (Stewart J.)

**Keywords:**

Assessment of facts and circumstances

Country of origin information

Credibility assessment

Individual assessment

Medical Reports/Medico-legal Reports

Membership of a particular social group

Obligation to give reasons

Procedural guarantees

Refugee Status

**Relevant Legislative Provisions:**

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 4](#) [2]

European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [3] > [Article 4](#) [4]

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**Headnote:**

The applicant challenged by way of judicial review the decision of the Refugee Appeals Tribunal (hereinafter RAT) (adverse credibility findings) on the grounds that it failed to have reasonable regard to the documents submitted. The Court held that the Tribunal failed to provide reasons rejecting a medico-legal report and further held that the Tribunal's analysis of documentary evidence supportive of ethnicity submitted was wrong in fact. The Court quashed the decision of the Tribunal.

### **Facts:**

The applicant, an Ethiopian national, claimed refugee status in Ireland on the basis that she was persecuted in Ethiopia due to her Oromo ethnicity and membership of the Oromo Liberation Front (OLF). The applicant claims that in 1998 her home was attacked by state forces and she and her children and husband were detained. While detained she claimed she was ill-treated by Ethiopian government troops. On release she fled to Kenya with her children. In May 2003 she returned to Ethiopia to continue her work for the OLF. In January 2008 she was arrested and detained for a period of four months. On release from detention the applicant fled to Sudan and from there fled to Ireland. The applicant applied for asylum in Ireland on the 29<sup>th</sup> July, 2008.

The applicant's claim for asylum was rejected on the basis of adverse credibility findings of the Refugee Application Commissioner (RAC) on the 30<sup>th</sup> April 2009. The applicant appealed the decision of RAC to the Refugee Appeals Tribunal (RAT) who affirmed the recommendation that the applicant should not be declared a refugee on the basis of adverse credibility findings linked to her time in detention, her failure to claim asylum in Kenya or Khartoum and her account of being released from custody in 1999 among other things.

The applicant claimed that these findings were made without any reasonable consideration of the submitted SPIRASI medical report which showed that she demonstrated some symptoms of Post-Traumatic Stress Disorder and documentation evidence supportive of her Oromo ethnicity.

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### **Decision & Reasoning:**

It was a telescoped hearing for judicial review seeking orders of certiorari to quash the decision of the RAT and remit the matter for de novo consideration by a different Tribunal member.

#### Decision & Reasoning:

The main questions put to the High Court were:

1. Did the RAT err in law in failing to give reasonable consideration to documents supplied by the applicant in support of her claim?
2. Did the RAT fail to provide special care and attention when making findings based on demeanour?
3. Did the RAT breach fair procedures in its determination of adverse credibility findings against the applicant?

In regard to the SPIRASI medical report the High Court held that RAT did not provide any reasons for ignoring the SPIRASI findings.

The High Court held that the SPIRASI medico-legal report supplied by the applicant to be

supportive of the applicant's history provided at RAT. The High Court followed the decisions in *R.A. (Uganda) v Refugee Appeals Tribunal & Ors* (Unreported, High Court, Eager J., 25<sup>th</sup> November, 2014), *Khazadi v Minister for Justice, Equality & Law Reform and anor*, (Unreported, High Court, Gilligan J. 19<sup>th</sup> April 2007); *J.M. (Cameroon) v Minister for Justice, Equality & Law Reform and anor* (Unreported, High Court, Clark. J, 16<sup>th</sup> September 2013) where the Court quashed decisions of the RAT due to its failure to give reasons for rejecting a SPIRASI medical report.

The High Court also accepted that the applicant was exhibiting signs of a depressive disorder and symptoms of PTSD (Para. 26) and noted that "there is no indication from the decision of the Tribunal member that any allowance was made for the fact that the Tribunal member was dealing with a person who was in a strange culture and was exhibiting signs of suffering from a depressive disorder and symptoms of PTSD"(Para 26).

The High Court found that RAT's assessment of documents supplied by the applicant was factually incorrect (Para. 22). It also held that the documentary evidence supplied by the applicant is *prima facie* sufficient to support the claim that the applicant is of Oromo ethnicity (Para. 18). The High Court supported this claim on the basis that documentary evidence supplied by the applicant to be capable of corroborating the applicant's story. The High Court held that to reject documentary evidence reasons must be provided (Para. 27) stating: "it is settled law that where there is documentary evidence which, *prima facie*, is capable of corroborating the applicant's story, if a Tribunal member is to dismiss and/or reject the applicant's story and thereby reject the documentary evidence before the Tribunal member, then reasons must be given for so rejecting (Para. 27).

In regard to findings based on demeanour in asylum cases the High Court held that care must be taken (Para. 25): "It is well established that decision-makers have to be very careful in relation to findings on the way that a witness presents him or herself".

In support of this approach the High Court adopted the dicta in *F.O.O. (Nigeria) v Refugee Appeals Tribunal & Ors* [2012] IEHC 46. The High Court further considered the above *dicta* where it stated that grounding credibility on demeanour, is itself an *uncertain expression*? (Para. 24).

In regard to fair-procedures the High Court held that RAT did not provide any cogent reasons as to why the SPIRASI medical report and documentary evidence were rejected.

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### **Outcome:**

Leave granted and orders of certiorari quashing the decision of RAT. Also order made directing that the matter be remitted to RAT for a *de novo* consideration by a different tribunal member.

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### **Subsequent Proceedings :**

Case remitted back to the Refugee Appeals Tribunal.

### **Observations/Comments:**

This case is interesting in terms of its approach to the medical evidence submitted to the RAT. Other observations regarding Irish case law and medical evidence include: In *K.H.A. v Refugee Appeals Tribunal* [2015] IEHC 91 (23/1/2015), Barr J., the High Court in considering RAT's consideration of a SPIRASI report held that *"the decision maker should have been explicit about whether it was accepted and, if not accepted, why that was the case?"* (Para. 24).

In regard to decision makers assessing medical reports Mc Govern J held in *N.M. v Minister for Justice* (Unreported, High Court, 7<sup>th</sup> May 2008) that:

??where the medical reports appear to support the applicant?s claim, I think that it is incumbent on the Tribunal member to specifically deal with the medical reports and state why he does not accept them, (Para. 10).

In regard for decision makers to provide reasons for their decisions it held in *Ahmed v Refugee Appeals Tribunal* (Unreported High Court, Cooke J, 15 January 2009) that the purpose of supplying reasons is twofold:

?In the first place it is to enable an applicant for refugee status who is adversely affected by the conclusion to know with sufficient detail and clarity why the negative finding is being made against him or her, including the reasons for rejection of the principal or material factors upon which the claim to a well-founded fear of persecution is based. And the second element is that a decision of a tribunal of this kind, which is susceptible of judicial review before the High Court, must give the reasons for its decision in sufficiently clear and concreted terms to enable the High Court to exercise its judicial review jurisdiction so that if the Court on reading the decision and having regard to the totality of the material which is available to the court, finds that it is unable to understand the basis upon which the conclusion has been reached, then the obligation to motivate the decision is possibly defective?.

The issue of medical evidence in asylum cases is discussed in an article titled [?Medical evidence in the asylum process ? recent developments?](#) [5] by David Leonard, BL in the journal ?The Researcher? March 2009 edition.

#### Attachment(s):



[Ireland - J.G. \(Ethopia\) -v- Refugee Appeals Tribunal & ors.docx](#)[6]

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#### Other sources cited:

The Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNITED NATIONS New York and Geneva, 2004

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#### Links:

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

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

[3] <https://www.asylumlawdatabase.eu/node/4038>

[4] [https://www.asylumlawdatabase.eu/node/4038#toc\\_95](https://www.asylumlawdatabase.eu/node/4038#toc_95)

[5]

<http://www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/77541cc18d9d57818%20March%202009,%20Vol%204,%20Issue%201.pdf>

[6] <https://www.asylumlawdatabase.eu/sites/default/files/alddfiles/Ireland%20-%20J.G.%20%28Ethopia%29%20-v-%20Refugee%20Appeals%20Tribunal%20%26%20ors.docx>