THE HIGH COURT
JUDICIAL REVIEW

[2021]_IEHC 126
RECORD NO.: 2020/135JR

BETWEEN

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APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL
THE MINISTER FOR JUSTICE, THE ATTORNEY-GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Ms Justice Tara Burns delivered on the 25th day of February, 2021.

General

1. The Applicant is a national of Albania who entered this jurisdiction on 30 December 2018 and made an application for international protection on 2 January 2019.

2. The Applicant's claim was based on his assertion that he was in an intimate relationship, when he was 19, with a Muslim woman of a similar age for approximately 11 months. After the relationship ended, her brother threatened the Applicant that he must marry his sister as a matter of honour, in light of the nature of the relationship. These threats escalated into a significant physical assault being perpetrated on the Applicant which culminated in another incident when a gun was produced. Following on from this last asserted incident the Applicant fled Albania in fear that he would be killed. The Applicant claimed that he would face persecution and/or a real risk of suffering harm if he returned.

3. The Applicant's international protection claim was rejected by the International Protection Office. An appeal, by way of an oral hearing, was held before the First Respondent which also rejected the Applicant's claim.

4. Leave to apply by way of Judicial Review seeking an Order of Certiorari of the First Respondent's decision was granted by the High Court on 2 March 2020.

The Grounds of Challenge

5. The Applicant asserts that the First Respondent erred in its determination that the Applicant was not credible and in its consideration of its alternative findings regarding the Applicant's claim.

Credibility Findings

6. The First Respondent dealt with the Applicant's claim in the following manner:-

> "The Applicant's account
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> 34. The Appellant's evidence was problematic at times, including on central matters. His account also featured inconsistencies. Examples of this now follow.
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> 35. The Appellant stated at the hearing that he kept the relationship with his girlfriend private. In his interview, however, he said that his friends knew about it (Q 14). When asked about this at the hearing by the Presenting Officer, the Appellant appeared unsure of himself, saying that they did in fact know before quickly

changing his mind. He then paused and said in English "I've said yes, so I'll keep yes, I mean I've said no I'll keep no". The Tribunal informed the Appellant that the important thing was to tell the truth – he was free to correct his evidence if needed and he did not need to "keep" or stick by a particular answer. The Appellant maintained that he wanted to keep his answer given earlier at the hearing – i.e. that his friends did not know about it. He went on to state, somewhat confusingly, that they had asked him about it, but he lied to them and denied that he was in a relationship. He appeared to indicate that they did in fact know about it, but he hadn't told them himself and that was why he said no. The Appellant had to be asked questions on this topic a number of times to clarify his evidence – he did not ultimately give a clear answer. His evidence was lacking in coherence and clarity and appeared evasive. This gave rise to concerns about his credibility. This was an instance, of which there were several, where the Appellant did not answer a direct question asked of him and appeared desirous to avoid the topic. Allowances must be used made for the fact that an interpreter was used; however, the Appellant had an excellent standard of English and indeed spoke in English at times throughout the hearing.

36. The Appellant's evidence that the relationship was a secret is entirely at odds with his account of how the couple conducted themselves over their 11 months together. He said they met roughly four times per week in public places like cafes and parks. He said they went for walks, to the mountains and so forth. They also checked into hotels in the daytime to have private time together. When asked why they met in public places, if there was a need for secrecy, the Appellant did not provide a reasonable explanation. If his relationship was, as he contends, out of step with Albanian attitudes (including the attitude held by his girlfriend's brother) then it is implausible that the Appellant and [his ex-girlfriend] were willing to be seen socialising together publicly so frequently. The Appellant's account did not hang together on this central matter.

37. This matter goes to the heart of the alleged fear; the Appellant stated that there is an "old law" that means that you must marry a girl that you are dating, and he was fearful that [his ex-girlfriend's] brother would kill him because of this. He said everyone knows about this law in Albania. He gave no detail about this "law" – itself problematic – however his account that he is at real risk of harm because he had a relationship that did not culminate in marriage is completely undercut by his willingness to go on dates, in public, with his girlfriend. There was a risk at all times of people they know seeing them. This did not appear to concern the Appellant. This is at odds with his assertion that he is at risk of harm because of the relationship. As above, how secret the relationship in fact was is a matter that he has not been consistent on.

38. The Appellant was vague and incoherent on other matters. For example, he told the IPO that the reason that he did not go to the hospital after the attack by several assailants was that the injuries were not serious. However he told the Tribunal that

the injuries were serious and that he did not go to the hospital because he was not the kind of person who likes people to know about his problems. The two accounts did not appear to align and the Tribunal asked the Appellant to clarify the matter. The Appellant then appeared to confuse himself by alternating between stating that the injuries were serious but also emphasising that he was not bleeding and had no more than superficial injuries which did not require hospital treatment. He did not appear able to settle on a final version of the severity of the injuries. It appeared to the tribunal that the Appellant was attempting to reconcile two different accounts in a manner that lacked credibility.

39. The Appellant claims to have been accosted by his girlfriend's brother, always in the same area. He was asked by the IPO why he continued to frequent this area. He did not have a reasonable explanation for this. That the Appellant did not take the basic step of avoiding the area where he was encountered by his girlfriend's brother calls into question the credibility of his account. It is implausible that he continued to visit the same area of town where he was encountered on four separate occasions, in reasonably quick succession, by his ex-girlfriends brother.

40. A further incongruous matter is the Appellant's failure to go to the police. He did not provide a reasonable explanation for this, in the Tribunal's assessment. He said that he did not ask them for help, as he was not rich or powerful. He thought that they might laugh at him. He gave no basis for this belief, no prior personal experiences or anything of that kind. As the Appellant did not attempt to get police assistance, it is difficult to judge whether, in fact, it would be forthcoming. This matter will be considered further below under state protection, however for the purposes of credibility assessment his failure to contact the police is taken to undermine his account.

41. The Appellant stated at the hearing that during the attack by the men nothing was said to him beyond the men swearing. He said that he did not make it out any words. At interview the Appellant told that the IPO that the men threatened him and told him not to go to the police or for any medical attention or something would happen to his family (Q 14). When asked about this the Appellant stated that what he had told the IPO was correct and he had failed to remember it at the hearing when asked. This was a minor matter which has a slight negative impact on credibility.

42. The Appellant claims to have been beaten by four or five men wielding weapons, what he suggested might have been tools like hammers. His account that he did not require medical attention after an assault of this kind appeared implausible – it may be that the attack was not as severe as claimed or the Appellant was exaggerating matters. The matter is difficult to assess, as the Appellant did not provide much detail about the assault itself. He simply recited bare facts in a manner that did not appear congruent with a person describing a genuine lived

experience: the level of detail he gave was very slight, and not commensurate with a significant, frightening assault by multiple assailants using weapons.

43. The Appellant's account, taken as a whole, was lacking in detail. He gave brief descriptions of the incidents and did not flesh these out with much additional detail at the hearing. On a broad overview of the Appellant's account the Tribunal finds that it lacked a credible level of detail.

44. The Appellant's account was consistent on many of the central matters, as his representative submitted. For example, when and how he met his girlfriend, how long the relationship was etc. His account, however, was not especially detailed. The more detailed the account the more likely it is that inconsistencies will arise and vice versa. Here the account was not an especially detailed one, yet inconsistencies still arose. This casts doubt on the Appellant's credibility.

45. The Tribunal has considered the country of origin information (COI) provided. The Appellant's account does not gain any significant support from the general COI relied on. The Tribunal was not taken to any COI to demonstrate, e.g., that persons who engage in relationships are likely to incur the wrath of family members due to prevailing social mores, or the like.

Conclusions on credibility

46. The tribunal has made a holistic assessment of credibility. The Appellant has provided no documentation to support his account. Corroboration is not required in this context: *Memishi v. Refugee Appeals Tribunal & Ors* [2003] IEHC 65. A private dispute of this kind is unlikely to find support in any specific country evidence and indeed none is adduced there: only general reports are relied on. In the absence of any documentary corroboration of any kind, the focus for the Tribunal's credibility assessment can only be the Appellant's account. For the reasons given above the account was problematic. The Tribunal has weighed matters in the round and finds that the Appellant has not established his credibility to the requisite threshold. His account is rejected in full."

Secrecy of Relationship

7. Counsel for the Applicant submits that the First Respondent unfairly characterised the Applicant's accounts regarding whether the relationship was publicly known. Attention was drawn to earlier accounts which the Applicant had given in his s. 35 interview regarding the secrecy of the relationship. This criticism of the First Respondent's decision is not well founded. The First Respondent recited the discrepancies which existed with regard to the evidence given by the Applicant as to whether the Applicant's friends knew about the relationship: there was no error in its recitation of the evidence in this regard, nor is any alleged. The First Respondent then made the objective finding that there was a significant discrepancy between the Applicant's assertion that the relationship had to be conducted in secrecy, which was the Applicant's case, with his evidence that he and his then girlfriend met very regularly in public: in parks and cafes. Both of these assertions

were made by the Applicant. It was open to the First Respondent to determine that there was a fundamental discrepancy in maintaining these opposing positions.

Failure to go the Hospital

8. Counsel for the Applicant further submits that the First Respondent's assessment of the Applicant's failure to go to hospital, after the attack on him by his ex-girlfriend's brother and a number of his associates, failed to take account of what he had said in his s. 35 interview, which included that he didn't want his family to see what had happened to him. It is the case that that the First Respondent did not recite this reason, however failure to mention this portion of his evidence does not resolve the discrepancy which the First Respondent found to exist between his s. 35 interview and his evidence at the oral hearing. If anything, it exacerbates the discrepancy.

Returning to the place of the attacks

9. Counsel for the Applicant also submits that an error in the First Respondent's reasoning is apparent having regard to its criticism of the Applicant's account that he kept returning to the same place where he was assaulted, in light of the First Respondent stating that this location was not far from the Applicant's house. It is argued that if the First Respondent was of the view that the Applicant lived in "A", then its reasoning that he would have avoided this area if his account was true is not reasonable.

10. The Applicant's account in his s. 35 interview is important in this regard. The Applicant asserted that he met his assailant randomly in the street called "A"; that he was just passing there. He did not indicate that "A" is where he lived, rather he indicated that this location was an easy place to catch him on the way to where he lived and when asked why he did not go home a different way, he replied – "Why should I have to change my road if I'm going somewhere."

11. It is important to note that the First Respondent recorded that "A" was not far from his house, rather than indicating that he lived there and the Applicant in his s. 35 interview did not indicate that there was not another way home.

12. This argument is very specifically focused on what is asserted to be the First Respondent's belief that the Applicant lived in "A". However, this is not what the First Respondent had stated. Having regard to what was actually stated by the First Respondent, as recited above, and what had been stated by the Applicant in the course of his s. 35 interview, the First Respondent's findings in this regard were open to it to make.

Failure to go to the Police

13. It is further submitted that the First Respondent erred in its determination regarding the Applicant's explanation for not going to the police and that the First Respondent failed to consider Country of Origin information, particularly an EASO report in this regard. It is also argued that the First Respondent did not engage in a full analysis of the availability of state protection.

14. With respect to the Country of Origin information, attention was drawn to sections of the EASO report which reported low levels of civic engagement; the fact that police

functioning was in need of improvement; and corruption in the judicial system. With respect to the police, the following is stated at p 21 of the report:-

> "The US Department of State reports that police functioning needs improvement:
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> "Police did not always enforce the law equally. Personal associations, political or criminal connections, poor infrastructure, lack of equipment, or inadequate supervision often influenced enforcement of laws. Low salaries, poor motivation and leadership and a lack of diversity in the workforce contributed to continued corruption and unprofessional behaviour."

15. The Court fails to see how this extract supports the Applicant's account that he was required to flee the country rather than at least report these assaults to the police even taking into account poor civic engagement and complaints regarding the judicial system. It is not asserted that his assailant was politically connected, was a criminal, was wealthy or in a position to bribe the police, or had connections with the police.

16. Accordingly, the Court does not see how this information particularly assisted the Applicant or establishes that the First Respondent erred in its determination that the Applicant had not provided a reasonable explanation for not going to the police.

17. Counsel for the Applicant also asserts that it is unclear whether the First Respondent even had regard to this portion of the EASO report. Separate to the consideration of whether that portion of the EASO report actually assisted the Applicant, this complaint is not well founded as it transpires that the paragraph immediately following the above quoted paragraph is referred to by the First Respondent in her later "alternative" considerations. It is inconceivable that the First Respondent did not read and take into account the preceding paragraph when making this reference.

18. Counsel for the Applicant complains that the First Respondent failed to properly assess the availability of state protection. The requirement to properly analyse the availability of state protection arises in a situation where a real risk of persecution or serious harm has been established. There was no requirement on the First Respondent to consider this issue in light of its rejection of the Applicant's credibility in full. The First Respondent did not in fact make any findings in relation to the availability of state protection when considering the Applicant's credibility. Rather it found that as the Applicant had not sought police assistance, it was difficult to assess whether it would be forthcoming. Unfortunately, later in its decision, the First Respondent engaged in a completely wasted exercise of proceeding to consider the availability of state protection when considering the Applicant's claim "in the alternative". The Court will return to this unnecessary exercise later. However, from the perspective of the First Respondent's consideration of the Applicant's credibility, its finding that the Applicant did not provide a reasonable explanation for not reporting these asserted assaults to the police was open to it to make even having regard to the country of origin information referred to.

Social Norms in Albania

19. Counsel for the Applicant has referred to the decision of this Court in *RK v. IPAT* [2020] IEHC 522, wherein I stated:-

> "23. A fact finder is not obliged to accept the evidence given. Rather, a fact finder must analyse and assess the evidence to determine whether she accepts the evidence and what weight she attaches to it. To conduct that exercise, a fact finder should apply their knowledge of life and common sense to the evidence. In asylum cases, because a fact finder is dealing with different cultures and norms, it is necessary to take account of the different cultures and conditions in the country in question when analysing the evidence. An assessment of what one might reasonably expect in a situation, having regard to the different culture and conditions in the country in question, should be carried out so that a rational assessment of the evidence given can be engaged in.
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> 24. This is precisely the exercise which the Respondent engaged in with respect to her analysis of Applicant's evidence. Rather than her comments being speculation or conjecture, they are instead an assessment of what one would reasonably expect in the situation asserted by the Applicant. Having carried out this exercise, the Applicant's evidence can then be assessed and measured with reference to that expectation."

20. Counsel for the Applicant argues that the First Respondent failed to have regard to the norms and culture applicable in Albania and failed to measure the Applicant's account having regard to these social norms and his particular circumstances, most notably his age when considering his credibility.

21. The difficulty for the Applicant in this regard is that he failed to produce any independent evidence before the First Respondent to establish this "old law" which he asserted he was in breach of. Had the Applicant produced Country of Origin information which established that marriages of honour were a feature of Albanian life, the outcome may well have been very much different for the Applicant. However, no such established information was placed before the First Respondent which meant that the First Respondent had to determine the Applicant's claim solely on his evidence. In that regard, the First Respondent found that a significant feature of his evidence which contradicted the existence of a marriage of honour law was the fact that the couple conducted this relationship in public. This, together with the other difficulties which arose with respect to the Applicant's evidence, led the First Respondent to find the Applicant's claim lacking in credibility and that the marriage of honour law was not established. This was a finding which was open to the First Respondent to make.

22. The Applicant asserts that there was evidence in the EASO report which was supportive, to a degree, of his claim. Under the heading of "Children", attention was drawn to the following paragraphs:-

> "Early marriages occur mostly – but not exclusively- amount Roma and Egyptian communities, mostly the more marginalised ones. Specific research on child

marriages among the Roma communities (2015) reveals that this is a long-standing and common phenomenon, rooted not only in poverty but in specific values, morals and beliefs related to honour. Once they have their menarche, Roma girls are considered women who are ready to marry and must do so soon. Parents are concerned that if their pubertal daughters start dating they may lose their virginity out of wedlock and thus lose the family's honour. Girls step into an arranged marriage at an age of 12-14. Boys also marry early at 14-16 years of age."

23. This Country of Origin Information is not supportive of the Applicant's claim. It relates to persons who are underage and who are from the Roma and Egyptian communities. This is not applicable in the instant case. The Applicant and his ex-girlfriend were adults and were not from these communities. The reference by the First Respondent to there being no documentation to support the Applicant's account is correct and the characterisation by the First Respondent of the Country of Origin Information being of a general nature is not inaccurate.

Alternative Claim

24. Having made a definite determination that the Applicant lacked credibility and that his accounts was rejected in full, the First Respondent proceeded to engage in an analysis of whether the Applicant could be successful had his credibility been accepted. There was absolutely no necessity for the First Respondent to have engaged in this exercise and the Court fails to see why it did so in a situation where it had been definitive in its rejection of the Applicant's claim.

25. The Applicant submits that the determinations of the First Respondent with respect to nexus, state protection and internal relocation under its alternative consideration is flawed. The Court does not intend to engage in a review of these issues as the exercise conducted by the First Respondent served no useful purpose. The rejection of the Applicant's credibility, which was conducted in a lawful manner and without a determination that state protection was available, decided his claim: it was not believed that the events he alleged occurred, accordingly there was no basis to determine whether a fear, which was not accepted to exist, would give rise to a real risk of persecution or serious harm and whether state protection existed or internal relocation was available.

26. A similar issue arose in *RJ v. IPAT* [2019] IEHC 448, where Mr Justice Keane, stated as follows:-

"35. The applicant then invokes the broader principles on the internal relocation alternative identified by Clark J in *K.D. (Nigeria) v Refugee Appeals Tribunal & Anor.* [2013] 1 IR 448 and the judgment of Mac Eochaidh J in *E.I. (a minor) & Anor v Minister for Justice, Equality and Law Reform & Anor* [2014] IEHC 27, dissenting on the issue of whether the nature or rigour of the required "internal relocation alternative" assessment might reasonably differ on the basis of the context in which it arises. The applicant asserts that there is a conflict between those two decisions on the proper interpretation of Art. 8 of the Qualification Directive and that I should

consider a preliminary reference to the European Court of Justice under Art. 267 of the Treaty on the Functioning of the European Union ("TFEU").

36. I am satisfied that no such issue arises on the facts of this case. That is because the tribunal made unequivocal findings that the applicant's claims were not credible and that there was no substantial basis to believe that the applicant would face a real risk of serious harm if returned to Bangladesh. The tribunal considered the applicant's evidence on the unavailability or unreasonableness of an internal relocation alternative (at para. 5.10) solely in the context of an assessment of his general credibility and not in the context of any discrete assessment of the availability of adequate state protection. Since no assessment of the latter kind arose or was conducted in this case, any issue on the principles that would govern it, if it did, is moot.

37. In the relevant portion of the judgment in *K.D*. (at 463), Clark J identified the situation that arises in the large number of decisions that consider the internal relocation alternative, notwithstanding a prior finding that there is no well-founded fear of persecution on credibility grounds, on an "even if the claim were credible" basis. Clark J expressed the view that: "These 'even if' findings are *not* internal relocation alternative findings requiring adherence to [Reg. 7 of the 2006 Regulations] but are part of a general examination of whether an applicant has a well-founded fear of persecution." As such, Clark J concluded later (at 465-6), that the context in which "internal relocation" comes to be considered is all important, and that "an 'even if I am wrong' finding *which goes on to suggest internal relocation* is not the equivalent of carefully exploring an antidote to a well-founded fear of persecution for Convention reasons and is often merely a facet of credibility" (emphasis supplied).

38. In *E.I*., Mac Eochaidh J stated:

> "9. […] I fully agree with the comments of Clark J. with respect to the redundancy of making internal relocation findings in situations where credibility is rejected. The practice of making negative credibility comments in asylum decisions followed by an internal relocation assessment is commonplace. It is not the function of the High Court to direct inferior Tribunals as to how they should take their decisions in future. A clearly expressed credibility finding without equivocation leading to a rejection of the applicant's claim is self-evidently a desirable outcome when justified by the evidence. However, it is understandable that decision makers often make equivocal findings in respect of credibility. In such cases, it is not surprising that such findings are then followed by an internal relocation assessment. Clark J. expressed the view that where an internal relocation finding is made, notwithstanding a rejection of credibility, that internal relocation assessment is not to be tested for compliance with the provisions of Regulation 7 of the EC (Eligibility for Protection) Regulations 2006. With the greatest respect to

my learned and experienced colleague, I am not convinced that any assessment of internal relocation should escape full-blooded scrutiny in judicial review, nor am I convinced that the provisions of Regulation 7 should apply to some but not all internal relocation assessments. In any event, in my experience, most internal relocation assessments which follow negative credibility findings rarely follow clearly expressed comprehensive rejections of credibility. They are usually credibility findings such as those which appear in this case. In other words, they are equivocal. The Tribunal Member has doubts as to the credibility of the applicant but does not appear to be in a position to reject fully the applicant's narrative because of the weaknesses observed. In those circumstances, the decision maker, quite naturally, feels compelled to proceed to examine the question of internal relocation, if the facts and circumstances justify such a consideration.

10. In this case, my view is that the internal relocation assessment was required to comply with the provisions of Regulation 7 and the general legal principles which have been observed over the years governing the correct approach to such portion of the protection decision making process."

39. Insofar as there is a conflict between the two decisions, it is one that is of no relevance to the resolution of the present case because this is not one in which the tribunal participated in what Mac Eochaidh J identified as the commonplace approach of making "negative credibility comments" or "equivocal findings in respect of credibility", followed by an internal relocation assessment. For what it is worth, I agree with the assessment of MacEochaidh J that, in such circumstances, the internal relocation alternative should not escape full-blooded scrutiny in judicial review. But that is not the situation that arises here, where there was an unequivocal adverse credibility finding and an unequivocal finding that there was no substantial basis to believe that the applicant would face a real risk of serious harm if returned to Bangladesh.

40. In those circumstances, even if the relevant portion of the tribunal decision (at para. 5.10) could be construed as a purported assessment of the internal relocation alternative (and I do not think it can), and as one conducted otherwise than in accordance with the requirements of Art. 8 of the Qualification Directive informed by the *UNHCR Guidelines on Internal Flight* (which, it is probably fair to say, it would then be), it would be a finding completely severable from the first, separate and free-standing one that there was no substantial basis to believe that the applicant would face a real risk of serious harm if returned to Bangladesh; see *I.G. v Refugee Appeals Tribunal* [2014] IEHC 207 (Unreported, High Court (Mac Eochaidh J), 11 April, 2014) (at para. 29).

27. Counsel for the Applicant also submits that by the First Respondent engaging in this exercise, the real reason for the rejection of the Applicant's claim is not clear. I do not accept this proposition: the Applicant's claim was rejected because he was not believed

in the story he asserted for reasons which were set out. This is unequivocally clear from the First Respondent's decision.

28. With respect to an argument raised in the Applicant's written submissions, but not pleaded in the Statement of Grounds, that the Applicant is prejudiced in any consideration of a permission to remain in the State because of the consideration by the First Respondent of the Applicant's claim in the alternative, I do not accept this to be the case. The reason for the refusal of the Applicant's claim is the complete rejection of his credibility which is abundantly clear from the decision. Any future s. 49 decision by the Second Respondent should not have any regard to the First Respondent's alternative considerations. As I stated in *LK v. IPAT* [2020] IEHC 626 at para. 40 of my judgment:

> "[T]he Second Respondent is an entity well used to making decisions in the asylum and immigration arena. As a professional and experienced decision maker within that field, the ability to place irrelevant prejudicial material from her mind is a skill already well-rehearsed and practised by her Department

29. The Applicant has failed to establish an error on the First Respondent's part affecting the lawfulness of its rejection of the Applicant's international protection claim on the grounds advanced. Accordingly, I will refuse the Applicant the relief sought and make an order for the Respondents costs as against the Applicant.