Neutral Citation: [2015] IEHC 268

THE HIGH COURT

JUDICIAL REVIEW

[2010 No 1231 J.R.]

BETWEEN

A. D.

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL (CONSTITUTED OF PAUL CHRISTOPHER, TRIBUNAL MEMBER) AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT of Ms. Justice Faherty delivered on the 6th day of March 2015

1. This is an application for judicial review of a decision of the first named respondent refusing refugee status to the applicant.

Background

2. The applicant is an Iranian national of Kurdish ethnicity. He was born in 1988 and prior to arriving in this State lived with his sister and uncle in a city in Iran. He sought refugee status in the following claimed circumstances:

3. While living in Iran the applicant worked as a mechanic. On Thursday 10th September 2009 a man came to the garage where the applicant worked, enquired after the owner (who was not present) and then requested the applicant to take in a damaged car for repair which the applicant duly did. Two days later as the applicant was arriving for work he saw that the garage was surrounded by Revolutionary Guards and intelligence officers and saw that they had put the car which had been left in for repair onto a tow truck. The applicant made enquiries about what was going on from an individual in a nearby shop, whom he knew, and was informed that the garage boss and an assistant had been arrested by the guards. Being a Kurd and because of his fear of the Revolutionary Guards and intelligence officers the applicant did not attend at his workplace but returned home and advised his uncle of what occurred. His uncle took him to a named village. Later that night his uncle returned and advised the applicant that the Revolutionary Guards and intelligence officers had come to the applicant's house to arrest him and had taken all of his belongings. Moreover, his uncle had told him that, according to the Revolutionary Guards, the garage owner and the other worker had disclaimed knowledge of the car before stating the applicant had taken the car into the garage. The applicant's uncle had ascertained that the car had been used for anti-government operations prior to it having been brought to the garage for repair. In light of what had occurred, his uncle had sent him to another village to stay with a friend. In the interim, the Revolutionary Guards came to the applicant's house a number of times. After ascertaining that they were still searching for the applicant, his uncle had arranged to send him abroad to protect him from the Iranian regime. Arrangements were made for him to leave Iran with the aid of traffickers. The applicant claimed to have been brought to Turkey by the traffickers where he remained in a room for a period of days without going outside. On the 13th October 2009 he was taken from the place he was staying, brought to an airport and put on a plane and arrived in Ireland on the same date.

Procedural History

4. The applicant presented at the offices of the ORAC on the 14th October 2009. His ASY interview was conducted on the 17th November 2009. He completed a questionnaire on the 21st November 2009. The applicant based his claim for asylum on a stated fear of persecution in Iran for reasons of nationality and political opinion. He was interviewed by the Refugee Appeals Commissioner on 10th December 2009. The Commissioner's section 13 report issued on 10th February 2010 and it recommended that the applicant not be declared a refugee. This recommendation was appealed to the Refugee Appeals Tribunal and an oral hearing took place on the 6th July 2010. The decision of the Tribunal, dated 7th July 2010 issued to the applicant on the 14th July 2010.

5. The Tribunal affirmed the recommendation of the Refugee Appeals Commissioner that the applicant not be declared a refugee. It decided the applicant's appeal primarily on the question of credibility.

6. The Tribunal was not generally satisfied as to the applicant's credibility in relation to the particular claim for asylum advanced by him. It found that some of his evidence ran contrary to common sense and was implausible and that other aspects of his evidence were contradictory. The Tribunal set out a number of "examples" in respect of credibility, as follows:

> a) The Tribunal said that a document "*purporting*" to be a ruling of the Iranian Court (which had been submitted by the applicant to the Tribunal in advance of the hearing) conflicted in several respects with evidence given by the applicant, insofar as the court's document made reference to the applicant having confessed to the crime for which he was ultimately convicted. The document made reference to a Toyota car where the applicant had made it clear it had been a Kia. The applicant had referred to the document as a warrant for his arrest. It appeared from the document that the applicant had been sentenced to a year in prison and lashes for his offence, yet the applicant had initially told the Tribunal that he would be executed for taking the car in for repairs. When this had been put to him, the applicant had changed his evidence to say that he would be executed for having escaped.
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> b) The Tribunal found the investigation of the circumstances surrounding the car "*inherently implausible*" because the applicant's relatives were never questioned as to his whereabouts, activities, political opinions, acquaintances, work life, etc. Moreover the Tribunal noted that despite having said that he would face the death penalty for taking the car in for repairs, the applicant had told the Tribunal that his boss, a far more responsible person had received a jail sentence.
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> c) The Tribunal presumed that the authorities would have been interested in asking the applicant's uncle questions about

any details that he was told by the applicant in relation to the incident and the authorities' failure to ask the applicant's uncle about such details struck the Tribunal Member as inherently implausible.

d) The absence of knowledge on the part of the applicant's uncle or sister regarding the court hearing that resulted in the applicant's conviction also struck the Tribunal Member as inherently implausible.

e) The Iranian court's ruling was on the 11th September 2009 whereas the attempt to arrest the applicant was on the 12th September 2009.

f) The Tribunal upheld the finding made by the Refugee Appeals Commissioner at para. 3.3.3 of the section 13 report and afforded no weight to the copy document purporting to be a ruling of court and found that nothing proffered by the applicant to the Tribunal tended to undermine the validity of the Commissioner's finding.

g) The Tribunal upheld the finding at para. 3.3.4 of the section 13 report that the applicant's evidence was vague and lacking in detail in relation to his journey to Ireland and that the applicant had not bothered to acquaint himself with the documents used for his journey.

h) The applicant's failure to claim asylum in Turkey was not indicative of a well-founded fear of persecution.

i) The Tribunal afforded "*the purported identity and other documents personal to the appellant printed by him no weight in the circumstances*" and found "*that they do not advance his claim in any material respect, indeed at least one of them serves to undermine the credibility of his claim*".

The challenge to the decision

7. The statement of grounds sets out six grounds of challenge to the Tribunal's decision, one of which was not pursued. In the course of the oral submissions, counsel for the applicant stated that the primary challenge to the decision was on the basis of the Tribunal Member's failure to assess the credibility of the applicant's claim in the context of country of origin information. Further, the Tribunal Member failed to take account of other documentation which had been submitted by the applicant in aid of his appeal, in particular his identity documentation and the record of his conviction and sentence by the Iranian court.

8. The following country of origin information was before the Tribunal:

1. Country of origin information taken from the Danish Fact Finding Mission to Iran 24th August – 2nd September 2008, Section 2 "Kurds". This document was attached as appendix A to the section 13 report of the Refugee Appeals Commissioner (PG. 91 and PGS. 96-99 of the booklet).

2. An Amnesty International Report dated June 2010 entitled "From Protest to Prison, Iran one year after the election", furnished to the Tribunal on behalf of the applicant.

3. A UNHCR document published by Human Rights Watch and entitled "Iran: Stop imminent execution of Kurdish dissident", dated 29th June 2010(furnished to the Tribunal by the applicant).

4. An International Federation of Human Rights (FIDH) position paper to the United Nations General Assembly dated October 2009 concerning, inter alia, the "Islamic Republic of Iran", again furnished by the applicant.

9. On the day of his appeal hearing, the applicant furnished the Tribunal Member with what the applicant said was an original Iranian court document which had been posted to him from Iran, together with a translation thereof. The applicant did not have this document in the earlier part of his asylum process including his interview with the Refugee Appeals Commissioner. Insofar as the applicant had any documentation, personal or otherwise, during the process before the Refugee Appeals Commissioner, this consisted of a colour copy of his national identity document. According to information given by the applicant in the course of his section 11 interview, he had this document notwithstanding that all his personal documents were seized by the authorities on the 10th September 2009, as he always retained upon his person a colour photocopy of his identity card while keeping the original in his house.

10. The translation of the Iranian court document produced by the applicant to the Tribunal Member on the day of the appeal hearing bears a date 16th September 2009 together with a reference to "*Classification of case file:…(11th September 2009) Branch 1, General court of…"* The applicant is named as defendant and an address for him is given. The body of the document contains, *inter alia*, the following:-

"Ruling of Court

Regarding the charges against [the applicant] of having effected repairs to a Toyota automobile, which, according to reports from intelligence officers, as well as the correct confession by the defendant regarding having effected the repairs to the said automobile, belonged to a counterrevolutionary group; and considering the defendant's inadmissible statements and defence, as well as his unsubstantiated denial [of the charges against him], along with other indications and clues, as reflected in the case file, the Court finds that the criminal charge brought against him has been proved beyond a shadow of doubt. Pursuant to Article 607 and 702 of the Islamic Penal Code, and in compliance with Article 22 and 47 of the said Code, as well as the provisions of the Law on the Manner of Imposition of Governmental Punishments, and Article 2 of the Law on Punishments for Criminals, the defendant is hereby sentenced to one year of penal imprisonment, as well as 60 lashes out of public view in the customary manner, along with payment of funds regarding the Pronouncement no. 228/941/856 as a cash fine payable to the Government of the Islamic Republic of Iran..."

11. Counsel for the applicant argues that the credibility findings made by the Tribunal Member, including the credibility findings in respect of the Iranian court document, were made in the absence of any due consideration of the country of origin information furnished by the applicant.

12. Counsel pointed, in particular, to the following extracts from the Amnesty International Report:

"Trials in Iran are the final stage in a process that can result in individuals being deprived of their liberty for years – or even their life – simply for what they have said or because of who they are. Proceedings are grossly flawed, particularly in trials before Revolutionary Courts, where it is impossible for those accused of offences against national security to get

a fair trial."

"According to the Constitution, trials should normally be held in open court, except where this would be incompatible with accepted principles of "public decency" or if the parties request that the trial be held in closed session. Under the Code of Criminal Procedure, proceedings may be conducted in camera when charges relate to national security or if a public trial would "offend the religious sentiments of the people". As a result, most cases heard before Revolutionary Courts are held behind closed doors. Those trials which the authorities claim are open often appear to be nothing but "show trials", selected extracts of which may be broadcast nationally, apparently as a warning or deterrent to others... Many defendants report that their interrogators announce the sentence they will receive before they are tried, raising concerns that judges are not independent, but are receiving instructions from one or other of the various intelligence services."

Later in the report it records:

"Since the election of President Ahmadinejad in 2005, Amnesty International has made many detailed recommendations to successive Iranian governments, but serious violations continue and the circle of repression ever widens.

People in Iran continue to be arbitrarily arrested, often without warrant, by state officials who fail to identify themselves. Many are held for weeks or even months – often in solitary confinement – in detention centres outside of the control of the Judiciary in prolonged incommunicado detention without access to families or lawyers, in conditions amounting to enforced disappearances. Unlawful killings, and the all too frequent reports of torture and other ill-treatment by state actors who enjoy near total impunity, are still not being investigated. Hundreds of political prisoners, sentenced after unfair trials, are held across Iran; many of them are prisoners of conscience…

Amnesty International can only call for an immediate end to the abuses, in particular for the release of prisoners of conscience, fair and prompt trials on recognizably criminal charges without recourse to the death penalty for political prisoners, and the commutation of all death sentences."

13. Counsel referred to the following extracts from the FIDH position paper:

"FIDH requests the third committee to condemn the endless intensification of the human rights violations in Iran, whether it is with regards to death penalty, human rights defenders and other peaceful activities, or the repression against minorities."

"Throughout 2009 the situation of human rights in the Islamic Republic of Iran has remained dire, and even further deteriorated in the months preceding the June 2009 election, and afterwards."

"In the last few years, the repression against persons belonging to the Kurdish minority has been severe."

"FIDH and LDDHI call upon the UN General Assembly to adopt a resolution appointing a UN Special Envoy of the Secretary General on Iran. Indeed, the Iranian judiciary shares responsibility for the repression carried out in the wake of the June 2009 election and still persisting today. Therefore the Iranian authorities, including the judiciary, cannot credibly and effectively investigate the recent and serious human rights violations…"

14. It is contended that the country of origin information supported the claim being made by the applicant and effectively the Tribunal Member failed to take account of it and/or in discounting it, failed to give reasons as to why that was the case. The respondents contend that the country of origin information was considered by the Tribunal Member and that this is evident from the face of the Decision.

15. The information was dealt with by the Tribunal Member in the following manner:-

"Notwithstanding the principal enunciated in Folarin v. Minister for Justice Equality and Law Reform (Unreported, High Court Peart J., 2nd May 2008) that:

"once such a fundamental lack of credibility is found, the Tribunal is not obliged to refer to country of origin information to see whether the story can be believed"

this Tribunal has considered all of the various country of origin information reports and information."

16. The probative value of the country of origin information is not addressed in the Decision. The probative value is of course a matter entirely for the decision maker. That notwithstanding, once a decision maker has embarked upon a consideration of country of origin information, it is incumbent on him or her to give some indication, in the decision, of the weight attached to the information proffered, or at the very least his or her view of the applicant's claim of persecution in the context of that information.

17. In part 3 of the decision under the heading "The Appellant's claim", reference is made, inter alia, to the following evidence given by the applicant.

"The appellant stated that he never made a confession to the police. When it was put to him that the record of conviction produced by him recorded that he had made a confession, he said that what the document meant was that his employer had made a confession. He said that neither his uncle or (sic) sister had attended any court hearing or gave evidence in relation to the apparent conviction which he received. He said that the only questions that they had been asked by the intelligence services were in relation to the where the appellant was now."

18. It is certainly apparent that the reference to a confession in the Iranian court document weighed with the Tribunal Member against the applicant, in circumstances where the account given by the applicant at all stages of his asylum process did not mention any confession. However, I am satisfied to accept the argument advanced on behalf of the applicant that this discrepancy was not a sufficient basis for the absence of a reasoned consideration of the country of origin information, particularly having regard to the nature of the country information.

19. Equally, I accept the argument made on behalf of the applicant in relation to the Tribunal Member's finding as inherently implausible that neither the applicant's uncle nor his sister knew anything about the apparent court hearing which resulted in his

conviction and sentence. This finding is unsafe because the Tribunal Member arrived at this conclusion without any apparent reference to country of origin information which documented the nature of court hearings in Iran or to the fact that, as suggested by the country of origin information, they often take place behind closed doors. Had the Tribunal Member averted to this information, there was the potential that he might have come to a different conclusion as to the likely state of knowledge of the applicant's uncle or sister. There is no way of ascertaining from the decision whether the Tribunal Member, in coming to his particular conclusion, averted to the country of origin information which was before him. Even if it was adverted to and discounted, the reason for the rejection should have been stated. To my mind, the unsatisfactory manner in which country of origin information was dealt with is not cured simply because there is the catch all statement in the Decision that the Tribunal Member has considered country of origin reports and information.

20. The failings of the Tribunal Member must be assessed in the context of the obligation on a decision maker pursuant to reg. 5 of the European Communities (Eligibility for Protection) Regulations 2006. Under the heading "Assessment of Facts and Circumstances", reg. 5 provides that:-

> " *(1) The following matters shall be taken into account by a protection decision-maker for the purposes of making a protection decision:*
>
> *(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application for protection, including laws and regulations of the country of origin and the manner in which they are applied;*

21. Thus, once acknowledged (as it was here) that the Tribunal Member had considered country of origin information and reports, it was incumbent on him to give some account of the nature of that consideration and the weight attached to the information and, if the applicant's claim in the context of that country of origin information was to be rejected, the reasons for the rejection should be clearly set out. This was not done in this case. It is not sufficient, as suggested by counsel for the respondent in the course of oral submissions, that the Tribunal Member in the instant case knew the law or that he was familiar with the country of origin information. In my view, it is not for a protection seeker or a court in reviewing a decision made in respect of a protection seeker, to second guess what was in the mind of a decision maker.

22. As stated by Cooke J. in *I.R. v. Minister for Justice Equality and Law Reform & Anor* [2009] IEHC 353:-

> *"The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told."*

And:-

> *"Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated."*

23. I also adopt the dictum of MacEochaidh J. in *F.T. v. Refugee Appeals Tribunal & Ors* [2013] IEHC 167:-

> *"The applicant's claim involves references to significant political events in Cameroon which are documented in the country of origin information. It is my view that the Tribunal Member erred in failing to adequately address such claims in the context of these sources."*

24. As to why reasons are necessary, I rely on the dictum of Cooke J. in *T.M.A.A. v. Refugee Appeals Tribunal & Ors* [2009] IEHC 23:-

> *"In the first place it is to enable an applicant for refugee status who is adversely affected by the conclusion to know with sufficient detail and clarity why the negative finding is being made against him or her, including the reasons for rejection of the principal or material factors upon which the claim to a well grounded fear of persecution is based. The second purpose is that a decision of a tribunal of this kind, which is susceptible of judicial review before the High Court, must give the reasons for its decision in sufficiently clear and concrete terms to enable the High Court to exercise its judicial review jurisdiction so that if the Court on reading the decision and having regard to the totality of the material which is available to the Court, finds that it is unable to understand the basis upon which the conclusion has been reached, or apparently material factors have been discounted, then the statement of reasons in the decision is possibly defective."*

25. While the issue of credibility is solely for the Tribunal to assess, the Tribunal Member's failure to properly deal with the country of origin information, particularly when it had the potential to inform his assessment of the credibility or otherwise of the applicant affects the decision made on the applicant's claim to a material extent.

The Iranian court document

26. Counsel for the applicant takes issue with the manner in which the Tribunal Member approached the Iranian court document, which had been furnished in aid of the appeal. As already stated, this document was not before the Refugee Appeals Commissioner: the applicant received it by post from Iran in advance of the appeal hearing. He claims that it was sent to him by a friend who was friendly with an intelligence officer.

27. To put the document into context, it is necessary to refer to the Commissioner's section 13 report. Section 3.3.3 provides, *inter alia*, as follows:-

> *"The applicant's testimony indicates the intention of the authorities in Iran to arrest him was made through third parties. The applicant claims that two days after receiving the car into the garage he arrived in the vicinity of his work place to see the car being towed by members of the Revolutionary guard and Ettelat (Interview notes, Q23). He claims that a man who works in the area told him that his boss [ ]and his boss's assistant [ ]had been arrested (Interview notes, Q24). He claims that when he explained the situation to his uncle, his uncle went with him to [ ]where he remained while his uncle and his uncle's friend returned to[ ]to investigate what was going on. The applicant claims his uncle confirmed [the] arrests and said that the authorities towed the car as it had been involved in activities against the regime and that they wanted to arrest the applicant too. (Ibid).*

The applicant claims he had never been involved with any political group which might be perceived as being against the regime (Interview notes, Q37). He claims that neither he nor any of his family members had come to the attention of the authorities before this incident (Interview notes, Q38)…

The applicant claims he does not know the outcome of [the]arrests (Interview notes, Q30). The applicant claims he has not been able to make contact with anyone in Iran since arriving in Ireland (Interview notes, Q29).

The applicant's case appears to be based on his fear of arrest for something he is not responsible for. Given that it appears the applicant fled because the authorities wanted to allegedly arrest him it is pertinent to examine why the applicant fears that arrest by the authorities would lead to persecution. It must be noted that the applicant does not know the outcome of his boss's or colleague's arrests (Interview notes, Q71-73). It could be that they were released without charge, yet he claims this forms part of the basis of his fear of persecution…

While the applicant's general assertions are consistent with Country of Origin Information about the treatment of Kurdish people in Iran he was ultimately unable to provide any specific examples of why he fears he personally would be executed were he to be arrested which would form an objective basis to fear persecution himself (Interview notes, Q83).

Ultimately the applicant could provide no further explanation as to how he could be so definite that he would be either imprisoned or executed when neither he, nor anyone in his family, had ever been involved with the authorities, he did not know anyone personally who had ever been in a similar situation to himself and consideration is also given to his claims that he did not know the outcome of his boss's arrest. The applicant asserts his fear is based on his ethnicity as a Kurd and because the authorities wanted to arrest him because he accepted a car into the garage which had allegedly been involved in activities against the regime (Interview notes, Q78). In addition to this, while COI supports his contention that Kurds are subjected to discrimination, it must also be noted that the burden of proof lies with the applicant and he has not provided any convincing testimony above and beyond this general information.

The well-foundedness of the applicant's fear is therefore undermined."

28. The Tribunal Member refers to the Iranian court document in the following terms:-

"The document purporting to be a Ruling of Court conflicts in several respects with the evidence provided by the appellant in support of his asylum claim.."

"The Tribunal would uphold the finding made by the Commissioner at para 3.3.3. of the section 13 report. As outlined above, the Tribunal affords no weight to the copy document purporting to be a Ruling of the Court and nothing proffered by the appellant to the Tribunal tends to undermine the validity of that finding."

29. Counsel for the applicant submits that this is a crucial aspect of the case since the Refugee Appeals Commissioner had found the applicant's story generally credible (having regard to country of origin information), save that the Commissioner found no basis upon which the applicant personally had cause to fear persecution. The Commissioner did not have the Iranian court document. That evidence was before the Tribunal Member. Counsel contends that rather than addressing the document in the context of deciding whether the applicant could be at risk of persecution, the Tribunal Member merely upheld the Commissioner's findings. It is submitted that, most egregiously, the Tribunal Member handed back the original court document and the envelope in which it arrived into the applicant's possession (retaining only a copy of the document) thereby depriving himself of the best evidence which could have assisted the Tribunal Member in ascertaining whether the document was authentic. It is argued that on this basis alone the decision of the Tribunal Member should be quashed. Counsel also argues that the Tribunal Member should not have embarked on an assessment of the applicant's general credibility without first making a finding, one way or another, on the Iranian court document proffered by the applicant in aid of his claim for refugee status. It is submitted that if the Tribunal Member entertained doubts about its authenticity (as he obviously did), it was within his remit, pursuant to s. 16(6) of the Refugee Act 1996, to request the Office of the Commissioner to verify its authenticity. The document was crucial to the core aspect of the applicant's claim. If authentic it would establish that the applicant would face persecution if returned to Iran. Counsel submits that the contradictions between the contents of the document and the applicant's account did not absolve the Tribunal Member of the requirement to establish whether or not the document was authentic.

30. The respondent submits that the document was fully taken into account by the Tribunal Member, albeit that he did not afford it any weight. That was the preserve of the Tribunal Member as the trier of fact. The Tribunal Member identified a number of discrepancies and found that the document did not support the version of events given by the applicant. Moreover, the dates on the document undermined the applicant's account, as found by the Tribunal Member. This exercise conducted was quintessentially within the remit of the Tribunal Member and in this regard counsel for the respondent relies on the dictum of Birmingham J. in *M.E. v. Refugee Appeals Tribunal & Ors* [2008] IEHC 192 where he states:-

"In my view, the assessment of whether a particular piece of evidence is of probative value, or the extent to which it is of probative value, is quintessentially a matter for the Tribunal Member…"

31. Counsel for the respondent also argues that the Tribunal Member did not say that the document was not authentic; rather he found that it did not support the applicant's story.

32. The question to be determined here is whether the approach adopted by the Tribunal Member with regard to the Iranian court document was the correct approach in all the circumstances of the case.

33. First and foremost reg. 5(1) of the 2006 Regulations provides that a decision maker shall take into account:-

(b) the relevant statements and documentation presented by the protection applicant including information on whether he or she has been or may be subject to persecution or serious harm;"

34. It cannot be said that the Tribunal Member did not have regard to the document: that is evident from the Decision. The question is whether due regard was paid to the document. If authentic, it had the potential to corroborate the applicant's fear of persecution, if returned to Iran. While the Tribunal Member took it into account, it is patently clear that he had doubts about its authenticity.

35. The other issue is whether the apparent contradictions between what is recorded in the document and the applicant's account of

events absolved the Tribunal Member of the necessity to ascertain whether or not the document was authentic. To my mind, and indeed as already set out elsewhere in this judgment, the fact that the document referred to the applicant having confessed to a crime, on its face inconsistent with the applicant's account of events could not, of itself, absolve the Tribunal Member of the necessity to make some enquiry as to its authenticity. Likewise, I find that the apparent inconsistency in the description of the car between what is recorded in the court document (there the car is described as a Toyota) and what is recorded in the translation of the applicant's questionnaire (the car is described as a Kia Pride) was not a sufficient basis on which the Tribunal Member was entitled to characterize it as a document "*purporting to be a Ruling of Court*". This is all the more so, given the peripheral nature of that inconsistency vis-à-vis the core matter to be determined. Moreover, I note that the applicant has averred in his grounding affidavit that in his questionnaire he described the car as a " *'Pride' which is a model of Toyota*" and that it was erroneously translated as a "*Kia pride*". The applicant testifies that had this inconsistency been brought to his attention during the hearing he could have clarified the matter by reference to the original questionnaire in Sorani. The applicant's averments in this regard have not been challenged by the respondents.

36. The Tribunal Member also impugned the corroborative value of the Iranian court document on the basis of the incompatibility of the dates recorded on the document with the version of events given by the applicant. Specifically, the Tribunal Member stated:-

> *"The appellant told the Tribunal that the man had brought the car in for repairs on the 10th September, 2009 and that the intelligence services called to the garage, impounded the car and arrested his boss two days later (on the 12th September 2009). Yet the "Ruling of the Court" was made on the 11th September 2009; "verdict no. 1880-1388/6/20 (11 September, 2009) Branch 1, General Court of [ ]""*

37. Counsel for the applicant submits that the Tribunal Member's description of the ruling of the court as dating from the 11th September 2009 is factually incorrect. I agree with that submission to a certain extent. The top right hand corner of the document bears the date 16 September 2009. Of course what this court (and the Tribunal) is looking at is a translated document, but at no time has it been suggested that that date 16th September 2009 is otherwise than a translation of the date recorded on the document. The extract referred to by the Tribunal Member more properly reads:-

> *"Date:1388/6/25 [16 September 2009]*
>
> *No. Ain/1423*
>
> *Attachments:----*

Verdict

> *Court:---*
>
> *Classification of case File: 1/Sh/Ain/1423-88, Verdict No. 1880-1388/6/20 (11 September 2009), Branch 1, General Court of [ ]"*

38. To my mind, there was sufficient ambiguity on the face of the document as to make it unsafe for the Tribunal Member to rely on the contradiction in dates as a factor to undermine the applicant's credibility. Moreover, I note that the words "*arrest warrant*" appear on the document and it is conceivable that the applicant's reference to it as "*a warrant for his arrest*" (as recorded in the Decision) originates from this entry.

39. In all the circumstances of this case, I am not satisfied that the Tribunal Member fairly assessed the Iranian court document which had been submitted in aid of the applicant's appeal. The mandatory requirements of reg. 5 (1) (b), in conjunction with the principles of fairness, made it incumbent on the Tribunal Member, in the first instance, to retain the original of the court document which had been furnished to him, if only to assure the applicant that his documentation would get due consideration. Furthermore, simply attributing the characterization "*purported*" to the document without some effort having been made to establish whether it was authentic or not, does not, to my mind, comply with the requirements of reg. 5 (1) (b).

40. The court notes that s. 16 (6) of the 1996 Act affords a Tribunal Member a mechanism to carry out investigations. Section 16 (6) of the Act states:

> *"The Appeal Board may, for the purposes of its functions under this Act, request the Commissioner to make such further inquiries and to furnish the Appeal Board with such further information as the Appeal Board considers necessary within such period as may be specified by the Appeal Board."*

41. Whether or which the Commissioner would be able to verify the authenticity of the document is another matter. The court notes that in the section 13 report the Commissioner stated that she was unable to verify the authenticity of the copy of the national identity card submitted by the applicant. However, that is not the issue here, the fact of the matter is that no inquiry was embarked upon by the Tribunal Member vis-à-vis the Iranian court document's authenticity prior to its characterisation as a document "*purporting to be a ruling of court*". As stated by Cooke J. in *H.I.D. v. R.A.T. & othrs.*, "*Where, in order to reach a conclusion on a disputed issue or a matter of doubt, the Tribunal member directs that the ORAC conduct further enquiries or obtain further information, the RAT is doing no more than ensuring that the full examination of the asylum application is thorough and complete*."

42. The various failures identified above affect the decision arrived at by the Tribunal Member to a material extent.

43. In coming to my findings, I am conscious of the dictum of Cooke J. in *S.B.E. v RAT & Ors.* [2010] IEHC 133 where it is stated:

> *"In reviewing a decision which turns predominantly on credibility the Court is fully conscious of the fact that the issue is one which is exclusively for the decision maker to determine. It must resist the temptation to substitute its own view of credibility for the assessment made by the Tribunal member. It is concerned only to ensure the legality of the process by which that conclusion has been reached."*

In the present case, the bulk of the adverse credibility findings relate to conclusions the Tribunal Member drew from his analysis of the Iranian court document and from his own perspective as to how the Iranian investigative and court processes operated. These conclusions were drawn without any apparent consideration of material potentially corroborative of the applicant's story (country of origin information) and without any effort to ascertain the authenticity of the document which was found to undermine his story. For the reasons set out above, this court has found the process by which the Tribunal Member reached his conclusions on credibility

wanting, particularly the treatment afforded to the country of origin information and the court document proffered by the applicant. In those circumstances, the court cannot agree with the respondents' contention that the decision conforms to the requirements set out in *I.R. v Minister for Justice* [2009] IEHC 353 or *R.O. v. R.A.T.* [2012] IEHC 573.

44. In the course of her oral submissions, counsel for the applicant sought to rely on a decision of the European Court of Human Rights in the case of *M.A. .v. Switzerland* (18 November 2014) as persuasive authority for this court in the context of its review of how the Refugee Appeals Tribunal dealt with the Iranian court document submitted by the applicant in support of his claim for refugee status. Counsel stressed that she was not seeking to challenge the Tribunal decision with reference to any ground under the European Convention on Human Rights and Fundamental Freedoms (the Convention) and acknowledged that the Convention does not deal with the question of asylum per se. While the *M.A.* case concerned an application under Article 3 of the Convention by a failed asylum seeker (an Iranian national) against his expulsion by the Swiss authorities, it is submitted that this decision is persuasive authority for how a decision maker in the asylum process should assess documents relied on by an applicant where there are inconsistencies in an applicant's account of events. This was an issue which fell to be addressed by the European Court of Human Rights in *M.A.* Notwithstanding "*weaknesses*" in the applicant M.A.'s story, the ECHR held that documents submitted on his behalf could not be disregarded. Counsel relies, *inter alia*, on the following passage from the Judgment. Addressing an allegedly original summons relied on by the applicant M.A. (and submitted by the applicant M.A. during his first asylum hearing), the Court stated:

> *"..the Court does not share the view that the discrepancies in the applicant's accounts were of such a serious nature that they could allow the documents submitted by the applicant to be ignored, but considers that they could to a considerable degree in fact be dispelled by the applicant's further explanations. Consequently, as there is no indication that the Government tried to verify the authenticity of the summons through specialists or with the help of the Swiss embassy in Teheran, the Government did not challenge the authenticity of the documents in a proper manner. The Court is therefore of the view that the summons of 10 May 2011 cannot reasonably be disregarded. The summons matches the applicant's account of the events of 10 May 2011 in Iran and therefore adds to the plausibility of his story."*

It is also argued that the approach adopted by the European Court of Human Rights would be regarded as the correct test by the European Court of Justice, in light of the recognition the Charter of Fundamental Rights of the European Union affords, inter alia, to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights, and having regard to the right to asylum as a general principle of European Union law, as provided for in Article 18 of the EU Charter. Furthermore, counsel submits that reg. 9 of the European Communities (Eligibility for Protection) Regulations 2006 defines acts of persecution under the 1996 Act as including a violation of basic human rights, in particular rights from which derogation cannot be made under the Convention. Article 3 of the Convention (freedom from torture and from inhuman and degrading treatment) is one of the articles from which derogation cannot be made. It is submitted that part of the punishment meted out to the applicant (as recorded in the Iranian court document) constitutes a violation of Article 3 of the Convention. For all of the foregoing reasons, counsel submits that the approach of the ECHR in *M.A.* should be applied in the present case. It is further submitted that even if counsel is incorrect about the applicability of *M.A.* as a matter of European Union law, the Refugee Appeals Tribunal, as an organ of the State, is bound by the ECHR's ruling, pursuant to the European Convention on Human Rights Act 2003.

Having regard to the findings this court has already made concerning the failings of the Tribunal, when viewed against the requirements of the 2006 Regulations and the established jurisprudence, it is not necessary to embark on a consideration of the arguments raised by the applicant's counsel based on the *M.A.* case.

The "mystery" document allegation

45. In his section 6 analysis, by way of wrap up, the Tribunal Member stated:-

> *"The Tribunal affords the purported identity and other documents personal to the appellant presented by him no weight in the circumstances and finds, accordingly, that they do not advance his claim in any material respect, indeed at least one of them serves to undermine the credibility of his claim."*

46. Counsel for the applicant submits that by his use of the phrase "*at least one of them serves to undermine the credibility of his claim",* the Tribunal Member has sought to impugn the applicant's credibility without identifying the document upon which this conclusion was based. Counsel argues that it cannot be a reference to the Iranian court document, as the Tribunal Member had already dealt with that in great detail. It is argued that without identifying which document he was referring to, the Tribunal Member fell into error in a manner similar to that identified by MacEochaidh J. in *I.B. v. Refugee Appeals Tribunal* [2013] IEHC 467. I do not agree with counsel's submission in this regard.

A reading of the decision as a whole clearly shows that the reference is to the Iranian court document. Therefore, while this court has found the Tribunal Member to be in error, as set out above, it has not been compounded by his having taken account of an unspecified document, as argued by counsel for the applicant. There is thus no merit in this particular argument

The reference to "*war crimes*"

49. In the course of her oral submission, counsel for the applicant referred the court to part 4 of the Decision entitled "*Submissions*". This part reads as follows:-

> *"Submissions were made by his legal representative who referred to the country of origin information submitted. Further details of the submissions are contained in the Notice of Appeal. The presenting officer resubmitted the section 13 report and submitted that the exclusion clause should apply to the appellant on account of possible involvement in war crimes."*

50. As counsel points out, the Decision does not record on what evidence the presenting officer based this particular submission: there was no such allegation against the applicant. Counsel acknowledges that the Tribunal Member clearly rejected the submission since there is no further reference to it. Counsel suggests that the reference to "*war crimes*" might be accounted for on the basis that it was "a cut and paste job". Counsel for the respondent submits that the presenting officer's reference to "*war crimes*" played no part in the Tribunal Member's reasoning and argued that the reference should not have any bearing on these judicial review proceedings.

51. Whatever the reason for its inclusion, the "*war crimes*" reference can only be described as bizarre. I note that neither the statement of grounds nor the applicant's written or oral submissions advance an argument that the decision is unsafe by virtue of the said reference. Whatever its origins, the reference on the face of the Tribunal Member's Decision is, to say the least, worrying.

52. Protection seekers who seek recourse to the asylum process should at the very least have the expectation that what will be addressed in the document communicating the decision on their claim will be the arguments they advanced in aid of the appeal and any arguments advanced by the presenting officer, as relates to the particular claim for refugee status. It does not serve the system which is in place for the determination of applications by protection-seekers well that the instrument through which the applicant receive the decision on his appeal contained extraneous material of the nature described above.

Conclusion

53. As the applicant has made out substantial grounds in this case, I therefore formally grant leave and as this hearing was conducted on a "telescoped" basis, I grant an order quashing the decision of the first named respondent and I direct that the matter be remitted for reconsideration before a different member of the Refugee Appeals Tribunal.