



# An Binse um Achomhairc i dtaobh Cosaint Idirnáisiúnta

## The International Protection Appeals Tribunal

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### Guideline No. 2017/6:

### Medico-Legal Reports

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#### [1] Background

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- [1.1] The Act, the 2017 Regulations and the Dublin Regulations all set out various matters relating to the conduct of Appeals before the Tribunal. These guidelines are intended to supplement the Act and Regulations and not to supplant them. In case of conflict, the provisions of the Act or relevant Regulation shall take precedence over these guidelines.
- [1.2] These guidelines apply to all Appeals heard by the Tribunal.
- [1.3] These guidelines are primarily informed by the Istanbul Protocol,<sup>1</sup> the UNHCR 'Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status',<sup>2</sup> the International Association of Refugee Law Judges' 'Guidelines on the Judicial Approach to Expert Medical Evidence',<sup>3</sup> case law, and international best practice.
- [1.4] These guidelines are issued pursuant to S.63(2) of the Act.

#### [2] Definitions

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- [2.1] In these guidelines the following terms have the following meanings:

**"2017 Regulation"** means S.I. 116 of 2017. International Protection Act 2015 (Appeals) Regulations 2017

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<sup>1</sup> 'Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', United Nations Office of the High Commissioner for Human Rights Professional Training Series No. 8/Rev.1 (2004) (Istanbul Protocol), available at:

<<http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>> (accessed 1 July 2015).

<sup>2</sup> UNHCR 'Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status', Geneva, December 2011, available at: <http://www.unhcr.org/3d58e13b4.html> (accessed 1 July 2015).

<sup>3</sup> International Association of Refugee Law Judges' Guidelines on the Judicial Approach to expert Medical Evidence, June 2010, available at:

<[https://www.iarjl.org/general/images/stories/working\\_parties/guidelines/Final\\_guidelines\\_March\\_2011.pdf](https://www.iarjl.org/general/images/stories/working_parties/guidelines/Final_guidelines_March_2011.pdf)> (accessed 1 July 2015).

**“Act”** means the Refugee Act 1996 as amended and shall include, where the context so permits or requires, any secondary legislation made thereunder.

**“Appeal”** means an appeal made under the Act or an appeal made under the Dublin Regulation.

**“Appellant”** means an Appellant pursuing an Appeal and shall, where the context so admits or requires, include his or her representative, if any.

**“Convention”** means the United Nations Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 and any protocols thereto.

**“Dublin Regulation”** means SI 525 of 2014, European Union (Dublin System) Regulations 2014.

**“Istanbul Protocol”** means the ‘Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’, United Nations Office of the High Commissioner for Human Rights Professional Training Series No. 8/Rev.1 (2004).

**“Medico-Legal Report”** means a report carried out by a medical expert that includes a physical and/or psychological evaluation of the victim and the expert’s opinion as to the probable relationship of the physical and/or psychological findings to possible torture or ill-treatment.<sup>4</sup>

**“Torture”** means Torture as defined by Article 1(1) of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 113 (UNCAT).

**“Tribunal”** means the International Protection Appeals Tribunal established under the Act and shall, where the context so requires, include a Member assigned to determine an Appeal.

### [3] Introduction

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- [3.1] The value of expert medical evidence in refugee status determination is recognised internationally. In its case law, the European Court of Human Rights has ruled that expert medical evidence can be of value in determining both (i) whether past instances of persecution occurred,<sup>5</sup> and (ii) potential risk should an individual be returned to their country of origin.<sup>6</sup> The value of expert medical evidence in assessing claims of Torture has also been recognised by the United Nations Committee against Torture.<sup>7</sup> European Union law and domestic secondary legislation

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<sup>4</sup> Istanbul Protocol, annex I at para. 6(b).

<sup>5</sup> *Cruz Varas and others v. Sweden* App. No. 15576/89 (ECtHR 20 March 1991); *R.C. v. Sweden* App. No. 41827/07 (ECtHR 9 March 2010).

<sup>6</sup> *Hilal v. The United Kingdom* App. No. 45276/99 (ECtHR 6 March 2001).

<sup>7</sup> CAT General Comment No.1: Implementation of Article 3 of the Convention in the context of Article 22 (Refoulement and Communications), 21 November 1997 at para. 8(c).

provide that evidence of past persecution shall be considered a “serious indication” of an Appellant’s well-founded fear of persecution for the purpose of refugee status determination.<sup>8</sup>

[3.2] In order for the Appeal to be considered in a timely manner, the Appellant should endeavour to obtain a Medico-Legal Report at the earliest possible date.

[3.3] The absence of a medical report should not be construed to suggest that torture did not occur, since torture may leave no marks or permanent scars and not all victims of torture will suffer from psychological symptoms.<sup>9</sup>

#### **[4] Purpose of Medico-Legal Reports**

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[4.1] Expert medical evidence serves the following purposes in refugee status determination:<sup>10</sup>

- To substantiate claims of ill-treatment;
- To establish a correlation between physical and psychological injuries and the alleged Torture or ill-treatment;
- To reduce the need for the Appellant to give testimony about traumatic events;
- To address the possible effect of removal and return to the country of origin upon a person’s physical or mental well-being;
- To explain an Appellant’s difficulties in giving evidence or recounting events by providing possible explanations for inconsistencies within the Appellant’s narrative of events and by providing possible explanations for reticence or reluctance in divulging a full account of events.

[4.2] The Medico-Legal Report may report on the consistency of psychological findings with the alleged report of Torture.<sup>11</sup> Trauma and psychological vulnerability as a result of Torture may result in vagueness or inconsistency in the Appellant’s account, and complete accuracy of an account is not to be expected by victims of Torture.<sup>12</sup>

[4.3] Where the Medico-Legal Report shows that the Appellant is suffering from a medical condition which may impact on his or her behaviour or ability to provide a coherent testimony, that factor shall be taken into account by the Tribunal when assessing that testimony.<sup>13</sup> For instance, the Tribunal may apply the principle of the benefit of

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<sup>8</sup> Council Directive 2004/83/EC, the ‘Qualification Directive’, article 4.4; SI No. 518 of 2006 Reg. 5(2); SI 426 of 2013 Reg. 13(2).

European Communities (Eligibility for Protection) Regulations 2006, section 5(2)

<sup>9</sup> Istanbul Protocol, sections 131 and 236.

<sup>10</sup> International Association of Refugee Law Judges’ Guidelines on the Judicial Approach to expert Medical Evidence, June 2010, section 3.1.

<sup>11</sup> Istanbul Protocol, section 287.

<sup>12</sup> CAT Communication no. 21/1996, May 8 1996 (*Alan v Switzerland*) at para 11.3; CAT Communication no. 133/1999, December 17 2004 (*Falcon Rios v Canada*) at para. 8.5; ‘Beyond Proof: Credibility Assessment in EU Asylum Systems,’ United Nations High Commissioner for Refugees, May 2013 at pp. 61-65; Istanbul Protocol section 290.

<sup>13</sup> Immigration and Refugee Board of Canada, Refugee Protection Division, ‘Assessment of Credibility in Claims for Refugee Protection,’ Legal Services, 31 January 2014 at section 2.4.9

the doubt with a wider margin of appreciation or may make accommodation regarding the way in which testimony relating to the traumatic events is to be given.

[4.4] Torture and other forms of ill-treatment may also impact upon a victim's behaviour, and no negative inferences should be drawn from the demeanour of an Appellant who has been the victim of such treatment.<sup>14</sup>

## [5] Istanbul Protocol

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[5.1] The Tribunal expects all Medico-Legal Reports in cases of alleged Torture or ill-treatment to be carried out in accordance with the standards set down in the Istanbul Protocol.

[5.2] The Istanbul Protocol provides a set of international guidelines for the assessment of persons who allege Torture or ill-treatment. The Istanbul Protocol is a collaborative document prepared by experts in law, health and human rights, published by the United Nations Office of the High Commissioner for Human Rights. It outlines a set of non-binding<sup>15</sup> minimum standards based on international best practice, aimed at medical practitioners, human rights investigators and adjudicators for use, *inter alia*, in the asylum context.

[5.3] The Istanbul Protocol sets down a hierarchy of terms to be used by the medical practitioner to report on the consistency of physical and psychological findings with the Appellant's asserted history of Torture or ill-treatment.<sup>16</sup>

### Visible Injuries:

[5.4] For each lesion<sup>17</sup> and the overall pattern of lesions the physician should indicate the degree of consistency between it and the attribution given by the patient. The following terms are generally used<sup>18</sup>:

- **Not consistent:** the lesion could not have been caused by the trauma described.
- **Consistent with:** the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes.
- **Highly consistent:** the lesion could have been caused by the trauma described, and there are few other possible causes.
- **Typical of:** this is an appearance that is usually found with this type of trauma, but there are other possible causes.
- **Diagnostic of:** this appearance could not have been caused in any way other than that described.

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<sup>14</sup> CREDO Manual, pp. 61-65.

<sup>15</sup> Rebecca MM Wallace and Karen Wylie, 'The Reception of Expert Medical Evidence in Refugee Status Determination' (2013) 25 International Journal of Refugee Law 749 at 753.

<sup>16</sup> Istanbul Protocol, section 187.

<sup>17</sup> The term 'lesion' includes abrasions, contusions, lacerations, puncture wounds, burns, electrical injuries, alopecia and nail removal.

<sup>18</sup> Istanbul Protocol, sections 187.

[5.5] A Medico-Legal Report conducted in accordance with the Istanbul Protocol may also report on trauma to the face, eyes, ears, nose, jaw, oropharynx and neck, oral cavity and teeth, chest and abdomen, musculoskeletal system, genito-urinary system and the central and peripheral nervous systems.<sup>19</sup>

### **Non-visible Injuries**

[5.6] In formulating a clinical impression for the purposes of reporting psychological evidence of torture, the following important questions should be asked<sup>20</sup>:

- (i) Are the psychological findings consistent with the alleged report of torture?
- (ii) Are the psychological findings expected or typical reactions to extreme stress within the cultural and social context of the individual?
- (iii) Given the fluctuating course of trauma-related mental disorders over time, what is the time frame in relation to the torture events? Where is the individual in the course of recovery?
- (iv) What are the coexisting stressors impinging on the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role)? What impact do these issues have on the individual?
- (v) Which physical conditions contribute to the clinical picture? Pay special attention to head injury sustained during torture or detention;
- (vi) Does the clinical picture suggest a false allegation of torture?

[5.7] Clinicians should comment on the consistency of psychological findings and the extent to which these findings correlate with the alleged abuse. The emotional state and expression of the person during the interview, his or her symptoms, the history of detention and torture and the personal history prior to torture should be described. Factors such as the onset of specific symptoms related to the trauma, the specificity of any particular psychological findings and patterns of psychological functioning should be noted<sup>21</sup>.

### **[6] Consideration of Medico-Legal Reports:**

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[6.1] The Medico-Legal Report will report on the consistency of findings with the Appellant's asserted history. The Medico-Legal Report will not serve to establish other factual claims, such as the identity of the perpetrator(s), as this is a matter to be determined under the credibility assessment.

[6.2] A finding in a Medico-Legal Report that the injury, either visible or non-visible, exists shall, subject to paragraph [6.8], satisfy the required standard of proof as to the existence of that injury.

[6.3] A finding that the lesions are "highly consistent" with, "typical of" or "diagnostic of" the Appellant's asserted history will usually satisfy the required standard of proof that the lesion was caused by the trauma described.

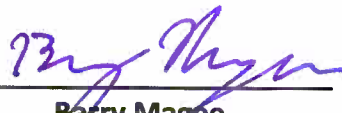
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<sup>19</sup> Istanbul Protocol, sections 176-186.

<sup>20</sup> Istanbul Protocol, section 287.

<sup>21</sup> Istanbul Protocol, section 288.

- [6.4] While the primary role of the Medico-Legal Report is to substantiate claims of ill-treatment by reporting on the consistency of injuries presented with the Appellant's asserted history, the Medico-Legal Report may also have a role as part of the credibility assessment.
- [6.5] A finding of 'consistency' in accordance with the Istanbul Protocol may have evidential value, and such a finding, as opposed to a finding of "highly consistent", "typical of" or "diagnostic of", should not be rejected as having no evidential value.
- [6.6] The Tribunal should not carry out its own medical examination or diagnosis. Judicial opinion should not be substituted for expert medical opinion.<sup>22</sup>
- [6.7] All Medico-Legal Reports should disclose the identity and qualifications of the author.<sup>23</sup>
- [6.8] In the case of contradicting Medico-Legal Reports, the Tribunal shall give reasons as to why it prefers one report over the other.
- [6.9] If expert medical evidence is dismissed by a decision-maker as being of little evidential value, this should be stated accompanied by appropriate reasoning. This is particularly the case if the expert medical evidence has been submitted by an organisation which has established itself as an objective and reliable provider of medico-legal reports in asylum or asylum related cases

  
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**Barry Magee**  
**Chairperson**  
**International Protection Appeals Tribunal**  
  
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<sup>22</sup> International Association of Refugee Law Judges' Guidelines on the Judicial Approach to expert Medical Evidence, June 2010, section 6.1(c)

<sup>23</sup> Istanbul Protocol, annex IV.