IMMIGRATION, ASYLUM & CITIZENSHIP BAR ASSOCIATION

THE DUTY TO GIVE REASONS

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Not so long ago there wasn't a general duty to give reasons

1. It wasn't that long ago that there was no general duty to give reasons in Irish public law. Sometimes there was an express statutory right to reasons. Or sometimes a right could be inferred from the statutory regime in question. But, as stated in *Pok Sun Shum v. Ireland* [1986] I.L.R.M. 593 by Costello J. at p. 599, there was "no general rule of natural justice that reasons for the decisions of an administrative authority must be given."

2. In *McCormack v. Garda Síochána Complaints Board* [1997] 2 I.R. 489, Costello P. stated at p. 500:

> Constitutional justice imposes a constitutional duty on a decision-making authority to apply fair procedures in the exercise of its statutory powers and functions. If it can be shown that that duty includes in a particular case a duty to give reasons for its decision then a failure to fulfil this duty may justify the court in quashing the decision as being *ultra vires*.
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> It is not the law of this country that procedural fairness requires that in every case an administrative decision-making authority must give reasons for its decisions.

3. The Court went on to conclude that the Garda Síochána Complaints Board had no duty to give reasons in the circumstances of that case.

There is now a general duty to give reasons

4. Things changed with *Mallak v. Minister for Justice* [2012] IESC 59, [2012] 3 I.R. 297. Fennelly J., writing for the Supreme Court, stated at para. 76, p. 324:

> The developing jurisprudence of our own courts provides compelling evidence that, at this point, it must be unusual for a decision maker to be permitted to refuse to give reasons. . . . At the very least, the decision maker must be able to justify the refusal. No attempt has been made to do so in the present case and I believe it would be wrong to speculate about cases in which the courts might be persuaded to accept such justification.

5. In that case, although the applicant had no right to a certificate of naturalisation—a privilege that the Minister had absolute discretion to grant or refuse under the 1956 Act—the Minister's decision nonetheless affected the applicant's *right* to constitutional justice, and in particular, the right to reasons as an element of constitutional justice.

6. Now in general, in public law, a decision maker should state reasons for a decision. And those reasons must be adequate.

Categories of decision that don't require reasons

7. There will be highly unusual cases where a public-law decision maker has no duty to give reasons. For example, a decision by the Government as a matter of executive policy to sign or go on to ratify a treaty (that doesn't involve any transfer of sovereignty) is surely a matter where no reasons would have to be given.

8. It is interesting to reflect on the fact that, outside the public-law domain, very serious decisions can be made that can irreversibly change a person's life where the decision-maker doesn't have to give reasons. For example, a jury in a criminal trial can find a person guilty of murder without having to give any reasons.

Reasons behind the duty to give reasons

9. The reasons for the duty to give reasons are, by now, well-known: see, e.g., the decision of Clarke C.J. writing for the Supreme Court in *Connelly v. An Bord Pleanala*.[1] A person affected by a decision is at least entitled to know in general terms why the decision was made. This requirement derives from constitutional justice—the obligation to be fair to individuals affected by binding decisions—and also contributes to transparency, which may now be seen as an aspect of the rule of law. Also, a person is entitled to have enough information to consider whether they can or should seek to avail of any appeal or to bring judicial review of a decision. Closely related to this requirement, it also appears from the case law that the reasons provided must be such as to allow a court hearing an appeal from or reviewing a decision to actually engage properly in such an appeal or review. This too, may be viewed as a facet of the rule of law.

Duty to give reasons required by the constitutional right of access to the courts

10. Aside from considerations of constitutional justice, the constitutional right of access to the courts has also been invoked as a basis for the duty to give adequate reasons. In *Meadows v. Minister for Justice* [2010] IESC 3, [2010] 2 I.R. 701, at paras. 93-94, p. 732, Murray C.J. explained:

[1] [2018] IESC 31 at para. 6.15

> **[93]** An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context.
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> **[94]** Unless that is so then the constitutional right of access to the courts to have the legality of an administrative decision judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective.

Adequacy of reasons is heavily dependent on context

11. In *Murphy v. Ireland* [2014] IESC 19, [2014] 1 I.R. 198, the Supreme Court expressed the view that the DPP must, when making the operative decision on whether a case that would otherwise be tried before a jury should be tried before the Special Criminal Court, as a matter of fair procedures give reasons why the ordinary courts are not sufficient to secure the administration of justice in the particular case. However, this duty was a most limited one. It was stated by O'Donnell J. at para. 31, p. 226:

    > The question of an entitlement to reasons is intertwined with the availability of judicial review. The requirements of procedural fairness are dictated by the particular circumstances: there is no one size fits all.

12. It was further stated at para. 41, p. 232:

    > The obligation to give reasons is, as has been observed, dependent upon and a reflection of the reviewability of the decision and the scope of that review.

Failure to give reasons for earlier procedural decision can vitiate substantive decision

13. Lest it be wondered whether, perhaps, the duty to give reasons applies only to the substantive decision and not to a decision on a preliminary procedural matter such as whether to hold an oral hearing, the Supreme Court judgment in *Oates v. Browne* [2016] IESC 7, [2016] 1 I.R. 481, shows otherwise. In that case, the Supreme Court quashed a criminal conviction because the District Court failed to give reasons for refusing the accused's requests on a procedural matter that arose prior to the decision to convict. The accused had applied to have an expert examine the Intoxilyser machine that had analysed his breath specimens and to be furnished with certain documentation relevant to the machine, its calibration, servicing and maintenance. The refusal of that application without giving reasons invalidated the subsequent decision to convict.

14. Practitioners will also note, with interest that the applicant's statement of grounds hadn't identified the failure to give reasons as a specific aspect of fair procedures being relied on. Rather, it was simply pleaded that the hearing was not "in accordance with the principles of natural and constitutional justice." Hardiman J. indicated it was desirable that the grounds stated should be more specific. However, the applicant's

written submissions furnished prior to the High Court hearing argued the issue of failure to give reasons, such that there was no misapprehension about the nature of the challenge prior to the High Court hearing. This case indicates a forgiving approach to general pleading in a Statement of Grounds.

Supplementing reasons by affidavit evidence

15. In *Subhan v. Minister for Justice* [2018] IEHC 458 (Unreported, High Court, Keane J., 25 July 2018), Keane J. stated at para. 56:

> For the purpose of this judgment, I have disregarded the averments in the affidavit of Mr Byrne, sworn on 10 August 2017, in which, as the decision-maker concerned, he seeks to clarify what the terms of the Minister's decision were intended to convey. It seems to me that the Minister's decision must stand or fall on its own terms, properly considered, and I have significant doubt about the correctness of permitting a decision-maker to adduce extrinsic evidence of what was intended to be conveyed by the decision *ex post facto*. In *Deerland Construction v Aquatic Licensing Appeals Board* [2009] 1 I.R. 673 at 693, Kelly J cited with approval the following proposition, amongst others, from the judgment of Stanley Burnton J in *Nash v Chelsea College of Art and Design* [2001] EWHC (Admin) 538, (Unreported, English High Court, Stanley Burnton J., 11th July, 2001):
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> > "Where there is a statutory duty to give reasons as part of the notification of the decision, so that (as Law J. put it in *R. v. Northamptonshire C.C. ex parte W.* [1998] E.L.R. 291) 'the adequacy of the reasons is itself made a condition of the legality of the decision', only in exceptional circumstances if it all, will the court accept subsequent evidence of the reasons."
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> In *Gavin v Criminal Injuries Compensation Tribunal* [1997] 1 I.R. 132 at 142, Carroll J refused to accept reasons given in the form of an affidavit sworn *ex post facto* by the Secretary to that tribunal on the basis that it was for the tribunal (or its decision) to speak for itself. I need only add that there is a clear statutory duty to give reasons for a refusal to permit a person claiming to be a permitted family member to remain in the State under both Reg. 6(3)(c) of the 2006 Regulations and Art. 3(2) of the Citizens' Rights Directive.

Reasons for rejecting significant medical evidence

16. There is a duty on the International Protection Appeals Tribunal to give reasons for rejecting significant medical evidence. In *M.M. v. Refugee Appeals Tribunal* [2015] IEHC 158, (Unreported, High Court, Faherty J., 10 March 2015), Faherty J. stated at para. 28, pp. 32-33:

> In summary, my understanding of what the jurisprudence establishes is as follows:

· In considering any assessment of an applicant's credibility, decision makers are obliged to consider the medical evidence in total before them;

· The medical evidence must be put into the totality of the evidence to be assessed and must not be tangential or peripheral to such assessment;

· It is always a matter for the decision maker to assess the probative value of the contents of such reports;

· Where an applicant provides a story which might be true and the medical evidence tends to confirm his or her story then it is axiomatic that an overall assessment of the evidence should weigh in the applicant's favour;

· If medical evidence is to be rejected, it is incumbent on the decision maker to give reasons;

· A summary consideration of medical evidence by a decision maker may be upheld where the medical evidence uses phrases of low probative value:

· Where an examining physician reports on objective findings and uses phrases which attach a higher probative value to those findings, the medical evidence should be treated as providing potentially objective corroboration of the claim;

· If such evidence is to be rejected, the reasons for rejecting the reports must be more fully addressed in the decision;

· The requirement to more fully address reasons for rejecting medical reports which attach a higher probative value to clinical findings may be less where the balance of the evidence is overwhelmingly in favour of a finding of a lack of credibility.

The duty to give specific reasons addressing matters of significance

17. The ninth and tenth principles set out with respect to review of a credibility assessment set out by Cooke J. in *I.R. v. Minister for Justice* [2009] IEHC 510, [2015] 4 IR 144, are:

    9) where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is *prima facie* relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated; and
    10) nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the applicant as addressee, and the court in exercise of its judicial review function, to

> understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached.

18. In the Supreme Court judgment in *Y.Y. v. Minister for Justice* [2017] IESC 61, [2018] 1 I.L.R.M. 109, Mr Justice O'Donnell dealt with the obligation to address significant matters as part of the duty to give adequate reasons. At para. 64, it was stated:

> The decision of the Refugee Appeals Tribunal is however a plainly significant aspect of the decision making process, and a matter along with other important points such as the determination of the ECtHR in *Daoudi*, which would normally require to be addressed in any logical reasoning process. Indeed, the manner in which the decision addresses those issues is a test of the reasons as provided, the reasoning process, and ultimately the reasonableness and lawfulness of the decision.

19. At para. 66, it was stated that, because the Refugee Appeals Tribunal had a specific expertise and fact-finding role, its views must normally be treated with respect. O'Donnell J. stated: "That entails a reasoned explanation of why the decision maker has come to a different conclusion." The same is true for other significant matters or materials placed before the decision maker. At para. 70, O'Donnell J. said:

> . . . on any view if the Minister was to depart from the finding by the Refugee Appeals Tribunal, the ECtHR and the approach of the UK authorities in relation to the risk to the applicant to Algeria if deported, clear reasons were required, which could be assessed by the Court. Approached fairly, I find it difficult to understand precisely how the Minister reached the conclusion that she did.

20. In *R.A. v. Refugee Appeals Tribunal* [2017] IECA 297, the Court of Appeal approved the 10 principles set out by Cooke J. in *I.R.* In *R.A.*, the former Tribunal rejected the applicant's credibility, and in doing so stated that it had addressed certain documents submitted by the applicant. It was concluded by the decision maker (see para. 15 of the judgment):

> "Whilst I have had full regard to the documentation submitted by the applicant purporting to confirm the applicant's activities with the FPI party and the difficulties he claims to have experienced arising from same, in light of the issues arising in the applicant's own evidence, I cannot accept that these documents represent a truthful account of circumstances.
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> I have considered all of the documentation, medical evidence, photographs, country of origin information, grounds of appeal, submissions and case law relied on in support of this applicant's claim. This information does not assist the applicant in circumstances where his credibility is found wanting to such a degree that the very basis of his claim is not believed. I do not believe the applicant. I found him to be vague and evasive in his manner of answering questions raised by the Tribunal and I cannot accept that his manner of answering such questions was anything other than a deliberate attempt by him to confuse the evidence."

21. There, the Tribunal found that the credibility concerns identified by it warranted the documents being given no weight. At para. 59 of the judgment written for the Court of Appeal, Hogan J. stated that "the Tribunal member made no specific finding in relation to any of these four documents (namely, the identity card, the RPI membership card, the notice from the Police Commissioner and the letter from the Bishop) because he concluded that, as I have already stated, this information 'does not assist the applicant in circumstances where his credibility is found wanting to such a degree that the very basis of his claim is not believed.'" The paras. that followed in the Court of Appeal's judgment are of some significance for the standard of express consideration and reasoning expected of a lawful decision, because they show an approach that is somewhat different to that taken in a number of High Court judgments. In particular, it had been found by the High Court in that case that the applicant had no general right to a "narrative discussion" of documentation (see para. 54 of the judgment in *R.A. v. Refugee Appeals Tribunal* [2015] IEHC 686). That aspect of the High Court judgment referred to country-of-origin information but the principle would be applicable to consideration of applicant-specific documentation such as identity cards or arrest warrants, and medico-legal reports or other medical, psychiatric, or psychological evidence. Hogan J. stated at paras. 60-65:

> 60. It seems to me that in this respect the Tribunal member fell into essentially the same error as did the Tribunal member in *IR*, namely, to conclude that because the oral testimony of the applicant was so unsatisfactory from a credibility perspective there was no need in the circumstances to consider the documentary evidence which had also been proffered by him. . . .
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> 61. The Tribunal member concluded that the applicant in the present case could not have been at risk because of his basic lack of knowledge of certain details concerning the political state of affairs in the Ivory Coast in the first five months or so of 2011 and the nature of the conflict between the Gbagbo and Ouattara factions. The premise of the adverse credibility findings was that anyone who had in fact participated in these political activities would have had a far greater knowledge of the relevant detail than this applicant appeared to have had. Yet if, indeed, the applicant was a member of the FPI or he had been summoned by the Chief of Police for his political activities or a Bishop of the Church of the Latter Day Saints was threatened in a menacing fashion by militants because it was rumoured that he had given the family of Mr. A. shelter as these documents all appear to show – assuming, again, that they were shown to be authentic - then the position would be very different.
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> 62. This case presents yet another example of where the fourth principle identified by Cooke J. in IR assumes such importance: the assessment of credibility must be made "by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed." Given that it is not disputed that Mr. A. is an Ivorian national who arrived in Ireland at a time of intense civil conflict – in effect, what amounted to a civil war – in the Ivory Coast, the fundamental question was whether his account of involvement with the FPI and the consequent risks to his life and limb was credible. But given the alleged

provenance of the documents and their obvious relevance to his claim, if true, it was incumbent in these circumstances on the Tribunal member to assess such documentary evidence – if necessary, by making findings as their authenticity and probative value - so that that very credibility could be assessed by reference to all the relevant available evidence. The potentially serious consequences for Mr. A. if an otherwise meritorious claim were to be rejected – assuming again, of course, that his account was a valid one – demanded no less.

63. It is, in any event, clear since the coming into force of the Qualification Directive (Directive 2004/83/EC) that the grant of asylum is fundamentally governed by EU law: see Case C-57/09 and C-101/09 B and D EU:C: 2010: 661. As this Court has already made clear in *NM (DRC)*, the requirement of Article 39 of the Procedures Directive means that the supervisory jurisdiction of the High Court in judicial review proceedings must nonetheless ensure that "the reasons which led the competent authority to reject the application for asylum as unfounded… may be the subject of a thorough review by the national court." This further underscored the necessity in the present case for the Tribunal member to have examined the documentary evidence advanced by the applicant, precisely because without an assessment of that evidence there could not have been a full assessment of credibility.

64. One may put all of this another way by saying that in the circumstances of the present case the Tribunal member was required to have regard to the documentary material supplied by the applicant in support of his case, because, just as in *IR*, that material – if it were to be accepted as authentic – would tend to bear out a claim (namely, that he escaped to avoid a real risk to his life and person during the course of an intense civil conflict) which is also generally consistent with the available COI. Accordingly, this is an instance of where the Tribunal erred in failing to have regard to "relevant statements and documentation presented by the protection applicant" (Article 5(1)(b)), specifically, by failing to examine whether they were or might be authentic.

65. In these circumstances, just as in *IR*, the decision of the Tribunal cannot be allowed to stand and I consider that the High Court fell into error in not quashing the decision on this ground. This conclusion is further underscored by the considerations identified by the Court of Justice in *Diouf* and by this Court in *NM (DRC)*, namely, the obligation to ensure that the reasons which led the Tribunal to reject the asylum application as unfounded must be "the subject of a thorough review" in the course of any judicial review proceedings contesting the legality of that decision. It would be clear from any such review that the Tribunal's decision rested only on a partial assessment of all the relevant evidence bearing on the applicant's credibility.

22. The Court of Appeal has held here that a failure to address potentially relevant evidence within the credibility process—by, on the contrary, adopting an approach of making negative credibility findings and then considering whether that evidence could, despite those findings, assist the applicant—is unlawful. Although Hogan J.

does not expressly characterise his findings as being warranted by the duty to give adequate reasons, they logically fit within this analytical framework.

23. In *Y.Y. v. Minister for Justice (No. 9)* [2019] IEHC 27, Humphreys J. stated at paras. 10 and 11:

> 10. As noted in *Y.Y. v. Minister for Justice and Equality (No. 7)* [2018] IEHC 459 at para. 10, reasons must relate to the "*principal important controversial issues or the main issues in dispute*": see Michael Fordham, *Judicial Review Handbook* 6th ed (Oxford, 2012) p. 667, *Bolton Metropolitan Borough Council v. Secretary of State to the Environment* [1995] 3 PLR 37, *City of Edinburgh Council v. Secretary of State for Scotland* [1997] 1 W.L.R. 1447, *Westminster City Council v. Great Portland Estates Plc* [1995] AC 661, *Wheeler (R.) v. Assistant Commissioner of the Metropolitan Police* [2008] EWHC 439 (Admin). Reasons are to be understood in the context of the "*broad issues*", *per* Finlay C J. in *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 at 76, or the "*broad gist*" of the basis of the decision, *Faulkner v. Minister for Industry and Commerce* (Unreported, Supreme Court, 10th December, 1996) *per* Flaherty J., applied by Birmingham J. in *P. N. v. Minister for Justice, Equality and Law Reform* [2008] IEHC 215 (Unreported, High Court, 3rd July, 2008). A decision-maker does not need to engage in micro-specific analysis: *K.R. v. Refugee Appeals Tribunal* [2014] IEHC 625 (Unreported, McDermott J., 2nd December, 2014), *M.S. (Albania) v. Refugee Appeals Tribunal* [2018] IEHC 395 [2018] 5 JIC 3005 (Unreported, High Court, 30th May, 2018) (para. 9). Nor is there a need for a "*micro specific format"*, *per* Denham J., as she then was, in *Oguekwe v. Minister for Justice, Equality and Law Reform* [2008] IESC 25 [2008] 3 I.R. 795 at 819, cited in *Seredych v. Minister for Justice and Equality* [2018] IEHC 187 (Unreported, High Court, 22nd March, 2018); see also the judgment of Clarke C.J. in *Connelly v. An Bord Pleanála* [2018] IESC 31 [2018] 2 I.L.R.M. 453, at para. 10.15. As O'Donnell J. said in *Murphy v. Ireland* [2014] IESC 19 [2014] 1 I.R. 198 [2014] 1 I.L.R.M. 457, at para. 41: "*The obligation to give reasons is, as has been observed, dependent upon and a reflection of, the reviewability of the decision and the scope of that review."*
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> 11. Thus the extent of reasons is context-specific, and as I noted at para. 19 of *Y.Y. No. 7,* there are some situations where there can be an enhanced duty to give reasons. Indeed, conversely, there are some situations (such as that in *Murphy v. Ireland*) where there is a reduced (or even non-existent) requirement to give reasons. The fact that the Minister is in the present case engaged in an exercise of dispelling doubts as to an art. 3 risk raised by the applicant does not in itself have the consequence that the Minister must set out micro sub-reasons for the main considerations. The principal criterion is that set out at para. 80 of the judgment of O'Donnell J. in the Supreme Court judgment in *Y. Y.*, namely "*that the decision sets out a clear reasoned path, and moreover one that was not flawed or incorrectly constrained by unjustifiable limitations or irrelevant legal considerations*". The word "*path*" is important in this passage. Thus, it is not simply a question of asserting a reason but providing a reason that makes sufficiently clear the logical path by

which the Minister arrived at that conclusion (see para. 70 of his judgment as to why such a path was missing from the original decision).

Law Society of Ireland v. Coleman

24. In *Law Society of Ireland v. Coleman* [2018] IESC 80, the Supreme Court expressed a strong view (albeit *obiter*) about the duty on a judge to give reasons—in the context of the refusal of an adjournment application. A solicitor came before the (former) President of the High Court, Kearns P., to deal with motions brought by the Law Society against the solicitor seeking consequential orders, including that he be struck off, following a decision of the Disciplinary Tribunal. The solicitor applied for an adjournment and this application was refused by the High Court, which went on to grant the orders sought. The applicant sought to argue on appeal that the High Court failed to give any proper or adequate reasons for the decision arrived at.

25. In delivering the Supreme Court judgment, McKechnie J. noted that neither notice of appeal as originally filed, contained any complaint about adequacy of reasons. It was then stated at paras. 95-97:

> . . . As such, unless the dictates of justice seriously demand, this Court should not now entertain such objection. No substantive reasons which would meet the strict threshold as set out in the case law have been so advanced I would therefore refuse to allow this point to be raised as an aspect of the appeal before this Court: in any event, it is unnecessary from Mr. Coleman's point of view to do so, in light of the finding above made.
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> 96. However, I am concerned that by remaining mute on this issue, my silence might be taken as acquiescing in the Society's response, which was to submit that the High Court when dealing with such an application is under no obligation to give reasons if the judge was merely giving effect to the Disciplinary Tribunal. Furthermore, it is the respondent's contention that the duty to explain would only arise if the President was to differ dramatically from that which the Tribunal had suggested (paras. 38 and 106 herein). As this is a far reaching proposition and one of general application, I feel compelled to respond to it.
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> 97. Can I immediately say, with respect, that I reject this submission, not only on the basis of general principles, but also because, if accepted, it would intrinsically follow that in the absence of cause shown and where the Society supports the Tribunal's findings and recommendations, the only function of the court is to approve both. Such approach, for the reasons above given, would entirely deprive the disciplinary regime of the legal and constitutional efficacy which is in place.

26. The relevant part of the High Court ruling, as set out at para. 87 and 111 of McKechnie J.'s judgment was:

> Having regard to the fact that these complaints were processed through the Solicitors Disciplinary Tribunal and that the respondent was fully aware of the conclusions and finding of the Tribunal, I was satisfied that the respondent had had full and adequate opportunity to instruct solicitor and counsel in advance of the hearing before me.
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> When the matter was heard before me on 26th July, the respondent did not advance any grounds to suggest that the Tribunal's findings were inaccurate and unwarranted and I accordingly made the orders sought.

27. McKechnie J. went on to state at para. 112:

> . . . the question of penalty is not dealt with at all. Perhaps that was in part the consequence of not granting the adjournment but whichever, what the President said does not disclose any consideration, independent or otherwise, of the strike off which was imposed. As such, there is no way of knowing why he felt that such an order was the appropriate one to make. Furthermore, apart from reciting the claim for €320,000 there is no further reference to it. It must also be remembered that having refused the adjournment, the learned President gave immediate effect to the findings and recommendations so made. In the circumstances prevailing, I cannot regard this as being adequate. By reference to the authorities above quoted, I regretfully have to conclude that in this respect there was also a lack of fairness.

28. McKechnie J. stated at paras. 109-10:

> 109. It can be no answer to the absence of reasons in the instant case to suggest that as a matter of routine the President is given copies of all the documents in advance and that prior to the hearing, he reads and considers them. Such is of little comfort to the affected solicitor and sheds no further light on the judge's reasoning when reviewed by an appellate court. Again, . . . I too have much sympathy for trial judges with multiple lists, typically on a Monday morning, which include a variety of motions, involving ever more complex and difficult questions of law. However, and notwithstanding the onerous workload involved, where a person's good name and livelihood are seriously in jeopardy, such pressures cannot trump the requirement of justice.
> 110. Finally, it is no harm to occasionally remind ourselves of what McMahon J. said in *Khan v. Health Service Executive* [2008] IEHC 234: -
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> > "To those involved in administration, adherence to fair procedural standards may appear cumbersome, irritating and even irksome on some occasions. Undoubtedly the necessary endurance may slow down the administrators and may not be conducive to efficiency. But that is the way it is. The battle between fair procedures and efficiency has long since been fought and fair procedures have won out. Insistence on fair procedures governs all decision makers in public administration. The same in my view applies with equal justification to the judicial function."

> Whilst I fully appreciate the necessity to dispatch the court list, nevertheless to all issues, particularly those with severe consequences, an appropriate response is called for: it does not necessarily have to be either lengthy or analytical: a short and succinct statement may be sufficient: but such issues must be addressed, as otherwise justice will not prevail.

29. The parts of this judgment dealing with the duty to give adequate reasons—despite being *obiter*—may be of relevance to IACBA practitioners. It may suggest that the Supreme Court considers that where a decision to impose a sanction has been made, a specific reason for the sanction ultimately imposed must be given, that the reasons for a particular sanction handed down cannot be inferred from the decision to impose it. If so, such a proposition is in harmony with the decision of the Court of Appeal in *Balc v. Minister for Justice* [2018] IECA 76. It was held that the Minister for Justice was obliged to give a reason for the duration of any exclusion period imposed when a removal order was being made under Regulation 20(1) of the European Communities (Free Movement of Persons Regulations) (No. 2) 2006 (S.I. No. 656 of 2006).

Marques v. Minister for Justice

30. In the recent decision in *Marques v. Minister for Justice* [2019] IESC 16, one of the issues considered by the Supreme Court was whether the Minister's reasons in making a decision to extradite the applicant were adequate. At para. of the judgment of Charleton J., it was stated that on 31 May 2017, according to his counsel, Eric Marques's solicitor wrote a detailed letter to the Minister pleading that he ought not to be extradited. At para. 24 of the judgment, Charleton J. stated:

> The response of the Minister is dated 2 June 2017, the solicitor's letter having effectively stopped the surrender of the suspect. That letter states that an order for extradition under section 33 of the 1965 Act had been made. The letter continues:
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> > In making this decision, the Tánaiste considered the issues raised by you in your letter of 31 May 2017.
> >
> > In that context the Tánaiste notes that this case has been the subject of extensive proceedings in the Courts and that it has been open to your client to raise any matter of concern to him in the course of the various proceedings that have taken place.
> >
> > The Office of the Director of Public Prosecutions decided not to institute proceedings against your client. Having regard to the statutory independence of that Office, the Tánaiste is of the view that it is neither necessary nor appropriate that she should seek an explanation from the Director as to the reasons why a decision was made not to prosecute Mr Marques in this jurisdiction.
> >
> > In arriving at the conclusion to make the section 33 order, the Tánaiste also took account of the views of the High Court and Court of Appeal

> arising from judicial review proceedings brought by the client on this matter and noted the subsequent determinations of the Supreme Court concerning the application for leave to appeal to that court dated 25 May 2017.

31. Charleton J. went on to state at para. 27:

> Certainly, in public law, the decision-maker should state reasons which enable the person affected by the decision to know where a person stands and why. That will enable that person to perhaps apply again, as in a refusal of a licence case, or to seek to impugn a decision on the basis of want of jurisdiction or lack of reasonableness or such disproportion in the decision that makes it unreasonable. Reasons, however, need not necessarily be extensive or philosophically analytical but must, instead, be adequate to the situation in which these are required; see *EMI Records Ltd v Data Protection Commissioner and Eircom Ltd* [2014] 1 ILRM 225 and *FP v Minister for Justice, Equality and Law Reform* [2002] 1 IR 164. Fundamental to this issue is the principle as to why any reasons might be required for the Minister to exercise a discretion which remains residual to the Minister and which constitutes an exercise of the sovereignty of the State. Important here is the fact that, in essence, the same reasons as to why the High Court should not make a custody order against the suspect to await the final order of surrender of the Minister, which had been put forward in the prior judicial review proceedings, were reiterated in the letter of the suspect. Where a fundamental breach of accepted international norms for the protection of rights is apparent within a requesting country, then, depending on the circumstances, the High Court may decline to make an order; *Russell v Fanning* [1988] IR 505, *Minister for Justice v Balmer* [2017] 3 IR 562, and *YY v Minister for Justice and Equality* [2017] IESC 61. The case of *Minister for Justice v Celmer* [2018] IEHC 153 is a recent example of where an extradition request was referred to the Court of Justice of the European Union on an issue as to concern about the state of the rule of law in the requesting state. A number of cases have considered the issue of when poor prison conditions in a requesting state can justify the refusal of an extradition request. It appears that exceptional circumstances must be present for an applicant to succeed on this ground; see *Attorney General v POC* [2007] 2 IR 421, *Minister for Justice v Busjeva* [2007] 3 IR 829, *Minister for Justice v Raustys*[2007] IEHC 370, and *AG v Simon Murphy* [2007] IEHC 342. Since those arguments were put forward and rejected in the earlier judicial review proceedings, anything set out in the letter to the Minister was essentially based on humanitarian grounds. The Minister, however, had an independent role and could take another view to that taken in the extradition proceedings by the courts or could take the same view. The Minister was entitled simply to reason that nothing had been put forward which would result in her viewing the pleas in the letter as having validity. That view was taken and explained on a reasoned basis.

32. *Marques* is a good example of the issue of the adequacy of reasons being very much context dependent. The reasons mainly recited what had been considered and showed a heavy reliance on the views of the courts rather than setting out independent reasons

for the Minister's position. But that was acceptable because of the humanitarian or *ad misericordiam* nature of the application made to the Minister. The decision suggests that the reasons for, say, a s. 3(11) refusal need not be extensive where no significant new material has been relied on by the applicant.

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