



An Binse um Achomhairc i dtaobh Cosaint Idirnáisiúnta

The International Protection Appeals Tribunal

Chairperson's Guideline No. 2025/2 on Medical Evidence and Medico-Legal Reports

[1] Background

The International Protection Act 2015, S.I. No. 116/2017 - International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 and the European Union (Dublin System) Regulations 2018, S.I. No. 62 of 2018 all set out various matters relating to the consideration of appeals before the International Protection Appeals Tribunal. This Guideline is 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 this Guideline. This Guideline replaces the Chairperson's Guideline No. 2017/6 on "Medico-Legal Reports" of 20 April 2017. This Guideline is issued pursuant to S.63(2) of the Act.

[1.1] This Guideline applies to all appeals determined by the Tribunal.

[1.2] This Guideline is primarily informed by the **Istanbul Protocol**¹, the UNHCR 'Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection'², the International Association of Refugee Law Judges' 'Guidelines on the Judicial Approach to Expert Medical Evidence'³, the EUAA Judicial Analysis on 'Evidence and credibility assessment in the context of the Common European Asylum System',⁴ the EUAA Mapping Report on 'Victims of Torture – Identification, support and examination of claims'⁵, case-law, and international best practice.

[2] Definitions

[2.1] In this Guideline the following terms have the following meanings:

"2017 Regulations" means S.I. 116 of 2017 - International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 as amended.

"2018 Regulations" means S.I. No. 230 of 2018 – European Communities (Reception

¹ "Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" Office of the High Commissioner for Human Rights (2022 edition), available at: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0>.

² "Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection", UNHCR (2019).

³ International Association of Refugee Law Judges' Guidelines on the Judicial Approach to expert Medical Evidence, (June 2010).

⁴ European Union Agency for Asylum, Judicial analysis, "Evidence and credibility assessment in the context of the Common European Asylum System", (2nd edition) available at: https://euaa.europa.eu/sites/default/files/publications/2023-02/Evidence_credibility_judicial_analysis_second_edition.pdf

⁵ European Union Agency for Asylum, Mapping Report, Victims of Torture – Identification, support and examination of claims', March 2023, available at: https://euaa.europa.eu/sites/default/files/publications/2023-03/2023_Victims_of_Torture_Identification_support_and_examination_of_claims_Mapping.pdf

Conditions) Regulations 2018 as amended.

"Act" means the International Protection Act 2015 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 Regulations.

"Appellant" means an Appellant pursuing an Appeal and shall, where the context so admits or requires, include his or her legal 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 Regulations" means S.I. No. 62 of 2018, European Union (Dublin System) Regulations 2018 as amended.

"Istanbul Protocol" means the "Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (2022 edition).

"Medico-Legal Report" means a written report carried out by a clinical expert that includes a physical and psychological evaluation of the victim, and the clinician's interpretation as to the probable relationship of the physical and/or psychological findings to possible torture or ill-treatment.

"the Regulations" means together the 2017 Regulations, 2018 Regulations, 2022 Regulations and the Dublin Regulations.

"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) 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

[3.1] The value of expert medical evidence in international protection 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 occurred⁶, and

⁶ R.J. v France App. No. 10466/11 (ECtHR 19 September 2013).

- (ii) potential risk should an individual be returned to their country of origin.⁷

The value of expert medical evidence in assessing claims of torture has also been recognised by the United Nations Committee against Torture⁸ and the European Union Agency for Asylum (EUAA)⁹. European Union law and domestic legislation 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.¹⁰

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

[3.3] The Istanbul Protocol notes that "the absence of such physical evidence should not be construed to suggest that torture or ill-treatment did not occur, since such acts of violence against persons frequently leave no permanent marks"¹¹. Similarly, when considering psychological injury, it is noted in the Istanbul Protocol that "not everyone who has been tortured develops a diagnosable mental illness"¹².

[4] Purpose of Medico-Legal Reports

[4.1] After completing a medico-legal evaluation of alleged torture or ill-treatment, clinicians then begin the process of writing up a formal report, which includes an interpretation of all relevant findings and a conclusion on the possibility of torture or ill treatment. One of the particularities of medico-legal reports is that they contain both documentary evidence and expert opinion. The documentary evidence collates all the medical findings, but does not provide an analysis of the lesions, while the purpose of an expert opinion is to inform a court or tribunal on technical issues outside its areas of expertise.¹³

[4.2] Expert medical evidence may serve the following purposes in the determination of international protection claims:

- To substantiate claims of torture or 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; and
- To explain an Appellant's difficulties in giving evidence or recounting events by providing possible explanations for inconsistencies within the Appellant's narrative

⁷ R.C. v Sweden App. No. 41827/07 (ECtHR 9 March 2010). See also *MC v the Netherlands* No 569/2013 (CAT, 30 November 2015) and *FG v Sweden [GC]* App no 43611/11 (ECtHR, 23 March 2016).

⁸ CAT General Comment No.4: Implementation of Article 3 of the Convention in the context of Article 22, 04 September 2018 at para 41.

⁹ EUAA, Victims of Torture - Identification, support and examination of claims - Mapping report, March 2023 at section 2.3.

¹⁰ Council Directive 2004/83/EC, the 'Qualification Directive', Article 4(4); SI No.518 of 2006 Reg. 5(2); SI No.426 of 2013 Reg.13(2), Section 28(6) of the International Protection Act 2015.

¹¹ Istanbul Protocol at para. 393.

¹² Istanbul Protocol at para. 493.

¹³ Paragraph 4.7.2 EUAA, Evidence and credibility assessment in the context of the Common European Asylum System, Second edition

of events and by providing possible explanations for reticence or reluctance in divulging a full account of events.

[4.3] Expert medical evidence may not prove conclusively whether or not someone was tortured or has suffered serious physical or psychological injury. However, a Medico-Legal Report may report on the level of consistency of psychological findings with an alleged report of torture or ill-treatment. Trauma and psychological vulnerability, as a result of torture or ill-treatment, may result in vagueness or inconsistency in an Appellant's account, and complete accuracy of an account is not to be expected from victims of torture or inhuman or degrading treatment or punishment.

[4.4] Where a Medico-Legal Report shows that an Appellant is suffering from a medical condition which may impact on his or her behaviour or ability to provide a coherent testimony, that factor must be taken into account by the Tribunal when assessing that testimony. For instance, the Tribunal may apply the principle of the benefit of the doubt with a wider margin of appreciation or may make accommodation regarding the way in which testimony relating to traumatic events is to be provided.

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

[5] Istanbul Protocol

[5.1] The Tribunal expects all Medico-Legal Reports in cases of alleged torture or ill-treatment to be compiled in accordance with the standards set down in the [Istanbul Protocol](#) published by the United Nations Office of the High Commissioner for Human Rights (OHCHR) and updated most recently in 2022.

[5.2] The Istanbul Protocol provides a set of international guidelines for the assessment of persons who allege past torture or ill-treatment. The 2022 edition of the Istanbul Protocol builds upon the previous 2004 edition and is the result of a cooperation involving civil society, practitioners, academics and members of all UN anti-torture mechanisms. The concerns of victims and a gender-based approach are placed at the centre of the revised version.

[5.3] Tribunal Members should ensure that the principles and standards set out in the Istanbul Protocol are upheld in proceedings before the Tribunal and should consider questions pertaining to torture or ill-treatment with due reference to the standards and principles set out in the Protocol. However, the outcome of such proceedings should not be dependent on a prior full investigation of the allegations of torture or ill-treatment.

[5.4] The Istanbul Protocol requires clinicians providing Medico-Legal Reports to behave at all times in conformity with the highest ethical standards and, inter alia, to provide an "interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment". The Istanbul Protocol requires, at a minimum, that such a report, or findings should

include an assessment of the level of consistency between all clinical evaluation findings and the allegations of torture or ill-treatment”¹⁴. There are a number of important questions a clinician should ask themselves in formulating a clinical impression for reporting evidence of torture¹⁵:

- (a) Are the physical and psychological findings consistent with the alleged report of torture?*
- (b) What physical conditions contribute to the clinical picture?*
- (c) Are the psychological findings expected or typical reactions to extreme stress within the cultural and social context of the individual?*
- (d) Given the fluctuating course of trauma-related mental disorders over time, what is the time frame in relation to the torture events? Where in the course of recovery is the individual?*
- (e) What other stressful factors are affecting the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role, etc.)? What impact do these issues have on the victim?*
- (f) Does the clinical picture suggest a false allegation of torture?*

[5.5] The Istanbul Protocol sets down a hierarchy of terms to be used by medical practitioners to report on the consistency of physical and psychological findings with the Appellant's account as to how the harm was inflicted.

Visible Injuries:

[5.6] For each finding/injury and the overall pattern of findings/injuries, the physician should indicate the degree of consistency between it and the attribution given by the patient. The following terms are generally used:

- **Not consistent with:** the finding could not have been caused by the alleged torture or ill-treatment;
- **Consistent with:** the finding could have been caused by the alleged torture or ill-treatment, but it is non-specific and there are many other possible causes;
- **Highly consistent with:** the finding could have been caused by the alleged torture or ill-treatment, and there are few other possible causes;
- **Typical of:** this finding is usually observed with this type of alleged torture or ill-treatment, but there are other possible causes; and
- **Diagnostic of:** this finding could not have been caused in any way other than that described.^{16 17}

¹⁴ Istanbul Protocol, at paras. 230 and 379.

¹⁵ Paragraph 4.7.2 EUAA, Evidence and credibility assessment in the context of the Common European Asylum System, Second edition.

¹⁶ Istanbul Protocol at para. 418.

¹⁷ Discussed by the European Court of Human Rights in e.g. *AS v the Netherlands* App no 20102/13 (ECtHR, 20 November 2018) para 31.

[5.7] A Medico-Legal Report compiled in accordance with the Istanbul Protocol may also report on trauma to the skin, 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.

Non-visible Injuries

[5.8] The Istanbul Protocol makes clear that the psychological consequences of torture vary according to the nature of the harm inflicted, and the context of personal attribution of meaning, personality development and social, political and cultural factors.

[5.9] The level of consistency denoted by “typical of” is not commonly used to assess psychological evidence of torture or ill-treatment as psychological findings tend to depend on individual factors. In addition, the level of consistency denoted by “diagnostic of” is used more frequently in the interpretation of physical evidence of torture or ill-treatment and is rarely used in the interpretation of psychological evidence.

[5.10] In formulating a clinical impression and interpreting the psychological findings for the purposes of delivering an opinion on the possibility of torture, the following important questions should be considered:

- (i) Are the psychological findings ***consistent with the alleged report*** of torture or ill-treatment?
- (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 relevant 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? Special attention should be paid to head injury sustained during torture or detention.¹⁸

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/ or torture or ill-treatment and the personal history prior to torture or ill-treatment 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 taken into consideration and noted.

[6] Consideration of Medico-Legal Reports:

[6.1] A Medico-Legal Report should report on the consistency of findings with the Appellant's alleged history of torture or ill-treatment. The Medico-Legal Report will not serve to establish other material facts, such as, for example, the identity or motivation of the

¹⁸ Istanbul Protocol at para.540.

perpetrator(s) of the alleged acts of persecution or serious harm.

[6.2] When it is considered difficult for a victim of torture to provide detailed and coherent statements, more weight is often given to other available evidence, in particular medico-legal assessments.¹⁹ The weight which should be accorded to a medical report depends on its quality and conclusiveness.

[6.3] A finding in a Medico-Legal Report that an injury, either visible or non-visible, exists shall, subject to paragraph [6.9] below, satisfy the required standard of proof as to the existence of that injury.

[6.4] A finding that an injury is "highly consistent with", "typical of" or "diagnostic of" the Appellant's alleged history of torture or ill-treatment will normally help to establish, on the balance of probabilities, that the injury was caused by the trauma described.

[6.5] It is the overall evaluation of all clinical findings and not the consistency of one finding in particular that is important in assessing allegations of torture or ill-treatment. When physical and psychological evidence are documented in a single report by one examiner, the conclusion on all of the clinical evidence should be of the highest level of consistency reported. When considering a conclusion on physical and psychological evidence that are reported in separate clinical evaluations, the conclusion on all of the clinical evidence should be the highest level of consistency reported in either of the separate clinical evaluations or, if confirming the same conclusion, it could in fact be higher.

[6.6] While the primary role of a Medico-Legal Report is to substantiate claims of torture or ill-treatment by reporting on the level of consistency of any injuries presented with the Appellant's alleged history of torture or ill-treatment, a Medico-Legal Report may also have a role as part of the overall credibility assessment.

[6.7] A finding of 'consistency' in accordance with the Istanbul Protocol may have evidential value, and such a finding (although not at the level of "highly consistent", "typical of" or "diagnostic of") should be taken into consideration as part of the overall credibility assessment and should not be rejected as having no evidential value at all.

[6.8] The Tribunal should not carry out its own medical examination or diagnosis. (Quasi-)judicial opinion should not be substituted for expert medical opinion.

[6.9] All Medico-Legal Reports should disclose the identity and qualifications of the authoring clinician.

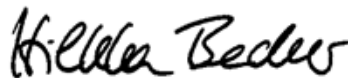
[6.10] In the case of contradictory Medico-Legal Reports, the Tribunal shall give reasons as to why it prefers one report over the other.

[6.11] If expert medical evidence is dismissed by a Member of the Tribunal as being of little evidential value, this should be stated and accompanied by appropriate reasoning. The Tribunal

¹⁹ Paragraph 3.3.1 of "European Union Agency for Asylum, Mapping Report, Victims of Torture – Identification, support and examination of claims", March 2023,

is not bound by medical reports, but is required to analyse the report and, if rejecting the report or part of the report, reasons for doing so must be provided.²⁰ 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 international protection related cases.

[6.12] The Irish Courts have noted that *“A tribunal member is not obliged to find for an applicant simply because the applicant presents a medical report. That would delegate decision-making to the applicant’s doctor. It is, of course, different if the injury is diagnostic of the applicant’s account; but if the medical report indicates that the applicant’s account is merely probable or that the injury is merely consistent with it, then that only provides some support, and the tribunal is entitled to consider that any such support is outweighed by other evidence in particular circumstances, having considered all matters fairly in the round”*.²¹



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²⁰ Paragraph [8.10], *B.A.C. (Botswana) v. The International Protection Appeals Tribunal* [2024] IEHC 97.

²¹ Paragraph 14, *M.Z. (Pakistan) v IPAT* [2019] IEHC 125