Neutral Citation Number: [2010] IEHC 256

THE HIGH COURT

JUDICIAL REVIEW

2008 977 JR

BETWEEN

G.D. AND M.D. AND 5 MINOR CHILDREN

APPLICANTS

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

JUDGMENT of Mr. Justice Cooke delivered the 2nd day of July, 2010.

1. The first and second named applicants ("the parents") are husband and wife and the minor applicants are their children. The seventh named applicant and youngest child was born in the State on 6th June, 2006, after the family had arrived here in May, 2004. The other applicants and their parents are natives of Serbia.

2. The parents claim to be Serbian nationals of Ashkali ethnicity who say that they come from the Presevo Valley in Southern Serbia and speak a dialect of the Albanian language. As a minority ethnic group in Serbia the Ashkali gypsies are distinguishable from the Roma gypsy minority both by their language (which is Albanian) and their religion (they are Catholics) whereas the majority of Roma are Muslims and speak Romani rather than Albanian. The Serbian majority population is, of course, Orthodox Christian.

3. Following their arrival each parent made a separate application for asylum on 8th and 9th May, 2004, respectively and the four daughters were included on the application made by the mother. (Their son, the 7th named applicant is currently the subject of a separate pending asylum application and is not included in the three decisions challenged in this proceeding.)

4. Their claim to refugee status was based on their account of forced flight from Serbia in order to avoid persecution as members of the minority Ashkali group. The father who made a good living as a dealer in second-hand clothes, livestock and other goods told of being ambushed, beaten and having his horses and his cart and goods stolen. His father and brother were, he says, beaten, killed and thrown into a river. The wife claimed she had been attacked and violently raped. They claim they were constantly mocked and that the children had had stones thrown at them by other children.

5. The parents were interviewed under s. 11 of the 1996 Act and reports dated 16th February, 2005, under s. 13 of that Act were made on their claims by different authorised officers of the Commissioner. In the case of the father the officer came to the conclusion that a case for international protection had not been made out because the attacks and robberies described appeared to be those of opportunistic criminals and not of any ethnic or racist origin. In the case of the mother the officer noted that she had no identity documents and had never registered the births of her daughters. The officer found that the mother was unable to identify those who had raped her and said only that they spoke Serbian. She considered that rape is a crime in all countries and the applicant had not therefore established persecution for a Convention reason.

6. Appeals against the two reports were heard together and a single decision was given by the Tribunal member dated 1st December, 2005, which refused the appeals and affirmed the negative recommendation of the Refugee Applications Commissioner. Under the heading "Evidence at the Hearing" the Tribunal member sets out over seven pages a detailed summary of the evidence given by each of the parents and includes a large number of comments on particular parts of that evidence and on answers to questions put to the applicants which she says give rise to discrepancies or queries.

7. The father had been questioned in detail about the incidents of attacks and robberies which he claimed. One particular issue is highlighted arising from the alleged killing of his father and brother and the dumping of their bodies in a river. At the hearing it appears that the applicants produced an Albanian newspaper which was said to contain a report of that incident and the applicant had been questioned in detail as to how he had managed to obtain this newspaper shortly before the hearing.

8. In the analysis of the claims the Tribunal member refers to country of origin information which had been consulted in relation to the conditions prevailing in Serbia with particular reference to the treatment of minorities. She quotes in particular information in relation to the position of 100,000 ethnic Albanians residing in the Presevo Valley from which the applicants claim to come. She then says:

> "As pointed out by the appellant's legal representative while there is a dearth of information in relation to the treatment of Ashkali in Serbia on the other hand there is no country of origin information to contradict their account. It is urged upon me that I must therefore rely on the evidence provided by the appellants. It is therefore unfortunate for the appellants that in this case I have found their evidence to be unreliable."

9. The Tribunal member points to the many discrepancies in the evidence noted earlier in the decision and to the fact that the applicants had provided no identity or documentation. She finds that the applicants did not fit the profile of many disadvantaged ethnic minorities in that they had obviously been free to trade and appeared to have made a reasonable living from their business activities. The first named applicant had given evidence that he would generally carry a large sum of money on him in order to trade in second-hand clothes, livestock and goods. She refers to the production of the newspaper report and to the fact that the accounts given by the first and second-named applicants as to when they received it were different. She finds "This article is self-serving. I have doubts about the authenticity of this document and indeed its provenance given the discrepancies between the two appellants' accounts." She concludes:-

> "Where the facts are not sufficiently clear from the record, as is the case here, an assessment of credibility is

indispensable. In this case I find that neither of the appellants are credible as their accounts contradict each other in a number of material respects. … I am not satisfied from the evidence that the appellants are in fact members of the Ashkali community or indeed that they suffered the persecution they claimed. In the absence of COI to support their claims I can only rely upon their own evidence which I find to be unreliable for the reasons outlined above."

10. The decision of the Tribunal rested therefore on a very explicit finding of lack of credibility in the substantive facts upon which the applicants claim was based namely their membership of the Ashkali community and the particular persecution they claim to have suffered and which gave rise to their departure from Serbia.

11. Following that decision the applicants were notified of the Minister's intention to propose to deport them and in response representations against a deportation order were made on their behalf and applications were made for subsidiary protection under the European Communities (Eligibility for Protection) Regulations 2006 which had then come into force.

12. In the case of the father a determination was made to refuse subsidiary protection and sent to him by letter of 1st October, 2008, enclosing the memorandum of analysis of the application as signed by an executive officer of the department on 18th September, 2008. In the cases of the mother and four children a similar determination was made and also sent by letter of the same date enclosing a memorandum signed off by the same executive officer dated 24th September, 2008.

13. On 30th October, 2008, the Minister made six separate deportation orders in respect of each of the parents and four children which were communicated to them by letter of 12th November, 2008. This enclosed the memorandum setting out the analysis of the representations made and the considerations required to be taken into account under s. 3 of the Immigration Act 1999 which constitute, in effect, the Minister's reasons for deciding to make the deportation orders. (The three decisions namely, the two refusals of subsidiary protection and the decision to make the deportation orders are referred to as the "Contested Decisions".)

14. It is against the Contested Decisions that the present application is brought for leave to seek judicial review including orders of *certiorari* to quash those decisions. The present proceeding was actually commenced in a different context and for a different purpose. As initiated in August 2008 it sought an order of *mandamus* to compel the Minister to make decisions on the applications for leave to remain. Following the making of the Contested Decisions an application was brought to amend the statement of grounds so as to include the reliefs now sought against those decisions. The respondent has consented to the amendments in question and, as the motion to amend was brought within fourteen days of the communication of the decisions in question, the Court is satisfied that the prescription period laid down by s. 5 of the Illegal Immigrants (Trafficking) Act 2000 is met.

15. A total of 22 grounds were proposed to be relied upon in s. 5 of the Statement of Grounds but numbers (i) – (v) relate to the original claim for *mandamus* and are accordingly redundant. Of the remaining grounds (vi) to (xxii) a number have not been proceeded with and several others are, in the view of the Court, lacking in sufficient particularity by reference to the content of the Contested Decisions to constitute the basis for the grant of leave. On that basis the Court finds it unnecessary to consider the grounds proposed to be advanced at paras. (vii), (xiii), (xiv), (xv), (xvi), (xxii) and the first of the two grounds mistakenly numbered (xxi). Insofar as concerns the determination of the application for subsidiary protection, the remaining grounds appear to rely on the following propositions:

- A failure to determine the applications of the minor applicants;
- A failure to consider whether the applicants had been subject to previous persecution or serious harm contrary to Regulation 5 (2) of the Regulations;
- A failure to comply with Regulation 5 (1) (c) by omitting to take account of personal circumstances;
- The opinion that the applicant's life or freedom would not be threatened if expelled from the State is irrational and unreasonable.

16. There are then further grounds which appear to apply to all of the Contested Decisions:-

- A failure to evaluate and consider country of origin information submitted by the applicants;
- Failure to consider whether the determinations comply with the obligations under s. 3 (1) of the ECHR;
- Failure to consider and evaluate evidence that the Ashkali minority are subject to prejudice and discrimination for which the Serbian state is unwilling or unable to protect them;
- Error of fact and law in applying evidence in respect of the treatment of Roma when the applicants are not members of that ethnic group;
- The conclusion that the seventh named applicant is able to acquire Serbian nationality is irrational and unreasonable;
- The opinion that the applicant's life or freedom would not be threatened if they are expelled from the State is irrational and unreasonable.

17. While a large number of grounds have been formulated in this way counsel for the applicant helpfully described the central thrust of the case to be made as based upon two broad submissions:-

- The position of the applicant children had not been properly considered in the two decisions;
- The medical evidence in relation to the parents had not been properly considered.

Minor Applicants – Subsidiary Protection

18. So far as concerns the position of the minor applicants, it is true that the texts of the Contested Decisions contain very little by way of separate mention of their distinct positions. It is argued on their behalf (in the written submissions,) that "the minor applicants have been omitted from the consideration in making" the decision and that while both parents and children are listed in the decisions "there is no individual consideration whatsoever of the situation and the risk of serious harm" to the children in Serbia.

19. There is no doubt, of course, as is clear from the text of the three memoranda setting out the basis for the decisions that the children were validly included in each case and that the writers of the memoranda were conscious that this was so. Apart from the mention of the stone-throwing incidents, however, no particular facts are examined in relation to the situations of the minor applicants themselves. In the Court's judgment, however, this does not in any sense invalidate the decisions made on subsidiary protection. No distinct case was made on their behalf as compared with the case made by the parents for themselves. The "serious harm" claimed for them is precisely the same serious harm as was claimed by the parents based upon the attacks, robberies and other alleged incidents of serious harm which they described. Insofar as this is the basis put forward for a risk of serious harm if returned to that country, it is a case made for the family as a whole. It is not suggested that the children would face any other or different form of risk of serious harm as compared with that which the parents claim for the family as members of the Ashkali minority group. That particular basis of the application for protection has been considered, examined and rejected and, that being so, there was no obligation upon the Minister to consider the positions of the children in any other light as no basis had been laid for such a consideration in the application.

Minor Applicants - Deportation
20. So far as concerns the deportation decision, the proposition that the position of the children has been omitted from consideration is clearly misconceived. Throughout the decision repeated references are made to the children as part of the family. The limited information furnished to the Minister in the representations relating to the children, their medical condition, schooling, etc. is recorded. For example, the writer notes that the second oldest girl, the fourth named applicant, who was six years old on arrival in the State has "a squint which requires treatment with patching and spectacles" and that this need would continue until 2008. The positions of the children are again considered under the headings "Consideration of the Irish born Children" and "Consideration of the Family". It is noted that the youngest child (who is not covered by the Contested Decisions) was born in the State after the arrival of the family. It is noted that the others are at school in the State. All members of the family are entitled to re-enter Serbia and reside there and the author reaches the conclusion that there is no impediment to their living together there as a family as they had done previously. They may not wish to return but, as a matter of law, there exists no obstacle to their doing so.

21. Having regard to the cases made in the applications and representations and to the content of the three Contested Decisions, the Court is satisfied that no arguable ground could be raised as to the existence of any errors of fact or law in the three contested decisions so far as concerns the consideration given to the minor applicants.

The Medical Evidence
22. The second broad theme of the submissions sought to invoke the medical evidence put forward in respect of the parents individually and was relied upon indiscriminately both in respect of the decisions on subsidiary protection and in respect of the decision to deport. The use thus made of the medical evidence was, however, somewhat ambiguous and it was unclear whether it was being relied upon as constituting proof of the risk of serious harm or of a threat to the life and freedom of those applicants for the purposes of s. 5 of the 1996 Act as opposed to being relied upon either additionally or in the alternative as a basis for establishing the credibility of the applicants in relation to their account of the mistreatment they allegedly suffered and which had led to their departure.

23. In the case of the father, he is said to suffer from a heart condition, to have mental health problems and to have been diagnosed with diabetes. A report of Dr. O'Sullivan of the Centre for the Care of Survivors of Torture dated 18th August, 2005, described him as being overweight and unfit. He gives the following conclusion:

> "A physical examination revealed a depressed area centrally on his forehead which would be consistent with the blow from a gun butt that he reports having received … and nil else to note. On mental state assessment [he] appears to have been traumatised by his experiences in Serbia and to be in a post-traumatic state, which is manifesting itself as depression."

The mother is said to suffer from severe depression resulting from psychic trauma. Reliance is placed on a report of 16th December, 2004, from a Dr. O'Reilly Carroll, a psychotherapist of the Centre for the Care of Survivors of Torture. She says the mother "presented with a history of trauma in (Serbia) and severe back pain resulting in abnormal posture. The client's physical and somatic problems were all consistent with a history of trauma …" A further report dated 12th February, 2007, from Dr. Feeney, Consultant Psychiatrist, also records the account given by the second named applicant of the mistreatment in Serbia and describes the regular treatment which she has received at the psychiatric unit in Roscommon County Hospital and says that she will require at least four to six months further treatment. Dr. Feeney observes:

> "Her treatment is slow because we have to use an interpreter and that tends to slow the process to a degree. She remains quite low and there has only been slight improvement since commencement of the treatment but it is still quite early days with her treatment. It would be advisable for her to remain in treatment here for the present because it would be quite difficult for her to develop a relationship and to go through all the details of her trauma again with a new team."

Medical Evidence – Subsidiary Protection
24. Insofar as the medical evidence adduced on behalf of the father is sought to be relied upon as against the refusal of subsidiary protection, the Court considers that the argument raised is clearly unfounded. It must be borne in mind that the central reason for refusing subsidiary protection in the case of the father was the same as that for the rejection by the Tribunal of the claim to refugee status namely, the lack of credibility in the account given of the attacks, robberies, etc. in Serbia. In effect, none of the three decision makers accepted that the father had established a threat to "a civilian's life or person by reason of indiscriminate violence in situations of … internal armed conflict" nor an exposure to a risk of inhuman or degrading treatment in Serbia. In the subsidiary protection decision, the writer gives the conclusion:

> "The applicant has asserted an entitlement to subsidiary protection as a result of his medical condition on the basis that his return to Serbia would subject him to inhuman or degrading treatment as the standard in medical treatment that would be available to him in Serbia is of a lower standard to that which he is currently receiving in this State…. It is not accepted that the applicant is entitled to subsidiary protection on this basis."

This conclusion is submitted to be wrong. It is not the absence of medical treatment that is argued to form the basis of the complaint but the way in which the Ashkali minority is treated.

25. In other words, the content of Dr. O'Sullivan's report is not relied upon as medical evidence *per se* but as corroborating his original account of having been attacked and beaten and also having been subjected to serious harm in the past. It should be noted, however, that all Dr. O'Sullivan says is that there is an area of depression in the centre of his forehead "which would be consistent with the blow from a gun butt". That does not constitute proof that the applicant was hit with a gun butt much less that the gun

was being wielded by an "actor of serious harm" within the terms of Regulation 2 of the 2006 Regulations. In relation to this submission and other submissions in the case, Counsel for the applicants referred on a number of occasions to the contents of the medical report constituting "uncontradicted evidence" of the facts asserted by them which the Minister was under an obligation to accept. The medical report is "evidence" but only of the doctor's opinion; it does not constitute proof of the occurrence of the original events described to the doctor by the applicant. The doctor makes an observation upon a statement made to him by his patient. He expresses no stronger opinion than that the depression is consistent with a blow to the forehead. In this regard the opinion expressed is materially different from one which, for example, describes an injury or scar as highly consistent with a particular form of torture because of the nature of the scar and its location and the impossibility of its having been self-inflicted. There was, accordingly, nothing in the content of this medical report which would constitute compelling evidence which the Minister was bound to accept and act upon to the effect that the father had indeed suffered past "serious harm" for the purposes of the Regulations. No stateable case to that effect is made out.

26. Similarly, the reliance placed upon the medical reports in respect of the mother is, in the Court's judgment, misconceived and raises no arguable case that the refusal of subsidiary protection in her case on that basis was in any sense flawed. The thrust of the medical evidence is that the mother has mental health problems, suffers from depression, and needs treatment. It is well settled law that a mere discrepancy in the quality of available medical treatment for particular conditions does not of itself constitute a ground either for refugee status under the Convention and the 1996 Act or for subsidiary protection under the Regulations. Here again, however, the medical evidence is claimed not to be relied upon to that effect but as a basis for demonstrating that the Minister failed to take account of its corroborative value on the issue of credibility. Contrary to the submission made, the Court is satisfied that there is nothing in the medical evidence on the mother's behalf either which could be said to lend credibility to the account given of mistreatment in Serbia having regard to the reasons why that account was rejected both in the subsidiary protection decision and during the asylum process. It must be borne in mind that eligibility for subsidiary protection is dependent upon it being established that the return of an applicant to the country of origin would give rise to a real risk that the applicant would be exposed to torture, inhuman or degrading treatment or punishment at the hands of some actor of serious harm. Where it is not accepted that, for the purposes of Regulation 5 (2) an applicant has already been subject to persecution or serious harm, such a risk of future serious harm must be established by reference to the existence of some actual basis in fact. In this case the future risk to the family is the same as that relied upon by reference to the alleged past persecution or serious harm namely the way in which the members of the Ashkali minority inevitably suffer in Serbia. That submission has been rejected by reference, primarily, to country of origin information as to the improving circumstances in that country including, notably, specific material as to the peaceful situation in the Presevo Valley. That appraisal is not in any way dependent upon the medical conditions of the first and second named applicants.

Medical Evidence: Deportation

27. It remains then to consider the arguments raised in respect of the decision to make the deportation orders.

In the memorandum supporting the deportation decision the medical evidence is dealt with as follows. Under the heading of "Humanitarian Considerations" (s. 3 (6) (h) of the 1999 Act,) it is noted that:

> (1) The mother is receiving treatment for psychiatric difficulties according to the letter from the Centre for the Care of Survivors of Torture and the Health Service Executive;
>
> (2) The father has diabetes, a heart condition and mental health problems; and
>
> (3) The eldest daughter has a continuing need for treatment for the squint.

28. Under the heading "Private Life" (Article 8 ECHR) the same medical condition of the father is noted including the report from Dr. O'Sullivan in relation to the depression mark on his forehead. In relation to the mother the above assessments of Dr. Feeney and Dr. O'Reilly Carroll are again quoted as is the letter from the Medical Eye Centre, Roscommon, in relation to the eye condition of the eldest daughter. The memorandum concludes that appropriate treatment for all of these conditions would be available to the applicants in Serbia. Having regard to that information and to the law as to the approach to be adopted to the assessment of divergent rights of the individual in the State in respect of Article 8, the memorandum concludes as follows:

> "Having considered all of these facts, it is not accepted that the deportation of the applicants, and in particular the fact that the conditions and treatment available to them in Serbia would be less favourable than those available to them in Ireland, would have consequences of such gravity as to engage rights under Article 8 (1). As a result the decision to deport the applicants in pursuance of lawful immigration control, does not constitute a breach of the right to respect for the applicant's private life under Article 8."

29. Consideration is also given to the medical evidence in the context of Article 3 ECHR. Again the report of Dr. O'Sullivan is quoted and considered in relation to the father as is the opinion of Dr. Feeney in relation to the mother. It is again concluded that appropriate treatment would be available in Serbia. Excerpts are quoted from the case law of the Court of Human Rights to the effect that no "medical care" obligation is imposed upon the contracting states by the Convention. The memorandum then concludes:

> "The above excerpts make it clear that Article 3 of the European Convention on Human Rights does not impose any obligation of contracting states to provide medical care. Having considered all of the above factors, it is not accepted that there are any exceptional circumstances in this case such that there is a sufficiently real risk that deporting the applicants to Serbia would be a breach of Article 3. The fact that the circumstances of the applicant in Serbia may be less favourable than those enjoyed by the applicants in Ireland does not in itself exist as exceptional circumstances."

30. It is abundantly clear therefore that the medical evidence now relied upon was not only known to but was considered by the Minister's officers in formulating their analysis of the representations in the context of the deportation decision. In the Court's judgment and for the reasons already explained in the context of the decisions on subsidiary protection, nothing in the medical evidence raises any substantial ground for considering that the basis of the decision to make the deportation orders was in any sense flawed. As already indicated, a discrepancy in the quality of medical treatment as between the State and a country of origin is not a ground for impugning a deportation order. Save in exceptional circumstances inferior medical treatment in a country of origin does not of itself amount to serious harm or a factor which attracts the prohibition on refoulement. Insofar as the medical evidence is relied upon in this case to overcome the disbelief of the factual basis of the applicant's claims to be refugees or to be at risk of serious harm if returned, the Court is satisfied that the medical opinions expressed in relation to the conditions of the father and mother fall far short of what would be required to put the Minister on re-enquiry as to whether they had suffered past persecution much less to compel him to reach a different decision on that issue

31. It is, finally, necessary to deal with some ancillary arguments raised in remaining grounds and in the course of oral submissions.

32. It was argued, for example, that the decisions to refuse subsidiary protection infringe Regulation 5 (1) (c) in that there was a failure to consider documentation submitted by way of country of origin information as to the conditions the applicants would face in Serbia. A total of eighteen documentary items were annexed to the applications for subsidiary protection of which some ten or eleven comprise extracts from newspaper articles, reports by international organisations or by support associations with an interest in conditions in Serbia relating to the treatment of minority communities and the protection of human rights.

33. Some of these undoubtedly contain material which tends to show that, at least in 2004, minority communities including the Ashkali faced acute difficulties. For example, a report from an entity called "Humanitarian Law Centre, Belgrade" describes attacks by mobs on settlements inhabited by Roma and Ashkali groups in March, 2004. Another untitled extract contains the passage:

> "The situation of the so-called small minority communities was particularly problematic. Due to their small size, such communities were unable to establish national councils or promote their interests. Not only were they subjected to assimilation but also, more often than not, they were exposed to violence. This particularly refers to an Ashkali who are usually confused with Roma and whose mother tongue resembles the Albanian language."

34. As indicated above, the applications for subsidiary protection enclosing that material were made at the end of July, 2007. The decisions on the application were given at the end of September, 2008. In the decisions the assessment of facts and circumstances related to the possible risk of serious harm in Serbia devote some seven pages to the consideration of the prevailing circumstances in that country as derived from a large number of extracts from country of origin documentation most of it dating from 2007 and 2008. The material is, in other words, more up to date than that submitted with the applications. Furthermore, it is clear that the sources thus consulted tend to be from authoritative, governmental and national or international agencies or other bodies including, for example, a European Commission Report on Serbia in 2007; advice from the British Foreign and Commonwealth Office of September 2008; the U.S. Dept. of State Country Report on Serbia and the Council of Europe Commission against Racism and Intolerance. It is, in the Court's view, of particular significance that this more recent information includes material of more direct relevance to the applicant's situation than any of that enclosed in the original application. A report dated 16th October, 2007 of the International Crisis Group (ICG), Serbia: *Maintaining Peace in the Presevo Valley* is quoted as follows:

> "Southern Serbia's Albania – majority Presevo Valley is one of the rare conflict resolution success stories in the former Yugoslavia. Outwardly, it is increasingly normal, with no major incidents in over three years. Yet, tensions linger: massive unemployment is still the single largest problem but the shadow of Kosovo's future status darkens the political landscape."

The same report is later quoted as follows:

> "Travelling to the Presevo Valley today, one cannot help but observe that, outwardly, there have been remarkable changes since the insurgency ended. A visitor with no knowledge of that period would be hard pressed to find signs of anything out of the ordinary. The anti-tank barriers and police check points are gone. Substantial infrastructure and investment seemed to have paid off: the formerly deeply potholed roads have been repaved even away from the main urban areas. The police and army presence, though still significant, is far less obtrusive. New construction is everywhere: private homes, gas pumps, hotels, restaurants and even the occasional business or shop. The valley seems at peace, its towns and villages vital, its markets lively. With each passing year there is an increased feeling of security and normalcy."

The memorandum then comments:

> "The country of origin information above would suggest that the situation in the Presevo Valley is calm."

It is on that basis, therefore, that in the father's case two conclusions are given:

> "Having considered the country of origin information, these factors, (sic) I find that the applicant has not shown grounds for believing that he would face a real risk of suffering torture or inhuman or degrading treatment or punishment of an applicant in the country of origin and serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict if returned to Serbia."
>
> "I do not find any evidence that the applicant has suffered treatment in his country of origin that would come with the definition of serious harm as defined in Regulation 2 (1). In this regard there are good reasons for believing that the serious harm the applicant allegedly suffered will not be repeated if he is returned to Serbia."

(Conclusions in similar terms are given in the mother's case also.)

35. It is true that the writer of the memorandum does not comment directly upon or seek to contradict passages in the documentation submitted with the application. That, however, does not vitiate the validity of the basis upon which the decision is made and the analysis expressed. The memorandum makes it clear that the documents submitted with the application and listed as "Tab 1" to the memorandum have been examined and considered. Clearly, however, the writer has consulted more up to date and more authoritative documentation which is directly relevant to the circumstances in the applicant's own area of origin within Serbia. That information has been preferred and has been relied upon. As such, the conclusion reached could not be said to be irrational or unreasonable. No stateable ground could, accordingly, be said to be raised upon the basis of country of origin information and its assessment to challenge the decisions on subsidiary protection. Exactly the same approach and the same information has been relied upon in the memorandum supporting the deportation orders and it follows that no substantial ground could therefore be said to be raised under this heading.

36. Criticism is also made of the fact that in the asylum process the decision makers had noted a dearth of available information in relation to the treatment of the Ashkali minority in Serbia and had looked at information on the treatment of the Roma minority when the Ashkali are a distinct group and face distinct threats. It is nevertheless clear that the decision makers were aware of the fact that the Ashkali were part of the Albanian speaking minority in Serbia and were of the Catholic religion. For the Tribunal member the issue was not so much the reality of any distinct mistreatment of that group but her difficulty in accepting as credible the applicants' claim that they were in fact members of it. The criticism cannot in any event give rise to any stateable ground for challenge to the Contested Decisions because the rejection of any risk to the applicants of serious harm was based as already pointed out above, upon up to date information as to the absence of violence and the restoration of order in the Presevo Valley were they had lived and which was inhabited by an Albanian ethnic majority.

37. For all of these reasons the Court is satisfied that no case has been made out for the grant of leave in respect of any of the contested decisions. Leave is accordingly refused.