Neutral Citation: [2014] IEHC 107

THE HIGH COURT

JUDICIAL REVIEW

[2008 No. 1169 J.R.]

BETWEEN

E. O. I.

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND PAUL MCGARRY SITTING AS THE REFUGEE APPEALS TRIBUNAL

RESPONDENTS

JUDGMENT of Mr. Justice McDermott delivered on the 7th day of March, 2014

1. This is an application by way of a telescoped hearing for leave to apply for judicial review by way of *certiorari* from the decision of the Refugee Appeals Tribunal made 2nd September, 2008, confirming the recommendation of the Refugee Applications Commissioner that the applicant not be declared a refugee.

Background

2. The applicant is a Nigerian national born on 17th October, 1978, in Benin, Nigeria. He applied for refugee status on 7th August, 2007, on the basis that he was a fugitive from the Nigerian authorities because he took part in kidnappings and other terrorist activity on behalf of the "Niger Delta Volunteer Force" (NDVF). He claimed that having finished school he worked as a trader, but because business was not doing well, he engaged in kidnapping people to earn a living "just to make ends meet". He operated in his local area. He regarded it as a profession. He claimed to have kidnapped wealthy men or their sons and daughters who were held captive until ransoms were paid. He could not recall how many people he had kidnapped, but he thought more than twenty. If the parents would not pay a ransom, the captives were injured and then photographed. The photographs were then sent to their families. The age of the kidnap victims varied from between 10 years to 25 years. Before taking the photographs he wounded the victims by stabbing them in the arm or leg. These kidnappings were carried out solely for gain. He had a well established criminal career before being invited to join the NDVF.

3. The NDVF was an organisation consisting of seven groups which, he claimed, was fighting for the emancipation of resources in the area of the Niger Delta. He was asked to join the organisation because he was a kidnapper. The kidnapped were not killed but were held hostage for the purpose of negotiating their release with the government. He claimed that government officials sometimes paid money and on other occasions negotiated policy improvements in youth employment and development of the area. Victims were released when youth jobs and light and water facilities were promised. He joined the group in November, 2005. He had no official position in it, other than that of "kidnapper". The leader of their group was arrested and the promises unfulfilled. Kidnapping also took place in order to secure the release of their leader. On behalf of the organisation he engaged in kidnapping government officials, oil workers and other foreigners. He said that he left the organisation after his leader was caught, because he was tired of being in the bush. He wanted to get married. He had taken an oath before joining the organisation and the members did not wish him to leave.

4. The applicant explained how he had used guns and knives in the course of kidnappings. Victims were sometimes stabbed and guns were fired into the air to frighten them. He used firearms against police and soldiers when they came to rescue captives and claimed that he shot and killed a number of members of the security forces.

5. The applicant also explained how he had assisted in the rigging of elections in Nigeria. He assisted a person who had been a member of the government party but had turned against his party by stealing ballot boxes and attempting to rig the election against the government party.

6. He claimed that when he indicated his wish to leave the NDVF, he was threatened and told he would be killed by members of the organisation. He thought that they believed he would inform on them to the government. The government were also looking for him. Some members of the organisation paid for his travel out of the country because of the services he had rendered to the organisation.

Section 13(1) Report

7. The Refugee Applications Commissioner issued a recommendation that the applicant should not be declared a refugee on 29th November, 2007. It stated that if taken at face value, the applicant's statements would make him a fugitive from justice rather than a refugee and therefore the matter of exclusion from the asylum process for committing serious non-political offences had to be considered. It was determined that s. 2(c)(i) and (ii) of the Refugee Act 1996 (as amended) applied to his case, namely that he was a person in respect of whom there were serious grounds for considering that he had committed serious non-political crimes in Nigeria. It was also concluded that he was fleeing prosecution, not persecution. It was stated that, regardless of the truth or otherwise of his statements relating to hostage taking, extortion, torture, possible murder and electoral fraud, it was clear that he had not presented any information to indicate that he would merit refugee status. His claim that he was sought by former criminal associates in the Niger Delta paramilitary group would not render his claim for asylum valid because his fear was based on an inability to seek protection and redress from the Nigerian authorities due to his being a wanted criminal himself.

The Challenge to the Decision

8. The Tribunal held an oral hearing on 3rd April, 2008. The tribunal member considered the papers in the case, including the notice of appeal and a copy of a newspaper article containing a "wanted poster" identifying the applicant as a member of a Niger Delta militia group. He carried out an extensive analysis of the evidence furnished on behalf of the applicant. The applicant's claim was based upon a subjective fear of harm, either at the hands of the Nigerian authorities who were looking for him or, on the other hand, from his former colleagues in the NDVF arising from fear that he might inform upon them to the authorities. The tribunal member stated as follows in respect of the credibility of the applicant:-

> "The applicant presented as generally credible and his account of circumstances giving rise to his departure from his country of origin do not appear to have substantially differed during the asylum process. I am prepared to accept, therefore, that the applicant is credible and that his fears are subjective."

9. He considered the applicant's fear that he was in danger at the hands of former colleagues and his fear that he was wanted for activities as a member of the NDVF by the Nigerian authorities.

10. Under s. 2 of the Refugee Act 1996 (as amended), the applicant had to demonstrate on appeal a reasonable likelihood that he was a refugee, namely a person who "owing to a well founded fear of being persecuted for reasons of…membership of a particular social group or political opinion is outside the country of his or her nationality and is unable or owing to such fear, is unwilling to avail himself of protection of that country". Under s. 11A(3) the applicant must show that he is a refugee where there is a limited onus of proof. As stated by Clark J. in *Zada v. Refugee Appeals Tribunal* [2008] IEHC 420 stated:-

> "34. It is appropriate here to deal with the arguments made relating to any obligation on the part of the tribunal member to warn the applicant that his appeal might fail on a particular point and to allow him to call further evidence. This is in my view to confuse the application process with the appeal process. The onus is on the applicant when appealing a recommendation not to declare him a refugee to make his case fully before the tribunal. It is not a shared burden at this stage as outlined in para. 196 of the UNHCR Handbook which refers to the first stages of the refugee process."

The court is satisfied, contrary to the applicant's submission, that the Tribunal applied the appropriate onus and standard of proof in reaching its decision.

11. Regulation 5.3 of the European Communities (Eligibility for Protection) Regulations 2006 provides:-

> "(3) Where aspects of the protection applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met—
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> (a) the applicant has made a genuine effort to substantiate his or her application;
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> (b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given;
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> (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;
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> (d) the applicant has applied for protection at the earliest possible time, (except where an applicant demonstrates good reason for not having done so); and
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> (e) the general credibility of the applicant has been established."

12. It is clear that there is a wide ranging body of facts and circumstances to be taken into account in determining whether the applicant is entitled to protection, including those set out at Regulation 5(1) and (2) of the 2006 Regulations. These include all relevant facts as they relate to the country of origin at the time of the taking of the decision on the application for protection, including the laws and regulations of the country of origin and the manner in which they are applied.

13. The Tribunal concluded that the applicant was generally credible and had a subjective fear of persecution in respect of a fear of harm from the Nigerian authorities who were looking for him and from his former colleagues in the NDVF, arising from fears which they allegedly held that he might inform against them.

Fear of the NDVF

14. Firstly, the Tribunal held in relation to the threat from the NDVF as follows:-

> "Insofar as the applicant's claim that he is in danger at the hands of his former colleagues is concerned, no evidence has been presented to the Tribunal, other than the information provided by the applicant personally, to the effect that present or former members of the NDVF are liable to be targeted (by) existing members of that group for any particular reason. No specific country of origin information or extract therefrom was identified that supports such a contention. In the absence of any evidence in support of this contention, I am not satisfied that such a conclusion could be said to be objectively well founded."

15. The applicant contends that the Tribunal erred in failing to apply the provisions of Regulation 5.3 of the 2006 Regulations and, in particular, subparas (a) and (b) thereof. It is submitted that the Tribunal erred in requiring "confirmation" of the applicant's statements "by documentary or other evidence" when it was satisfied that the credibility of the applicant had been established and that he had, in effect, made a genuine effort to substantiate his application. The reliance upon the absence of country of origin information was said to be in the circumstances contrary to the provisions of the Regulations in that the applicant's statements were, by reason of his finding in respect of credibility, coherent and plausible and by reason of the absence of country of origin information not counter to any available specific and general information relevant to his case. In particular, the applicant contends that all relevant elements at his disposal were submitted under Regulation 5.3(b) and that it was unreasonable to suggest that a satisfactory explanation regarding any lack of other relevant elements had not been given in circumstances when there was no country of origin information available in respect of the propensity of the NDVF to pursue former members or to punish or kill former members who were informants, or potential informants.

16. The court notes that the absence of evidence relied upon by the tribunal member is in respect of both country of origin information and any other potential evidence.

17. The applicant relies upon the decision of MacEochaidh J. in the decision in *D.E., L.E. & S.E. v. Refugee Appeals Tribunal & Ors* [2013] IEHC 304 in which he made a number of observations in respect of the application of Regulation 5(3). The applicant, a Ukrainian Army Platoon Commander, refused to collect money from men in his unit to give to certain officers, but the money was, in any event, deducted from the soldiers pay. He pursued this matter and claimed to have been persecuted as a result. He claimed to have written letters of complaint to a senior officer and to have been assaulted as a result. He also claimed that his wife was abducted and assaulted. Though documentary evidence was submitted in support of his claim, the Refugee Appeals Tribunal rejected his appeal because of the absence of documentary evidence of the complaints. MacEochaidh J. considered it unfair to criticise the

applicant for not having kept notes of complaints that were made, particularly where some of the complaints were made orally. He noted the provisions of Regulation 5.3 quoted above. He stated:-

> "13. It is a matter of concern to the court that the rules applicable to the assessment of an asylum claim not based on documentary evidence required by Article 5(3) were not followed in this case. My view is that to discount credibility based on the absence of documents without even mentioning the existence, much less the applicability, of Article 5(3) of the Regulations places a cloud over the relevant finding.
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> 14. It is of note that Regulation 5(3) forgives the absence of documentary evidence in support of an asylum claim where certain conditions are met, including where the general credibility of the applicant is established. This suggests that it is wrong to rely on the absence of documentary evidence to ground a finding as to the general credibility of an applicant. The legislative scheme strongly suggests that general credibility should be determined before the absence of documentary evidence comes to be examined. (My remarks on the impact of Reg. 5(3) are made in passing as the parties did not engage in argument on this point nor did the court invite submissions on the impact of these rules in this case.)
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> 15. Given the explanation in the applicant's account for the absence of documents and the failure of the Tribunal Member to allude to or to apply the provisions of Regulation 5(3), the first reason given for rejecting the first named applicant's general credibility is infirm."

18. In this case the tribunal member examined the evidence to see if there was any other material or evidence, documentary or otherwise, to support the existence of circumstances in the country of origin as described by the applicant. In that regard, the Tribunal had already concluded, relying upon country of origin information and the applicant's testimony, that militants in the Niger Delta were in conflict with the government. An examination of the evidence summarised in the decision indicates that no overt action was taken against the applicant at any stage and that:-

> "The applicant stated that the government forces managed to infiltrate the organisation (NDVF) and launched an attack on the group in their hideout. The applicant ran away at this time and decided to leave the organisation…Although the applicant decided to leave the NDVF, he still had some friends that were involved with the group. The applicant told the Tribunal that he thought the group was looking for him because of the fact that he knew where their guns were held and about what operations they had been engaged in. The applicant stated that it was likely that the NDVF would suspect the applicant as having supplied information about the group to the authorities. A friend of the applicant by the name of Peter told him to leave the country and arranged for his travel via Benin City…the applicant stated that this was paid for by the opposition party leader who had engaged the applicant to steal the ballot boxes."

Finally, the applicant told the Tribunal that:-

> "He left his country of origin because the police were looking for him because of these activities."

There was no evidence given by the applicant or otherwise that he was an informant. He did not give evidence that he knew of the location of caches of arms. There was no evidence that the NDVF threatened or assaulted former members or assaulted or killed suspected informants, whether in country of origin information or otherwise. It is clear on an overall reading of the decision that the Tribunal did not accept that the applicant's expressed fear of his former colleagues was objectively justified on the evidence.

19. As noted by Cooke J. in *I.R v. Minister for Justice*:-

> "There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded."

It was entirely reasonable and rational for the Tribunal to conclude in this case that the subjective fear of the applicant in respect of his former colleagues was not objectively justified or reasonable and, therefore, well founded because there was nothing to support it apart from the credible subjective fear of the applicant. It was clear that there was no explanation available to the Tribunal for the lack of any evidence or country of origin information to support the proposition that the applicant's fear was objectively justified or reasonable. The applicant gave no evidence of any knowledge on his part as to the treatment of informants or of any experience which suggested that he was under threat by reason of being or suspected of being an informant or that he was, in fact, an informant. The only evidence furnished was that he was threatened that he should not leave the organisation. Therefore, the court is satisfied that the conditions set out at Regulation 5.3(b) were not satisfied in that there was no satisfactory explanation regarding the absence of such "relevant elements".

20. The respondent relies upon the decision of Clark J. in *O.A.A. v. the Refugee Appeals Tribunal* [2009] IEHC 1. In that case the applicant submitted two documents in support of her claim for refugee status and said to support the proposition that her family had been abducted. The applicant had made a complaint to the local police that her family had been abducted by a particular organisation. Adverse credibility findings were made relating to the failure by the applicant to mention this abduction or the involvement of the organisation in any document describing the attack on her home during which her family ran away and since which her husband and two children had been missing. An explanation was offered for the failure to mention the involvement of the organisation namely, the animosity between the police and that organisation. Clark J. stated:-

> "41. There can be no doubt when examining the documents furnished that there is nothing in any of the COI documents furnished which make any mention of the abduction of a bank manager who is the spouse of a taxation expert from a "good" area of Lagos. Far more significant, there is no record of the abduction of such a man and his young son and daughter. The Human Rights Watch Report furnished includes many reports of sometime relatively minor incidents of politically motivated attacks giving location, dates and detail. I believe that the whole point of furnishing reports from recognised NGO's, such as Human Rights Watch or Amnesty International, is that these organisations make it their business to collect, investigate and collate the minutiae of human rights abuses in order to make an overall assessment of political, religious or social stability in a particular country. The consideration of these objective reports is a recognised tool in guideline and statute in the important process of establishing the credibility of an asylum applicant and is indispensable in the operation and application of the benefit of the doubt. In the circumstances, it cannot be deemed unfair to expect to find such a mention in reports dealing specifically with the activities of a well documented and apparently vicious organisation."

The court noted that the lack of reporting of such an event, together with the other unusual factors in the case, distinguished it from

other cases especially where a lot of country of origin information was furnished to prove similar activities on the part of the organisation. In that case the absence of the recording of the incident in the country of origin information was regarded as one but not the conclusive factor in the determination of credibility. The court determined that the Tribunal had not erred in law in determining credibility on the basis that the documents furnished did not corroborate an abduction or kidnapping. The court did not consider the finding that it was to be expected that multiple abductions would be referred to in country of origin information to be irrational or unreasonable.

21. In this case the Tribunal gave very careful consideration to all of the evidence adduced by the applicant and found in many respects that he was a credible witness to the extent that his assertion of a subjective fear was credible concerning his former colleagues. However, the Tribunal also carefully considered that finding in the context of the absence of other relevant material which might logically be expected to arise in country of origin information concerning militant groups in the Niger Delta, a substantial body of which had been presented in the course of the application and the other evidence in the case. In the circumstances, the court is satisfied that the Tribunal determination that the subjective fear was not objectively justified was reasonable and, therefore, well founded on the basis of a consideration of the full picture that emerged from the available evidence and information taken as a whole when "rationally analysed and fairly weighed". The court refuses relief on this ground.

Fear of Government Authorities
22. The second and most important matter considered in the decision relates to the applicant's alleged fear of persecution by the Nigerian authorities because of his membership of NDVF and the actions which he claims to have carried out when a member of that organisation. The Tribunal concluded as follows:-

> "Insofar as the authorities are concerned, the applicant provided a copy of a wanted poster, which appears at first sight to relate to him, published in a Nigerian newspaper. It identifies the applicant by name and states that he is wanted for activities as a member of the Niger Delta Militia. This is in accordance with the applicant's own testimony. Some country of origin information was produced to show that the Niger Delta Militia Group are in conflict with the government. I am therefore satisfied that in the context of this element of his claim, the applicant has demonstrated that his fear in this regard is objectively well founded."

23. The Tribunal then went on to analyse the nature of that fear. The applicant had alleged that his activities were politically motivated as was his membership of the NDVF. This claim was regarded by the Tribunal as being "at the heart of the applicant's claim". A conclusion had been reached in the s. 13 report that the applicant was, in reality, fleeing prosecution rather than persecution. The applicant's argument, as summarised by the Tribunal, was that because his activities were politically motivated, though contrary to the laws of Nigeria, he should be regarded as a refugee because of his political motivation. He claimed the offences that he committed were political in nature. Having analysed the facts of the case, the Tribunal was not satisfied that this was so. The Tribunal stated:-

> "Whilst there may be a genuine political purpose to the act (and this was the applicant's evidence), I am not satisfied that there is any real link between the act committed and the political purpose being pursued. The political purpose being pursued (although vaguely described) appeared to relate to the treatment of the population of the Niger Delta region, and in particular, the repatriation of natural resources or the money obtained therefrom to other parts of Nigeria.
>
> The act committed is identified as kidnapping with violence. It is not clear to me as to the extent of the linkage between the two and as to how it might be said that engaging in ongoing kidnapping would have the effect of achieving the aim sought…the proportionality of the good sought to be obtained in relation to the harm and the crime, was not the subject of any detailed submission. Nonetheless, I do not think it could be seriously argued that the harm inflicted through the crime of kidnapping with violence (and including the injuring of those kidnapped) could be said to be in any way proportionate to the good sought to be achieved by this applicant."

The Tribunal considered that the offence of kidnapping was "distinctly remote" from the ultimate political goal and "extraordinarily" disproportionate to the good sought to be obtained by the applicant as a member of the NDVF. The Tribunal, therefore, concluded that the applicant was in reality fleeing prosecution for common law offences as opposed to persecution on the grounds of his political beliefs. No submission was made in relation to the nature and extent of the punishment applicable to the offences of kidnapping or false imprisonment in Nigeria, and the Tribunal was satisfied that a political motive alone would not be sufficient to characterise a common crime as political. The Tribunal concluded that it was the applicant's voluntary and willing participation in violent acts contrary to the common law which motivated the authorities in seeking to arrest and detain him. Furthermore, it concluded that there was nothing in the evidence or in the submissions or country of origin information to indicate that the lack of tolerance by the Nigerian authorities of kidnapping on the part of political dissidents or militia groups amounts to persecution.

24. The respondent relied upon extracts from Symes & Jorro: *Asylum Law and Practice*, Lexus Nexis (2003) which contains a statement of the principles appropriate to such a case and, in particular, relied upon para. 3.37 which cited a number of factors relevant to a consideration of whether an offence committed by an applicant on a refugee application could be regarded as a political offence as follows:-

> "(a) Whether there is a genuine political purpose to the act;
>
> (b) The extent of the linkage between the act committed and the political purpose being pursued;
>
> (c) Most importantly, the proportionality of the good sought to be obtained in relation to the harm of the crime;
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> (d) The object and purpose of the law;
>
> (e) The nature and extent of the punishment…mere political motive alone is insufficient to characterise a common crime as political. Rather, it is the act not the actor that predominates in establishing the nature of the offence. While a political motive is essential, it is not conclusive: Gilbert, *Aspects of Extradition Law* (1991) 120. The most important factors are generally the remoteness of the crime from the ultimate political goal and the issue of proportionality, namely the proportionality of the good sought to be obtained in relation to the harm inflicted to the crime."

Applying those criteria, the Tribunal was not satisfied that there was any real link between the acts committed and the political purpose being pursued.

25. The applicant relied on paras. 56 – 60 of the Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status

of the UNHCR. Under the heading "Punishment" the guidelines provide:-

> "56. Persecution must be distinguished from punishment for a common law offence. Persons fleeing from prosecution or punishment for such an offence are not normally refugees. It should be recalled that a refugee is a victim – or potential victim – of injustice, not a fugitive from justice.
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> 57. The above distinction may, however, occasionally be obscured. In the first place, a person guilty of a common law offence may be liable to excessive punishment, which may amount to persecution within the meaning of the definition. Moreover, penal prosecution for a reason mentioned in the definition (for example, in respect of "illegal" religious instruction given to a child) may in itself amount to persecution.
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> 58. Secondly, there may be cases in which a person, besides fearing persecution or punishment for a common law crime, may also have a "well founded fear of persecution". In such cases the person concerned is a refugee. It may, however, be necessary to consider whether the crime in question is not of such a serious character as to bring the applicant within the scope of one of the exclusion clauses.
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> 59. In order to determine whether prosecution amounts to persecution, it will also be necessary to refer to the laws of the country concerned, for it is possible for a law not to be in conformity with accepted human rights standards. More often, however, it may not be the law but its application that is discriminatory. Prosecution for an offence against "public order", e.g. for distribution of pamphlets, could, for example, be a vehicle for the persecution of the individual on the grounds of the political content of the publication.
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> 60. In such cases due to the obvious difficulty involved in evaluating the laws of another country, national authorities may frequently have to take decisions by using their own national legislation as a yardstick. Moreover, recourse may usefully be had to the principles set out in the various international instruments related to human rights, in particular the international covenants on human rights, which contain binding commitments for the parties and are instruments to which many States parties to the 1951 Convention have acceded."

26. It is submitted by the applicant that the guidelines require the respondent to address whether the imposition of an excessive punishment which might amount to persecution is likely, to review the laws of Nigeria to see if they conform with accepted human rights standards and to examine the application of criminal law in respect of kidnapping in Nigeria.

27. It was submitted that the failure to address these matters was in breach of the applicant's legitimate expectations and that in order to reach a valid conclusion the tribunal member was obliged to comply with the terms of the guidelines. It is clear that the Tribunal considered and accepted that it was the norm in civilised countries that kidnapping or false imprisonment would be properly regarded as a criminal offence, as it is in Nigeria. There was no evidence to suggest that the punishment applicable to the offence was excessive. It is clear that the applicant admits that he committed multiple offences of kidnapping and assaults upon minors before joining the militants, and it would be entirely appropriate that he should be subjected to prosecution and due process in relation to those offences. I am not satisfied that the Tribunal's decision was in any respect inconsistent with the UNHCR Guidelines.

28. There is no doubt that if committed in Ireland these acts would be treated as criminal offences corresponding to the Nigerian offences of kidnapping, false imprisonment, assault and murder. Under s. 11 of the Extradition Act 1965, extradition would not be granted for an offence which is a political offence or an offence connected with a political offence. Some offences such as treason are clearly political in nature and fall within the exception. Other offences are committed for the purpose of compelling a change in government or the policy of a regime. However, it is well recognised that not every person who commits an offence in the course of political struggle is entitled to the benefit of the exception. In *Shannon v. Fanning* [1984] I.R. 569 the Supreme Court determined that what constitutes a political offence must be determined in each case having regard to the act done and the facts and circumstances which surrounded its commission. The onus was on the person claiming the political exception to establish that the offence to which the warrant related came within its protection. The test to be applied was whether the person charged was at the relevant time engaged, either directly or indirectly in what reasonable, civilised people would regard as political activity. In that case the 84 year old retired speaker of the Northern Ireland House of Commons and his son were murdered in so "brutal, cowardly and callous" a manner that the court considered it would be a distortion of language if they were to be accorded the status of political offences.

29. In *Quinliven v. Conroy (No.2)* [2000] 3 I.R. 154, Kelly J. considered the effect on the political exception of s. 3 of the Extradition (European Convention on the Suppression of Terrorism) Act 1987. Section 3 provided that an offence involving kidnapping or the taking of a hostage or serious false imprisonment should not be regarded as a political offence or an offence connected with a political offence in extradition proceedings. The offences alleged concerned a prison escape in the course of which a prison officer was falsely imprisoned, a car was hijacked and a civilian was shot. The court concluded that the offences created a collective danger to life, physical integrity and the liberty of persons and that the offences could not properly be regarded as political offences or offences connected with a political offence. The learned judge quoted McCarthy J. in *Shannon v. Fanning* in which he stated:-

> "The argument made on (the applicant's) behalf involves the proposition that, however revolting the circumstances of a particular crime may be, if the ultimate aim of the criminal, however remote it be from the crime, be truly political, then it is a political offence. I reject such a proposition; on the same basis it could be argued that the murder of a young woman shot down on the public street may be categorised as a political offence because her murder might deter her father, a Belfast Magistrate, from carrying out his duties as such. The mind rebels against such a view."

Kelly J. rejected the proposition that the applicant's behaviour in hijacking the car and shooting the civilian in any way could be regarded as a political offence in that:-

> "The activity of the applicant clearly affected them and they were entirely foreign to the motives allegedly behind the applicant. There can be little doubt but the act was one of considerable cruelty and viciousness. This offence cannot properly be regarded as a political offence or as an offence connected with a political offence."

30. The scope of the offences to which s. 3 of the 1987 Act applied was extended by s. 2 of the Extradition (Amendment) Act 1994, and the first schedule thereof, which also provided that the offences corresponding to murder, kidnapping, false imprisonment and assault occasioning actual bodily harm would not benefit from the political exception in relation to extradition to Convention countries.

31. The court is satisfied that the principles applied by the Tribunal in determining whether there was any real link between the acts committed by the applicant and their suggested political purpose are in accordance with the principles of asylum law as applied in other jurisdictions, the UNHCR Guidelines, and the principles informing the legal definition of the political exception provisions as

defined by domestic law.

32. I am satisfied that the Tribunal's conclusion that the activity carried out by the applicant bore no relationship whatever to the political aim sought to be achieved by the NDVF was entirely reasonable, as was the conclusion that the applicant was fleeing prosecution rather than persecution. It is to be expected that the authorities in Nigeria would seek to apprehend any person engaged in these admitted offences and prosecute them in accordance with law.

33. It follows that the applicant's fears from former associates with whom he engaged in the carrying out of kidnappings or murder must also be viewed in the context of this more important finding and any falling out with former criminal associates would fall to be addressed within the criminal justice system in Nigeria.

34. Therefore, I am satisfied that the applicant is not entitled to the relief claimed upon any of the grounds advanced. Any further objection which the applicant wishes to make in respect of the criminal law or procedure that applies in Nigeria to those who may be charged with criminal offences, may be more properly addressed under s. 3 of the Immigration Act 1999, if deportation is considered.