

**THE HIGH COURT
JUDICIAL REVIEW**

[2021] IEHC 367

Record No: 2020/450JR

BETWEEN:

EH

APPLICANT

-AND-

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR
JUSTICE**

RESPONDENTS

JUDGMENT of Ms Justice Tara Burns delivered on 13th May, 2021.

General

1. The Applicant is a national of Albania who entered the State on 18 August 2018 and applied for international protection on 20 August 2018.
2. On 14 September 2018, he was interviewed pursuant to s. 13(2) of the International Protection Act 2015. On 29 September 2018, he submitted an Application for International Protection Questionnaire. On 7 May 2019, he was interviewed pursuant to s. 35 of the 2015 Act.
3. On 4 June 2019, an International Protection Officer recommended that the Applicant be granted neither a refugee or subsidiary protection declaration. The Applicant appealed this recommendation to the First Respondent who affirmed the negative first instance recommendation on 25 May 2020.
4. The Applicant claimed that he had a well-founded fear of persecution, if returned to Albania, from a named individual, BB and his family arising from the Applicant being in a relationship with BB's sister, who is a widowed woman.
5. Leave to apply by way of Judicial Review for an order of Certiorari of the First Respondent's decision was granted by the High Court on 15 July 2020.
6. The grounds of challenge to the First Respondent's decision are that the First Respondent came to an irrational decision; made a material error of fact; and/or failed to give adequate reasons regarding its decision in specific respects.

The Protection Claim

7. The Applicant is in his thirties and from the Northern region of Albania. In 2014, he asserted that he commenced a secret relationship with a married woman. In 2015, this woman, together with her husband and daughter, moved to Germany where they claimed asylum. The Applicant remained in contact with the woman. Her husband died in January 2016. In March 2016, the Applicant went to Germany for a few months to be with this woman. In August 2016, he relocated to Germany to join her.
8. He asserted that his girlfriend's family were very much against this relationship when they found out about it: it was against Kanun law and brought dishonour to the woman and her family. The Applicant was threatened regarding their relationship. His girlfriend

and her daughter did not obtain refugee status and were deported to Albania in March 2018.

9. The Applicant did not return to Albania with them due to the threats he had received about the relationship. However, he was required to leave Germany having overstayed his permission and thereupon travelled to Italy having again been warned by his girlfriend that his life was in danger if he returned to Albania. The Applicant attempted to travel to Ireland from Italy in July 2018 using false documentation, but he was discovered. He was given the option that he could leave voluntarily or stay to make an international protection application, but that if he did stay, he would likely have to remain in prison pending the determination of the application. The Applicant decided to leave Italy. He returned to Albania, to his home town which is 15km from where his girlfriend and her family reside.
10. In August 2018, he encountered the woman's brother, BB, in Rus in Shkoder who was furious and threatened to kill the Applicant.
11. After this alleged incident, the Applicant made arrangements to leave Albania and travelled to Ireland with the help of an agent.

Decision of the First Respondent

12. The First Respondent accepted that the Applicant was in a relationship with the widowed woman. However, it did not accept that he was at risk of serious harm amounting to persecution from the woman's brother or her family.
13. The basis for this finding was that there were a number of matters which significantly undermined the Applicant's credibility regarding that portion of his claim, namely inconsistencies in the Applicant's account of the threats which he received; the fact that he did not apply for international protection in Italy; and the account he gave regarding meeting BB in Shkoder.

Inconsistencies in his account regarding the threats he received

14. The First Respondent found that the Applicant's account of the threats made to him varied considerably and that he was unable to explain these inconsistencies. As the alleged threats related to a core aspect of his claim, the inconsistencies and the lack of an explanation regarding the inconsistencies undermined his credibility, it was found.
15. Counsel for the Applicant submits that there was not a variation in the Applicant's account, or if there was, it was explicable because of the number of times he had repeated his story or because of the use of an interpreter. It was submitted that the First Respondent had made a material error of fact in this regard or had made an irrational finding.
16. The relevant extracts from the various accounts given by the Applicant read as follows:-

Section 13 interview

"Applicant stated Seri's family found out about their relationship while they lived together in Germany together

Applicant stated he can only assume how they found out about their relationship as they did not say anything to them

Applicant stated they became abusive and threatened the applicant continuously

Applicant stated they would threaten him face to face

Applicant stated her family are from an area in Albania with a bad mentality

Applicant stated this was why they did not accept their relationship

Applicant stated Seri is still living in Albania

Applicant stated she has no contact with her brother because of the situation with the applicant

Applicant stated because of these threats he no longer felt safe in Albania

Applicant stated he fears that Seri's family will carry out their threats".

Translated Application for International Protection Questionnaire

"We tried to make our relationship work but it was impossible. The moment her family found out about us, not only did they not agree to it, they also started threatening me by phone and through mutual friends. Regardless of everything we continued our relationship, hoping that she will be granted permission to remain there and we would be able to live in peace. However, she was refused permission to stay and she was forced to return to Albania, whereas I went to my relatives in Italy. While I was staying in Italy she called me and told me not to come back to Albania as my life could be in danger there. Therefore, I tried to come to Ireland as I thought it would be the safest country for me, but was stopped by the Italian police and was banned from entering the Schengen zone for 5 years. They also gave me a short period of time to leave the country, so I was forced to go back, but as soon as I went back I started received all kinds of threats. It was impossible for me to stay in Albania and for my own safety I decided to leave and found a way to leave by truck...."

Section 35 interview

"Q. 21 [C]an you tell me more about your relationship with your girlfriend in Albania and Germany?

A.... My family were aware but her family were not. I was thinking of living my life with her and while we were living together, her family found out that we were living together. Their reaction was very bad of course especially her brother and he is the one I am having a huge problem with because he never accepted the relationship. In his mentality, this is not accepted and that was why he did not accept us... While in Germany, his brother threatened me few times through his sister who was my girlfriend. Because of this, my girlfriend cut contact with her brother and they have not spoken together in a long time.

Q. 24 Can you tell me the number of times you received BB threats from..BB?

A. He was in touch with the sister from the time they found out that she was living with me. He went crazy and told the sister that if he sees me he will kill me

Q. 25. Apart from the threat from BB, did you receive threats from any other persons in Albania?

A. BB is the only person that I received threats from but her family was against our relationship as well.

Q. 27 Can you explain to me what you meant when you stated in your Section 13 interview that they became abusive and threatened you continuously.

A. I was continuously threatened by BB. When I went back to Albania, I had a physical confrontation with him.

Q. 29 You stated that they threatened you face to face in your Section 13 interview. Can you explain who you were referring to as "they" and how they threatened you face to face?

A. They were against my relationship with her as a family and that was why I said 'they' in plural. 'They' can also mean one person as well but they are all against my relationship with her. It was him, BB that I had physical confrontation. He has told me to my face that he is going to kill me".

17. The First Respondent noted in its decision that in evidence before it, the Applicant gave another account in relation to these threats, namely that BB was the only member of his girlfriend's family who phoned her in Germany and threatened the Applicant, and that this occurred four or five times as she stopped talking to her brother.
18. The First Respondent gave the Applicant the opportunity to address these inconsistencies at the oral hearing to which the Applicant stated "When they heard they threaten me".
19. The various accounts from the Applicant set out above clearly recite different versions of events. These differing versions are not explainable because of repetition in recounting the events: they are different versions with respect to who threatened the Applicant; how often he was threatened and where he was threatened. Neither does the fact that his accounts were translated explain the obvious differences.
20. Furthermore, the Applicant was given the opportunity of addressing the inconsistencies and did not offer any explanation, nor did he state that there were not any inconsistencies or that any inconsistencies which existed were because of translation.
21. Accordingly, the finding made by the First Respondent in this regard was entirely open to it to make and no error arises with respect to this determination either in terms of a material error of fact or irrationality. As this issue related to a core element of the

Applicant's claim, the inconsistencies clearly affected the First Respondent's assessment of his credibility.

Not applying for international protection in Italy

22. The Applicant returned to his home town in Albania, which is 15km from where his girlfriend and her family reside, rather than making his claim for international protection in Italy because he was told that it was likely that he would have to remain in prison pending a determination of his application.

23. The First Respondent set out its considerations with respect to this aspect of the Applicant's claim as follows:-

"Return to Palvar, Albania

The Appellant told the Tribunal that he was arrested in July 2018 while attempting to leave Italy for Ireland on false documentation. The Appellant was detained in Milan for up to seventeen hours during which he was advised by the Italian authorities that he could leave voluntarily or seek to stay, but that, if he sought to remain, he would likely have to remain in prison pending a determination in his application. The Appellant chose not to avail of the Italian authorities offer of international protection, and notwithstanding the Appellant's claimed fear of serious harm amounting to persecution from [BB], he decided to return to Albania. The Tribunal finds the Appellant's failure to make a claim in Italy for international protection was not indicative of a person with a genuinely held fear of return to the locus of his stated fear, Albania. This is considered a negative credibility factor in the circumstances of this case".

24. The Applicant challenges this finding on the basis that reasons were not provided for this finding and that there was no analysis of the fact that the Applicant was likely to have been required to remain in prison while his protection claim was considered in Italy.

25. In a judgment of this Court in *SKS v. IPAT* [2020] IEHC 560, I summarised the law regarding the duty to give reasons as follows:-

"21. The duty to give reasons is so well established that perhaps an engagement with the essence of the duty is sometimes overlooked. In *Connelly v. An Bord Pleanala* [2018] IESC 31, Clarke CJ set out, at paragraph 5.4 of the report, the purpose behind the duty to give reasons which illuminates a decision maker's duty in this regard. He stated:-

"One of the matters which administrative law requires of any decision maker is that all relevant factors are taken into account and all irrelevant factors are excluded from the consideration. It is useful, therefore, for the decision to clearly identify the factors taken into account so that an assessment can be made, if necessary, by a court in which the decision is challenged, as to whether those requirements were met. But it will be rarely sufficient simply to indicate the factors taken into account and assert, that as a result of those

factors, the decision goes one way or the other. That does not enlighten any interested party as to why the decision went the way it did. It may be appropriate, and perhaps even necessary, that the decision make clear that the appropriate factors were taken into account, but it will rarely be the case that a statement to that effect will be sufficient to demonstrate the reasoning behind the conclusion to the degree necessary to meet the obligation to give reasons.

Having considered a number of cases in this area, Clarke CJ continued at paragraph 6.15 of the judgment:-

“Therefore it seems to me that it is possible to identify two separate but closely related requirements regarding the adequacy of any reasons given by a decision maker. First, any person affected by a decision is at least entitled to know in general terms why the decision was made. This requirement derives from the obligation to be fair to individuals affected by binding decisions and also contributes to transparency. Second, 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. Clearly related to this latter 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.”

22. Dealing with a situation where the reasons for a decision are not apparent on the face of a document issuing a determination, Clarke CJ referred to the decision of Fennelly J in *Mallak v. Minister for Justice* [2012] IESC 59 wherein Fennelly J stated at paragraph 66 of the judgment:-

“The most obvious means of achieving fairness is for reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attainment of fairness in the process. If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision maker, there may be situations where the reasons for the decision are obvious and that effective judicial review is not precluded.”

23. In *YY v. Minister for Justice* [2017] IESC 61, O’Donnell J., made the following remarks regarding the question of whether adequate reasons had been given for the issuance of a deportation order, at paragraph 80 of the report:-

“I consider that a court should be astute to avoid the type of over-refined scrutiny which seeks to hold civil servants preparing decisions to the more exacting standards sometimes, although not always achieved by judgements of the Superior Courts. All that is necessary is that a party, and in due course a reviewing court can genuinely understand the reasoning process.”

Having analysed the reasons given in that case, O’Donnell J continued:-

“I cannot have the level of assurance that is necessary that the decision sets out a clear and reasoned path, and moreover one that was not flawed or incorrectly constrained by unjustifiable limitations of irrelevant legal considerations.””

26. In analysing the Applicant’s submission of a failure to give reasons in this regard, it is necessary to consider the import of his claim. On the Applicant’s version of events, his option was to either return to his home town, 15km away from the source of the threat which placed his life in danger or be in prison for a period awaiting the outcome of his claim for international protection which, if successful, would rescue him from his asserted well-founded fear of persecution. While, not specifically stated, it is obvious that the First Respondent’s determination was that the Applicant’s choice of returning to the source of his difficulties and placing his life in danger, if his version events was true, rather than probably spending some time in prison but remaining alive was not believable. Ultimately, a choice of life or possible death faced the Applicant, on his version of events, and the First Respondent determined that the choice of possible death was incredible. The finding was one which was open to the First Respondent to make and its reasoning in that regard, although not spelt out, is clearly discernible.

Chance meeting with BB

27. The Applicant asserted that when he returned to his home village, he remained inside all the time, except on one occasion when he went to Shkoder to meet someone in a part of the City called Rus to arrange to leave Albania. While in Rus he encountered BB. He did not know BB personally. He met BB on the street and BB came towards him. The Applicant pushed BB who threatened to kill him, but the Applicant managed to get away.
28. The Applicant was questioned as to whether the meeting with BB was by chance; how did BB recognize him; who would have informed BB about the Applicant’s movements on the one day he left his house; and who would have informed BB that the Applicant had returned to Albania. The Applicant gave various answers to these questions which were probed before the First Respondent.
29. The First Respondent determined this issue as follows:-
- “The Tribunal found the Appellant’s attempts to address or explain the coincidence of this alleged meeting with BB in Rus and how BB would recognise him, given that the two men had never met, to be unconvincing and the Tribunal rejects the Appellant’s claim to have encountered BB in Rus and/or that BB threatened to kill him.”
30. The Applicant complains that it was irrational of the First Respondent to make this determination regarding this issue as the answers to the questions were not within the Applicant’s knowledge and were mere speculation on his part.
31. The difficulty with the Applicant’s argument in this regard is that it is based on the premise that this event actually happened: the answers given by the Applicant would only be speculation on his part in that scenario.

32. This is not be the correct approach for the First Respondent to adopt and indeed was not the approach taken by the First Respondent. The First Respondent's task is to assess the evidence of the Applicant and determine whether it is credible, whether it can be relied upon and what weight to attach to it. The First Respondent is entitled to explore the evidence given by the Applicant with respect to any relevant issue. With respect to this issue, the First Respondent most certainly was entitled to explore and assess the evidence of the Applicant regarding this asserted chance but central meeting between the Applicant and his persecutor.
33. The First Respondent, having probed and considered the Applicant's evidence in this regard, determined that the meeting did not occur. This was a finding which was open to the First Respondent to make and nothing in the nature of irrationality or unfairness arises in this regard.
34. Accordingly, the grounds of challenge to the First Respondent's decision have not been established and I therefore refuse the relief sought and make an order for the Respondents' costs as against the Applicant.