THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 1455 J.R.]

BETWEEN

H.M.

APPLICANT

AND

MINISTER FOR JUSTICE, AND LAW REFORM

RESPONDENT

JUDGMENT of Mr. Justice Cross delivered on the 27th day of April, 2012

1. This judicial review application seeks orders of *certiorari* quashing the subsidiary protection decision of 12th October, 2010 and the subsequent deportation order of 20th October, 2010, in respect of the applicant. In a reserved judgment of 21st January, 2011, Hogan J. granted an injunction in respect of this matter. On foot of the said decision, the applicant and the respondent agreed grounds upon which leave could be granted. By order of Cooke J. on 17th October, 2011, leave was granted on consent on the following grounds:-

> (a) the respondent found that State protection and internal relocation were options open to the applicant contrary to the country of origin information relied on and considered by the respondent;
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> (b) the respondent determined that as the applicant was found to have acted in bad faith and/or had acted in a self serving manner, he is not a refugee *sur place*and/or not entitled to the protection of s. 5 of the Refugee Act 1996;
>
> (c) notwithstanding the determination of the RAT that the applicant was not of good faith in his asylum claim, the respondent failed to consider whether the applicant is facing a serious risk of his life or freedom being threatened and/or has a well founded fear of persecution on the basis of his apostasy and conversion to Christianity;
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> (d) the respondent failed to apply the test as to whether the applicant's fear was well founded based on a consideration of what would count as conversion in the eyes of a religious judge, which is the only thing that would count insofar as the danger to the applicant is concerned; and
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> (e) the respondent erred in law having regard to Article 5(1)(d) of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) in failing to consider whether a hypothetical Afghan judge is likely to disregard the applicant's engagement with Christianity on the ground that it was not simply meant and was simply opportunistic, so that the applicant would not face a real risk of suffering serious harm as defined in the 2006 Regulations.

Background

2. The applicant claims to be a national of Afghanistan who arrived in the State on 20th September, 2005, where upon he applied for asylum. He claims to be an ethnic Hazarra who in 1999 had to flee Afghanistan for Iran when the Taliban came to power.

3. The applicant claims, after working in Iran for five years, he changed his religion and became a Jehovah Witness after being employed by a Christian. After elections in Afghanistan, Iran began to deport Afghanis. He further claims that fearing for his life he fled to Turkey, Greece, Italy, France and England before entering this State.

4. The applicant admitted that he described himself as a Muslim and gave false information when he initially applied for asylum because he claims he was assisted by a fellow Afghani in completing the questionnaire and he not tell this Afghani that he had become a Christian.

5. The applicant claims that he fears for his life because of his rejection of the Muslim faith and his conversion to Christianity, which constitutes the crime of apostasy under Sharia law.

6. The applicant's asylum claim was rejected by the Refugee Appeals Tribunal (RAT) on 9th October, 2006. The RAT found against the applicant on credibility grounds. These findings were never challenged by way of judicial review.

7. The applicant applied for subsidiary protection on 23rd November, 2006, which was refused by the Minister on 11th October, 2010. A deportation order issued on 20th October, 2010. Both of these decisions are currently the subject of the challenge herein. As previously noted, an injunction was granted in respect of these proceedings by Hogan J. on 21 51 January, 2011. It is not disputed that the applicant was significantly untruthful in his interactions with the asylum process. Hogan J. in his judgment granting the injunction stated (*H.M. v. MJELR* [2010 No 1455 J.R.] (Unreported, 21st January, 2011) (incorrectly referred to as H.E.)):-

> "There is no doubt but that the applicant's engagement with the asylum system in this State has a number of distinctly unsatisfactory features."

8. For example, the applicant had originally denied that he had applied for asylum elsewhere in the EU, it later emerged that he had, in fact, applied for asylum in both Greece and the United Kingdom. This information was not obtained from the applicant but from the

EURODAC database. The applicant's conversion to Christianity was also deemed by the RAT to be a cynical ploy devised to manipulate the asylum process rather than a true conversion.

The Submissions

(A) The Applicant's Arguments
9. Ms. Sunniva McDonagh, S.C., on behalf of the applicant, argued that the applicant fears he will be persecuted if returned to Afghanistan as a result of his conversion from Islam to Christianity; a fear clearly supported by the country of origin information, which categorically stated that conversion is considered to be apostasy punishable by death under some interpretations of Sharia law.

10. The applicant criticised the respondent's interpretation of the country of origin information and stated that the Minister was clearly cherry picking the evidence. This is an approach which allegedly violated the principles of *T.S. v. Minister for Justice* [2007] IEHC 451 and *Meadows v. MJELR* [2010] IESC 3. The latter holding that when considering the issue of non-refoulement, a proportionate decision must be made and its essential rational must be clear on the face of the decision.

11. The applicant contended that there was nothing to suggest why the respondent ignored the country of origin information in favour of the applicant and instead relied on a conflicting country of origin information to his detriment.

12. It was submitted by the applicant that while it is possible in the context of a refugee application to refuse to grant a declaration on the basis of a "cynical motive", consideration pursuant to s. 5 of the Refugee Act 1996 and pursuant to the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) (the Subsidiary Protection Regulations) are a different matter. The duty imposed on the decision maker is not discharged upon a finding of bad faith and it is only properly discharged when the respondent is satisfied that no serious harm or persecution will arise.

13. In that respect, the applicant relied upon *Danian v. Homes Secretary* [2000] Imm. AR 96 (Court of Appeal, Brooke L.J.); F V. v. RAT [2009] IEHC 268 and *M v. Secretary of State* [1996] 1 WLR 507. However, the applicant did acknowledge that bad faith will inform upon credibility.

14. The applicant argued that the respondent never addressed the issue of religious conversion clearly and did not reach a clear and proportionate determination as to whether the applicant's conversion was accepted by the respondent or not. Consequently, it is alleged that the respondent did not discharge his duty to consider non-refoulement issues in a proportionate manner.

15. However, the applicant argued that the truth of the issue of his conversion was inconsequential as the task that the applicant was faced with was not determining whether the conversion was sincere but whether the fact of a conversion would be seen in the eyes of an Sharia Afghani judge as apostasy and if so whether that amounts to the objective grounds necessary to substantiate the applicant's subjective fear of persecution- see *Bastanipour v. INS* 980 2 D 1129 (7th Cir. 1992).

16. The applicant argued that by failing to consider this point, the respondent failed to comply with the requirements of s. 5 of the Refugee Act 1996 or of Article 5(1)(d) of the Subsidiary Protection Regulations.

17. The judgment of Hogan J. in granting the injunction in this matter (*H.M* above) was relied upon by the applicant when Hogan J. concluded:-

> "This is thus a variant of the problem posed in *Bastanipour*: in the present case the issue under Article 5(1)(d) whether the hypothetical Afghan judge is likely to disregard the applicant's engagement with Christianity on the ground that it was not seriously meant and that this was simply opportunistic, so that in truth there was little risk of persecution. While Article 5(1)(d) of the 2006 Regulations is certainly mentioned in the Minister's decision on subsidiary protection, the Minister does not appear to have engaged with the issue in the way I have just indicated."

(B) The Respondent's Arguments
18. Ms. Siobhan Stack, B.L., argued on behalf of the respondent that the fundamental basis for the RAT's decision was that the applicant lacked all personal credibility. She submitted that good faith informed on the refugee *sur place* decision and that the qualifications as identified by *Bastanipour* (above) did not apply. It was not believed that the applicant had genuinely converted to Christianity, and it was not believed that he would disclose his alleged conversion to anyone upon his return to Afghanistan. The respondent argued that the subsidiary protection decision was correctly decided as it relied upon the unconverted credibility findings of the RAT. No new information was put forward by the applicant in his subsidiary protection application nor were any arguments similar to that now being made in the judicial review challenge made to the Minister at the subsidiary protection stage.

19. The respondent asserted that the reliance on *Bastanipour* (above) was misconceived, not only because no application on this point had actually been made to the Minister, but because this issue had in fact been raised by the Tribunal Member, herself at the appeal stage and rejected. It was submitted that taken together with the fact that the credibility of the entire conversion was rejected, that the finding of the RAT was eminently rational and one which on the authority of the *Dbisi v. Minister for Justice* (Unreported, High Court, Cooke J., 2nd February, 2012), the Minister was obliged to apply in the contested decisions.

20. On the point that even an insincere conversion could give rise to apostasy proceedings against the applicant by a Sharia judge, the respondent argued that it defied logic. The nature of this claim was someone who engaged in a bogus conversion in the State in order to attempt to procure asylum would continue to publicly profess a faith in which they did not believe risking capital punishment when the returned to Afghanistan.

21. The respondent then argued that is noted in all the legal authorities while the overriding concern is to provide protection from "serious harm", a claim based on a contrived set of circumstances, engaged in solely for the purchase of grounding an application for protection is one likely to be lacking credibility- see *Danian v. Homes Secretary* [2000] Imm. AR 96.

22. The respondent asserted that the Subsidiary Protection Regulations specifically recognised that the authorities are entitled to take into account of the dubious nature of the asylum claim based upon a false pretext. It was submitted that neither the Regulations or indeed the qualification directive from which they derive materially alter the law as set out by the RAT in this matter.

23. The applicant made no meaningful submission to the Minister in relation to s. 5 of the Refugee Act 1996. Relying upon the authority of *Ugbo v. Minister for Justice* (Unreported, 5th March, 2010), the respondent argued that when equally perfunctory

submissions were made in that case, the court held that the obligations of the Minister to give reasons why deportation would not breach s. 5 were minimal. Hanna J. distinguishing *Meadows* by reason of "the absence of any real attempt to make out or substantiate a claim that the repatriation of the first named applicant would expose him to any of the risks referred to in s. 5".

24. The respondent further drew on the support of Irvine J. in *M v. Minister for Justice* (Unreported, 22nd March, 2011) and Clarke J. *in Kouaype v. Minister for Justice* (Unreported, 91 November, 2005) in that regard.

25. The respondent accepted that if the subsidiary protection was in fact based upon the availability of state protection, it would not stand. However, the respondent argued that the decision was based upon the complete absence of the personal credibility of the applicant and hence any state protection finding was entirely irrelevant.

Decision

(A) The "Bad Faith" Issue - Grounds (B), (C), (D) and (E)
26. As stated above, there has been no challenge to the RAT decision. Accordingly, a challenge cannot issue indirectly by way of the back door i.e. challenge via the subsidiary protection decision. What is equally clear, however, is that the subsidiary protection decision and indeed the deportation order stem from the RAT determination.

27. In other words, this is indeed an interlinking process. If consequently the foundations are proved unstable, in the judicial review sense, this will undoubtedly serve to undermine the legitimacy of the subsequent decisions.

28. In the injunction decision in this case, *H.M* (above), Hogan J. stated:-

> "As I have already indicated, both decisions rely heavily on the Tribunal's reasoning on the credibility and refugee *sur place* issues. This in itself is in principle perfectly acceptable, but where such reasoning is itself open to objection, then it will also infect the Minister's decision, even where the decision of the Tribunal has not been challenged in judicial review proceedings."

29. In *Ninga Mbi v. MJE* [2011 No. 766 J.R.] (Unreported, Cross J., 23rd March, 2012), this Court referred to the above decision of Hogan J. and reconciled it with the judgment of Cooke J. in *Dbisi v. Minister for Justice* (Unreported, High Court, 2nd February, 2012) when he stated:-

> "It follows, in the view of the Court, that where the s. 13 Report (or for that matter the decision of the Tribunal on appeal) has found that an asylum seeker's claim is implausible or lacks credibility such that the events described or the facts relied upon are considered not to have happened or not to have involved the applicant, there is no obligation on the Minister to reconsider the same facts or events and to decide whether they should be considered plausible or credible in the light of explanations given in the application for subsidiary protection; at least in the absence of new evidence, information or other basis capable of demonstrating that the original findings were vitiated by material error on the part of the decision makers."

30. In discussing the above authorities, this Court stated in *Mbi* (above):-

> "29. The Minister is not under an obligation to revisit the factual findings especially including the credibility findings of the ORAC or the RAT. The function of the court when assessing the matter for the purposes of a judicial review is to establish whether or not in this case the Minister's decision was irrational...
>
> 30. Accordingly, the passage from Hogan J. in *HM* quoted above, does not alter the established jurisprudence of this Court as pronounced by Cooke J. in *Dbisi* (above): it is for the Minister in subsidiary protection to make his decision. He must do so on the basis of S.I. 518 of 2006 always guarding against refoulement. It is only if the Minister errs in his conclusions, in the judicial review sense that he could be successfully challenged. This challenge, of course, would include a challenge on the law as reaffirmed in *Meadows.* If the credibility of the applicant has been rejected by the RAT then unless the Minister's reasoning is defective then the Minister is entitled to rely upon this conclusion and cannot be successfully challenged if he does so...
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> 32. What was being stated by Hogan J. in *H.M* is that if, for example, an applicant is from the DRC and the RAT deals with country of origin information from the Republic of Congo (Brazzaville) then the Minister is not entitled to utilise such erroneous country of origin information in his subsidiary protection decision or, as in *H.M* (above) the fact that an applicant's credibility as a convert to Christianity had been rejected does not necessarily deal with the issue of how an Afghan religious judge would be likely to treat the applicant' apparent apostasy."

31. In respect of the decisions in this case now challenged, I accept that their analysis relies heavily upon the findings of the RAT; therefore, I will assess that decision to ascertain whether these decisions should be set aside as being the fruit of a poison tree.

32. Central to the RAT decision was whether the applicant was a refugee sur place. According to Hely: "A lack of good faith; Australia's approach to 'Bootstrap' refugee claims". *Journal of Migration and Refugee Issues*, [2008] Vol 4, Issue 2 pp. 66-79 at 66:-

> "Unlike the more typical refugee, who has fled his or her home country to escape persecution, a refugee *sur place* fears persecution on the basis of events that have occurred since his or her departure. A particular controversial category of refugee *sur place* arises where the person engages in conduct abroad with the sole aim of creating a risk of persecution in his or her home country, such as by changing religion or engaging in politically provocative acts. Such refugee claims are typically said to lack 'good faith' and are sometimes referred to as 'bootstrap refugees'. Opinion worldwide has differed over whether bootstrap refugees may fall within the definition of a refugee under the Refugee Convention or, alternatively, whether there is an implied requirement of good faith on the part of the refugee claimant."

33. The Tribunal Member in the RAT gave a most detailed and reasoned decision which in most respects was exemplary. She took it upon herself, without submissions being made on the point on behalf of the applicant, to consider the case of *Bastanipour* (above) and the issue of whether despite bad faith the applicant could be considered a refugee *sur place*. In *Bastanipour,* it was held that it did not matter whether a conversion was sincere as the question to be resolved was the question of how the purported conversion would be viewed by the authorities in Iran. It seems clear, however, that the ultimate decision of the Tribunal Member in the RAT in refusing refugee status was on the basis that a person "who wilfully creates a set of circumstances simply as a means of accessing the benefits of the Refugee Convention cannot be said to be a refugee for the purposes of the Refugee Convention".

34. Book L.J. in *Danian v. Homes Secretary* (above) stated:-

> "I do not accept the Tribunal's conclusion that a refugee *sur place* who has acted in bad faith falls out with the Geneva Convention and can be deported to his home country notwithstanding that he has a genuine and well-founded fear of persecution for a Convention reason and there is a real risk that such persecution may take place. Although his credibility is likely to be low and his claim must be rigorously scrutinised, he is still entitled to the protection of the Convention, and this country is not entitled to disregard the provisions of the Convention by which it is bound, if it should turn out that he does indeed qualify for protection against refoulement at the time his application is considered."

35. This Court accepts that while an applicant may have contrived to stage his "conversion" and be the architect of his own misfortune, it does not necessarily detract from the fact that he may indeed be misfortunate. The essential question remains - whether the applicant had a well founded fear of persecution, even if he had acted in bad faith. I accordingly adopt the reasoning of Hogan J. regarding this matter set out in the injunction application herein (*H.M.*, above) at paras. 15-29:-

> "The key point remains, however, whether the applicant has a well founded fear."

36. The decision of the RAT was not challenged so while this Court might have issue with its findings, I can only view the decision in the context of the present challenge. The question to be answered is what role the "good faith" finding played in the subsequent decisions herein.

37. Section 5 of the Refugee Act 1996, prohibits absolutely the respondent from refouling a person to a country:-

> "where, in the opinion of the Minister, the life or freedom of that person would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion."

38. Likewise, by virtue of the Subsidiary Protection Regulations, the respondent cannot send a person to a country where they are likely to suffer serious harm. This Court readily accepts that neither application can automatically be defeated by a cynical motive. In fact, the subsidiary protection decision maker might well consider such a motive as a reason to grant protection as Article 5(1)(d) of the Regulations states:-

> "whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country."

39. In that light, I believe that Hogan J. was correct when he relied upon *Bastanipour v. INS* (above), the question to be considered is not whether the applicant converted in good faith but whether this conversion will be viewed from the eyes of an Afghani religious judge and if so what would count as conversion in their eyes.

40. Before engaging with this question, I would stress that I do not believe that the issue rests here. There is a further consideration which serves to frame the question in two parts: (a) the likelihood of the applicant's activities being discovered; and (b) if the applicant's activities would be discovered whether the hypothetical Afghan judge is likely to disregard the applicant's engagement with the Christianity on the ground that it was not seriously meant.

41. I consider "discovery", an essential element of the test as without it the applicant would not be likely to suffered "serious harm" or "persecution". This Court would consider that while it is all very well to hypothesise over what an imaginary Sharia judge would do when faced with a convert but there must be a realistic possibility demonstrated that this test will ever be applied and that the applicant will ever come under the jurisdiction of this hypothetical Sharia judge.

42. In *Bastanipour* (above), the discovery of the applicant's conversion was indeed a possibility, if not an inevitability. The applicant's brother was already known to the authorities for his political activities. Unlike the protection of anonymity contained in the Refugee Act 1996, the US INS does not operate in a confidential manner. Furthermore, the applicant's conversion in *Bastanipour* was believed to be genuine and therefore as a real convert, he was likely to practice his religion.

43. In relation to the findings of the RAT with regards to the "conversion" of the applicant which were accepted by the Minister, I do not, with respect to Hogan J., believe there to be any conflict, I do not think there is any real distinction to be made between a "conversion for opportunistic reasons" and a person who "simply pretends to convert but has not in fact done so".

44. The Tribunal Member was quite clear that she believed that the applicant had the trappings of conversion but that this was not sincere. The applicant attended religious services and claims that he was baptised. The Tribunal Member held, based upon the undoubted self serving nature of the applicant's dealings with the refugee process, that the applicant's sincerity as to his conversion simply could not be accepted.

45. There is no doubt that the RAT was entitled to come to that conclusion and the Minister was entitled if not obliged to follow the same credibility findings.

46. It is not the function of this Court to moralise but merely to ensure that the State had discharged its obligations. It is accepted that the conversion was not a sincere one and that the applicant clearly engaged with the process and adapted the trappings of conversion so what must be addressed is the consequences that flow from this action.

47. This is where I consider that the issue of the "convenient convert" comes to the floor. A true religious convert would be easy to detect as an individual who so strongly believed in a matter that they had changed their religion in the face of possible apostasy allegations would be unlikely to conceal their new found faith and indeed, it would be entirely wrong for this State to expect a genuine convert to conceal their faith. If it is unreasonable, as it is, to insist that a homosexual should conceal their practices and identity so as not to run foul of a state that persecutes such activities, so much more so is it unreasonable and wrong to suppose that a sincere religious convert should be expected to hide their beliefs should they return to a hostile environment so as to avoid persecution.

48. A genuine convert to Christianity would almost certainly be classified as a refugee *sur place.* However, the comparator is useful when contrasting the situation with that of an opportunistic converter where the possible discovery becomes far more remote.

49. How indeed is it argued that the applicant's "conversion" would ever come to the attention of anyone in Afghanistan. If the

decision that the applicant's "conversion" is not genuine, cannot be challenged, it is beyond credibility that such a person would voluntarily draw attention to anyone in Afghanistan that he had supposedly converted to Christianity while out of that country.

50. Ms. McDonagh, S.C., submitted and I accept that her instructions are clear that the applicant is genuine in his conversion. It remains, however, that the applicant has at no stage up until these proceedings advanced the case, even as an alternative proposition, that if it is held that his "conversion" is not genuine that he still may be in some way in danger. In these matters, it is not for the court to speculate or to infer but it is for the applicant to discount. The applicant has never attempted to discount or to provide any information as to why he, as someone who has been found not to be genuine, should run foul of any religious court in Afghanistan.

51. The applicant did indicate that some Afghanis in Ireland has shunned him but he has not made the case that any information as to his religious activities in this State would or could be utilised in Afghanistan.

52. Given the total silence of the applicant, it must stated that there is no evidence whatsoever that this applicant if returned to Afghanistan would come to the attention of anyone for having pretended to convert to Christianity in Ireland for the purpose of creating a viable asylum application. Therefore, without any possibility of discovery, I do not consider it necessary to address the second limb of the test i.e. the hypothetical reaction of a hypothetical Sharia Afghani judge.

53. It is in this context that I now review the present decision under challenge. The applicant in both applications essentially repeated the unsuccessful asylum application. The case of *Bastanipour* (above) so heavily relied upon by the applicant was never put to the Minister by him although it was considered by the Tribunal Member in the RAT without prompt from the applicant. In addition, as already stated, the applicant never sought to demonstrate how his "conversion" will ever be discovered. Indeed, nothing in these applications were crafted to the specific situation of the applicant i.e. an individual who was found to have purportedly converted to Christianity for the cynical purpose of manipulating the asylum process but who now, in these proceedings claims he faced a real persecution or serious harm as a result.

54. Indeed, what type of analysis would the Minister be expected to undertake in these underwhelming circumstances. The court would consider in the light of *Dbisi* (above) that any analysis would be extremely limited. In applying the *Dbisi* principles to this case, it follows that, when the application for subsidiary protection was made, it was encumbent on the applicant to point the Minister to new facts or circumstances giving rise to an alleged threat of serious harm, to point to some material error of fact that would vitiate the entire decision of the RAT or, at a minimum to provide new evidence which could form a basis for findings of fact by the Minister which differed from those of the RAT. It is abundantly clear that the applicant did not do any of these things.

55. Similarly, regarding the s. 5 decision, the Minister was well within his purview to give this limited consideration, in the light of a mere one line submission supported by bland legal terminology.

56. Irvine J. in *M v. Minister for Justice* (Unreported, High Court, 22nd March, 2011) concluded at para. 25:-

> "the Minister must consider the case made to him and form an opinion but to the extent that the case made has already been determined by the Commissioner and the Tribunal, the obligation of the Minister to engage with it is a limited one."

57. Irvine J. reasoned and I agree that this position did not conflict with *Meadows*.

58. As to the issue as to whether the "good faith" finding of the RAT infected the subsequent decisions of the Minister and rendered them inoperable, I hold this is not the case. It seems to me that while "good faith/bad faith" informed upon the Minister's decision, in the end, I believe that it only fashioned part of the credibility consideration i.e. that the disingenuous conversion was only a part of the story.

59. I consider that a "bootstrap" refugee inevitably faces significant credibility problems. This is hardly surprising, as the testimony of a person who is manifestly self engineered circumstances to attract persecutory wrath of his or her home country is likely to met with considerable scepticism. In this regard, I draw on the decision of *F.V. v. RAT* [2009] IEHC 268 where Irvine J. stated at p. 14:-

> "The making of a self-serving, unfounded initial claim must, of course, not exclude any person from the protection of the Refugee Act 1996, but it seems reasonable that it be taken into account and accorded some weight by the decision-makers when credibility is being assessed."

(B) State Protection- Ground (A)

60. The decision maker found that state protection was available to the plaintiff in Afghanistan. It is clear from the COI that whatever about persecution by state authorities in Afghanistan, there are significant dangers to any apostate from Islam of being persecuted by Sharia law judges and that the state authorities cannot, or do not protect effectively persons from such prosecution. It is accepted, by the respondent that if state protection was the basis of the decision that the decision cannot stand, the court does not consider that it is at all central to the decision. When considering state protection what must be recalled is the purpose behind it, an applicant must be in need of state protection otherwise its presence or absence is irrelevant.

61. The alleged danger to the applicant, hence the requirement of state protection, stemmed from his supposed religious conversion. The court holds, as already outlined, that this convenient conversion was not genuine and that there is no basis to suggest and certainly the applicant has not advanced any such basis that it will be discovered by anyone or that the applicant will ever require state protection.

Conclusions

62. The hypothetical Afghani judge will not have any function or role herein as there is no basis for concluding that the applicant's case will ever be brought to his attention. The applicant's fear is either misplaced or dishonestly propagated and cannot amount to something that would result in his requiring state protection.

63. For all the above reasons, I dismiss the applicant's claims.