

## THE HIGH COURT

2007 1723 JR

BETWEEN/

K. I.

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL, MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM,  
ATTORNEY GENERAL AND IRELAND

RESPONDENTS

**JUDGMENT of Mr. Justice Cooke delivered on the 3rd day of March, 2010.**

1. By order of 29th July, 2009, Clark J. granted the applicant leave to seek judicial review of the decision of the first named respondent made on 2nd November, 2007. In particular, leave was granted to seek an order of *certiorari* of that appeal decision upon the two following grounds:

(1) The Refugee Appeals Tribunal erred in law in relying upon country of origin information in respect of the availability of state protection which failed to accurately address the applicant's personal circumstances and thereby failing to address the core element of the applicant's claim of exposure to persecution by reason of her inter-ethnic family circumstances; and

(2) The Refugee Appeals Tribunal further erred in law in the manner in which the applicant's credibility was assessed in resulting from the reliance upon the country of origin information in respect of the availability of State protection which failed to accurately address the applicant's circumstances.

2. The applicant is a national of Georgia. Her husband whom she married in 1982 is also a national of Georgia but is a native of South Ossetia. They have two daughters. When first married they lived in Tbilisi and her husband earned his living as a car mechanic. In 1981, however, they moved to Tskhinvali in South Ossetia. She claimed that in 1990 her husband had joined the newly formed Georgian National Army but when the army was ordered into South Ossetia in 1991 he refused to go. As a result, he was regarded as a traitor in Tbilisi: they were attacked at home and beaten and her husband's garage was burned down. This drove them from Tbilisi to South Ossetia. The applicant's parents still live in Tbilisi.

3. They remained in South Ossetia for fifteen years and the applicant's husband continued to earn his living as a mechanic. In 2004 when tensions arose between the Georgian authorities and the separatist South Ossetia regime the local people turned upon them because it was believed her husband had fought against Ossetia as a member of the Georgian National Army and she was disliked because she was a Georgian married to an Ossetian. She claims that in the summer of 2004 her husband was abducted, tortured and beaten. He was missing for ten days and a ransom was demanded. He had been kidnapped by a group of Ossetian fighters. She said she knew they were Ossetians because they were speaking the Ossetian language although she herself does not speak it. She says she paid the ransom out of savings they had accumulated in their garage business and her husband was released.

4. She claimed that a second incident occurred in December 2006 when her husband was again kidnapped, on this occasion by Georgians who regarded him as having betrayed Georgia and was hiding in Tskhinvali. On this occasion she had to sell their house in order to pay the ransom. When she had done so they had nowhere to go. She claims her husband left first and she does not know where he is now. She believes she is in hiding and that the children are with him.

5. In early February 2006, she fled South Ossetia and flew to Ukraine by plane and then travelled to Ireland illegally by truck. She did not know to what countries they travelled on their way to Ireland. She made an application for asylum here on 7th February, 2007.

6. In a report under section 13 of the Refugee Act 1996 (As Amended) dated 17th May, 2007, the Commissioner recommended that the applicant should not be declared a refugee. The primary reason for considering that the applicant did not have a well founded fear of persecution in Georgia, her country of origin, was that, based upon country of origin information, the authorised officer considered that the applicant would not face persecution if she returned to Tbilisi where her mother still lives. The authorised officer additionally considered that the index of credibility at section 11Bc of the 1996 Act was relevant namely that the applicant had not provided a full and true explanation of how she travelled to and arrived in the State.

7. In the Contested Decision, the Tribunal member set out at some length the full account of the applicant's personal history of the life of her family in South Ossetia between 1991 and 2007. The replies which the applicant gave to questions at the oral hearing are given in some detail. It was agreed by her counsel upon the hearing of this application that the Tribunal member had correctly identified the essential claim made by the applicant at p.6 of the Contested Decision where he quoted her as replying:

"In Ossetia I am a Georgian wife of an Ossetian man and in Georgia I am the wife of a traitor who spent fifteen years of our life in Ossetia living with Ossetians."

8. In section 6 of the Contested Decision under the heading "Analysis of the Applicant's Claim" the Tribunal member first makes two findings by reference to the indices of credibility listed in section 11B of the 1996 Act. He finds that the applicant has offered no plausible reason or explanation for the absence of identification documents and secondly, that she had not provided a full and true explanation as to how she travelled to and arrived in the State. (Paras. (a) and (c) of section 11B).

9. The Tribunal member then cites a passage from a document consulted by way of country of origin information in the form of a

"United Kingdom Home Office Guidance Note": "the Georgian government does not oppress minorities". The applicant was asked to comment upon this and the Tribunal member notes "the applicant rejected the country of origin information" and comments that she did not produce country of origin information to the contrary.

10. The Tribunal member then states:

"In circumstances where reliable country of origin information, such as the United Kingdom Home Office Guidance Note, is available and placed before the Tribunal and there is no reliable contrary view from other country of origin information, I find that I will rely on the United Kingdom Home Office Guidance note. In circumstances where the applicant's evidence runs counter to the country of origin information relied upon I find her evidence to be neither plausible nor credible and I find that it undermines her credibility."

11. While the Tribunal member is thus clearly holding that the applicant's evidence as a whole is not credible, the principle finding upon which the confirmation of the section 13 report is based, is that State protection would be available to the applicant against the persecution alleged to have been suffered in South Ossetia. In effect, she is not believed when she states that she would be not safe in Tbilisi because she would be regarded as the wife of a South Ossetian who had betrayed Georgia and as someone who had lived in South Ossetia. The Tribunal member emphasises that the applicant had never sought any protection in Georgia having fled directly from South Ossetia to the Ukraine and thence to Ireland.

12. As indicated, this central finding of the Contested Decision is based explicitly upon the quoted extract from the U.K. Home Office Guidance Note to the effect that the Georgian government does not oppress minorities. In other words, the Tribunal member is effectively concluding that even a South Ossetian would not face oppression in Tbilisi or be without state protection there against threats of oppression. That being so, the applicant as a native Georgian would be even less likely to be at risk of serious harm. It is this central conclusion which is the focus of the two grounds for which leave to seek this review was granted.

13. The Home Office Guidance Note on Georgia from which the quotation in the Contested Decision is drawn is dated 4th December, 2006 and is a survey of information compiled, presumably, from various diplomatic or other sources recording political, social and other conditions in that country with particular reference to the circumstances of various minority ethnic groups including Abkhazians, South Ossetians and Kurds.

14. Paragraph 2.3 of the note records the general position as regards the relationship between the Georgian authorities and the separatist areas of Abkhazia and South Ossetia: "The dispute with the separatist regimes of Abkhazia and South Ossetia continues and provides the most serious challenge to Georgia's hopes for political and economic stability. The *de facto* authorities in the separatist regions remained outside the control of the central government and although ceasefires were in effect, incidents of violence, including deaths, occurred in both areas during 2005."

15. A later section of the note describes the attitude and treatment of ethnic minorities by the Georgian authorities outside the separatist areas:

"The question of minorities in Georgia is often understood through the prism of the Abkhaz and Ossetian conflicts reinforcing the widely held view that the minorities are a potential threat. This has led to a mixed policy, marked, on the one hand, by the mistrust which further marginalises the minorities and, on the other hand, a conciliatory attitude towards them, particularly in the densely populated regions where the central authorities fear, rightly or wrongly, vague separatist impulses."

16. The passage cited in the Contested Decision is extracted from the conclusion at paragraph 3.6.11, the full text of which is as follows:

"Due to the ongoing tense relationship between the Georgian government and the separatist regions there may be some antipathy directed towards Abkhazians and South Ossetians within Georgia and the Yezidi Kurds are often viewed as being at the lower end of the social scale. However, the Georgian government generally respects the rights of ethnic minority groups and there is no evidence that either state or non-state agents persecute such individuals on account of their regional origins, minority ethnic group or imputed association with the separatist authorities of those regions. Therefore it is unlikely that claimants from this category of claim will qualify for a grant of asylum of humanitarian protection."

17. The essential argument being made on foot of the two grounds is that this information is not, in effect, directly relevant to and does not address the precise claim made by the applicant. It is submitted that her position is in some way distinct from that considered in this material. She, it is said, is not an ethnic minority Ossetian at risk of persecution and such in Georgia. Her particular situation is that of a Georgian wife married to a former member of the Georgian National Army regarded as a traitor in Georgia. She also claims to fear that, in effect, her status as a Georgian woman would not protect her because she would be regarded as having lived in hiding in South Ossetia for fifteen years.

18. In the judgment of the Court these submissions are misconceived. In the first place the applicant's claim was essentially based upon the treatment she alleged South Ossetians received at the hand of Georgians when outside South Ossetia. The source of her apprehension was two-fold. Her husband was from South Ossetia and she had lived there with him for fifteen years. It was this association with the separatist region that would attract the feared mistreatment. The second consideration was that her husband had refused to serve in South Ossetia as a soldier in the Georgian army. This latter consideration was clearly secondary being a matter which dated back fifteen years and might not be remembered, presumably, outside a small circle of neighbours in Tbilisi. It was perfectly logical therefore for the Tribunal member to consult such information as was available as to the treatment generally of South Ossetians and those associated with the separatist regime in particular as to the availability of protection for them in Georgia should the need arise. Clearly, the passages quoted by the Tribunal member provided a cogent basis on which he could conclude that the risk expressed by the applicant was exaggerated having regard, particularly, to the fact that it was based on events which were alleged to have occurred fifteen years earlier.

19. In the second place, the applicant's claim was based upon a particular personal circumstance namely, the fact that her husband had apparently been targeted in 1991 for his refusal to serve in the army in South Ossetia. It was highly improbable therefore that any authoritative country of origin information would be available which would cover that particular circumstance. As is clear from the Contested Decision, the Tribunal members proposed reliance on this information was put to the applicant at the hearing and she was invited to comment on it. Furthermore, the issue had been raised in various ways under a number of headings in a lengthy set of grounds in the notice of appeal because the section 13 report at paragraph 4.6 had quoted similar country of origin information as to the non-persecution in Georgia of South Ossetians as a minority ethnic group (see grounds 9 and 10).

20. The onus of proof at the hearing lay with the applicant in advancing the claim. While, as mentioned, country of origin information might be difficult to find on the precise issue of her husband's refusal to serve, it was open to the applicant to refer to analogous recent incidents of mistreatment of South Ossetians or of soldiers who had refused as reported in newspapers in Tblisi. It must also be remembered that the applicant had apparently not been in Tblisi for over fifteen years and it may be significant that she appears to have made no enquiry of her mother or of other family members as to what their perception was of the reception she might receive if she returned now to Tblisi.

21. For all of these reasons the court is satisfied that the Tribunal member made no error in relying upon the particular information quoted in the decision nor did reliance upon it in any way vitiate the manner in which the assessment of credibility was made.

22. The application must accordingly be refused.