Neutral Citation: [2013] IEHC 482

THE HIGH COURT

JUDICIAL REVIEW

Record No. 2009 / 987 J.R.

Between:

A.T. [GEORGIA]

APPLICANT

-AND-

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

RESPONDENTS

-AND-

HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT OF MS JUSTICE M. H. CLARK, delivered on the 30th day of October 2013.

1. The applicant is a Georgian national who came to Ireland in search of asylum in December 2007. His relatively uncomplicated claim was based on the assertion that as an ethnic Georgian born and reared in South Ossetia he was unsafe either in South Ossetia or in Georgia. At his appeal he added a new dimension to his claim saying that in addition to his fear of Ossetians in or near South Ossetia and of Georgians if he relocated to Tbilisi, he feared the Georgian government as he had been engaged in security duties for the former president.

2. The Commissioner and the Tribunal both made negative recommendations to the Minister. The applicant seeks an order of certiorari quashing the decision of the Tribunal on the basis that the Tribunal Member failed to give any or adequate reasons for his decision, failed to make clear findings on core aspects of his claim, failed to properly consider documents furnished to him and finally, failed to properly consider the internal relocation alternative.

Background

3. The applicant's claim was that he was born in Tskhinvali, South Ossetia where he lived with his wife and two sons in what became the Ossetian controlled part of the city. His parents and paternal grandmother lived in Z Settlement and his maternal grandmother lived in B, a village in K. [It was never clarified whether these villages are in Georgian controlled areas of the breakaway South Ossetia or in Georgia but close to the conflict area.] His life encompassed the two cities of Tskhinvali and Tbilisi. His formal education took place when Georgia was part of the Soviet Union and included a period in Tbilisi where he lived from his teens until he was twenty five.[1] He attended the University of Tskhinvali for four years obtaining a diploma in jurisprudence. He ran a shop in Tskhinvali from 1999 to 2006. His problems arose when Tskhinvali came to be controlled by South Ossetians. Because he and his family were Georgian, they received many insults and threats and ultimately in October 2007 their home was burned down while they were visiting his grandmother in Z. He drove back to the house and observed and heard Ossetians in masks who were talking of killing him if he turned up. He ran back to his car and slipped away. He then stayed at his grandmother's house in Z but was attacked by Ossetians when he was there. He feared returning to his native city as there was no law there and it was very possible that his return would end in his death. He went from Z to B and then travelled to Turkey from where he paid a man to arrange marine transport to come to Ireland. He left his passport in Turkey and presented his driver's licence as proof of his identity. He left his wife and children behind with his parents and grandmother in Z when he fled.

4. Geography is all important in a small country like Georgia where Tskhinvali, the capital of the breakaway province of South Ossetia, is only 60 or so miles from Tbilisi, the capital of Georgia. Country reports submitted by the applicant indicate that the two regions are engaged in inter-ethnic warfare with peacekeepers patrolling the disputed border. Russia supports the breakaway provinces of South Ossetia and Abkhazia.

5. The applicant did not speak English and his evidence was translated. The record of his Section 11 interview is on occasion stilted and the meaning unclear. Perhaps the interview could have been more productive and better understood had a map of South Ossetiabeen used during the interview and then appended to the Section 13 Report, as without a map it is difficult to know where the claimed danger from South Ossetians lay. Identifying areas of conflict is important in cases such as this with regard to the evaluation of past harm and future risk. However the Commissioner did not fully investigate the geographical extent of the applicant's fears in Georgia.

6. At his interview the applicant was asked why he remained for so long in South Ossetia considering the conditions for Georgians. He explained that their home was in Tskhinvali and as he had Ossetian friends, he thought that he would be safe from threats of real harm. He reported the burning of his house to the Georgian authorities in K but there was no reaction because "*it is a war zone and Georgians have no control over the affairs in Tskhinvali*". He never returned to his house or shop. When he was found and beaten in Z, he suffered bruising and a minor concussion but did not attend a doctor. When asked if he had considered relocating to another part of Georgia away from the conflict area he replied that Georgians in Tbilisi treat other Georgians from the conflict zone with suspicion. If he was to get a home or a job in Tbilisi he would have to reveal that he was born in Tskhinvali and could be discriminated against. For that reason he would not consider living in Tbilisi.

7. The driving licence offered as proof of identity is written in English as well as in Cyrillic script and indicates that it was issued in K district on 25.03.2003 and bears the applicant's photograph and bio-details which accord with his claim. He explained the absence of

documents apart from his driving licence and said that while it was possible to obtain copy documents he did not want to risk his family going to Tskhinvali to obtain them. He said his wife and children were now hiding in K that his wife had a nervous breakdown and was unable to attend a doctor. No questions were asked as to where K is, why she had a nervous breakdown or why she was unable to consult a doctor. An odd question was however posed which may demonstrate a lack of insight into nature of inter-ethnic conflict when the interviewing officer asked the applicant if he "*had a police or fire officer's investigative report concerning your house?"*

8. In a brief and, in the Court's view, very inadequate Section 13 report following minimal investigations, the Commissioner rejected the applicant's credibility because there was no proof of the burning of his house or of his report to the Georgian authorities or that he sought assistance from the police authorities. (It was not specified which police authorities he ought to have approached.) The beating in Z was found to be vague and lacking in detail. The Section 13 Report found that he would have no difficulties relocating to Tbilisi as he had lived there between the ages of 13 to 25 and it was considered that internal relocation was a reasonable option as his problems were confined to South Ossetia. Generally, it was found that he had not provided a credible basis or evidence to support his claim.

9. The applicant appealed to the Tribunal.

The Appeal Submissions
10. The applicant's appeal submissions expanded as the interval between the Section 13 Report and the appeal hearing lengthened. His solicitor forwarded several COI reports dealing generally with the origins of the conflict in South Ossetia and its on-going nature. In late 2008, the main focus of the COI furnished became the Russian invasion/occupation of South Ossetia in August 2008 with the bombing of Georgian villages in the conflict zone resulting in many casualties. Tskhinvali was said to have been very heavily bombarded in civilian areas and Georgian areas in South Ossetia were also bombarded. Named towns and villages includedKareli (which appears to be the municipality in which the village of B is located and where the applicant' maternal grandmother lived.)It was reported that "*some 10,000 ethnic Georgians have been forced to leave South Ossetia by Russian troops*", that the "*city of Tbilisi was struggling to provide food and housing for the increasing numbers of displaced people*" and that "*fuelled by the attacks, public anger against the Russians is growing".* A Human Rights Watch report on Georgia for 2009 which was furnished to the Tribunal stated that "*all sides to the conflict committed serious violations of international human rights and humanitarian law*" and that "*the Georgian government used indiscriminate force and failed to comprehensively investigate past use of excessive force*".

11. In between this COI there were letters from the applicant's solicitor which were stated to be *submissions* and which introduced a new dimension to the claim. It was stated almost as an afterthought that "The applicant trained as a policeman and this would also make him a target." A later letter continued, "*He was not exactly a policeman, but he will explain this to the Tribunal*" and later, "*the fact that he worked in security would put in him grave danger*" and he could not go back to Georgia "*because of his security involvement*". The applicant's solicitor stated "*Please note that in a previous submission, I stated that the Applicant trained to be a policeman, but in fact it was the security services*." The submission that the applicant could not go back to Georgia because he is seen in Georgia as an Ossetian was repeated.Documents relating to his place of residence in his grandmother's house in B in K Municipality and his marriage certificate confirming the information he had already supplied to the Commissioner were furnished. By a coincidence the documents were issued just before the bombing of K by Russian planes, which was also notified to the Tribunal Member.

The Appeal
12. The Court has the benefit of a written record of the hearing prepared by the applicant's attending solicitor in July 2009. The Tribunal decision also contains a full summary of the applicant's evidence. It was clarified that Z where his grandmother lives (referred to as N by the Tribunal Member) is in Ossetia and three kilometres from P village (referred to elsewhere as B) where his maternal grandmother lives and about thirty kilometres west of Tskhinvali. While a Wiki-map was appended to the submissions, it was illegible to the Court. The Tribunal did not consult or produce a map during the oral hearing.

13. The applicant's claim relating to the beating he allegedly received in Znauri was expanded at the appeal hearing: it was by Russian soldiers and Ossetians and he was taken from his car and beaten over a period of twenty minutes to half an hour and escaped by a miracle. He produced a report from a neurosurgeon confirming that he had seen the applicant after the attack, which was in direct contradiction to his previous evidence that he had not seen a doctor after the attack.

14. He confirmed that he was born in Tskhinvali and lived there until he went to sports school in Tbilisi when he was 15 or 16 years old. After that he went to the police academy in Tbilisi and while he qualified as a policeman he never worked as a policeman. He also attended a specialist security course and then worked in security of the president's house guarding the inside of the perimeter fence. He was asked very few questions about his time with the police/state security under the Shevardnadze presidency. He said that when Shevardnadze lost power, 80% of the people working for him including his friends were arrested. He saw that he was in danger so he returned to Tskhinvali. Some of the recorded answers are not easily understood which raises translation issues. In particular, the record of his evidence of how he avoided arrest after the fall of Shevardnadze was not easy to follow.

15. He returned to Tskhinvali after that. His evidence about the shop and the burning of his house remained the same apart from the number of masked men who grew from six or seven to nine or ten. He explained why he did not mention his security work on his questionnaire saying he didn't think it was necessary and *that when he arrived, he didn't speak the language, he didn't know anyone, his first concern was to save his life, he did not know who would be here and he couldn't understand that it was so important. When he understood everything he felt it was alright to tell*. He described going to Turkey (the adjoining country) and meeting a trafficker. He described how he had a passport but the agent did not give it back to him. He was taken to a port in Istanbul and put into a container to Ireland. It was about 10metres long; it had windows which opened and he had a bed and pillow and food. There was nothing else in the container, it was on a truck and he never met the driver. He feared returning to Ossetia above all else as the Ossetians were moving into Georgian territories and they would find him. As the decision records, he said he feared Ossetians even more that being put in jail by the Government. His evidence in response to questions put by the Presenting Officer generally confirmed his evidence at the Section 11 interview and on his questionnaire. He also furnished a series of photographs of a burned house to the Tribunal and the Tribunal recorded that his legal diploma was with his file.

16. As mentioned, the Tribunal decision contains a detailed summary of the evidence given at the appeal hearing. In his brief analysis of the applicant's claim the Tribunal Member made three negative credibility findings and two legal determinations:

- It was not plausible that the applicant could travel as described in a container which contained nothing apart from the applicant;

- He gave conflicting evidence about the burning of his house, saying at one stage that there were 6 or 7 people and at

the hearing saying that there were up to 15 people. He did not provide a plausible or credible explanation for this discrepancy; "*the evidence such as it was, was vague and non-specific…I would have expected him to be able to provide more detail and less vague and conflicting evidence*."

• His explanation for not mentioning his work in the security service of the Shevardnadze government in his questionnaire was not convincing. The evidence he gave about his involvement in this work was vague. "*His evidence would not lead one to conclude that he had ever been involved in security work at the high level he is contending for*."

• By his own evidence he did not claim to be persecuted by state actors. He said he feared the present government but he also said was not a criminal and he did not fear this type of arrest and was more afraid of the Ossetians.

• Even if the applicant's evidence was found to be credible, which it was not, internal relocation was a viable option because he is ethnically Georgian with a third level qualification and would have "*no difficulty moving or returning to Georgia*".

The Submissions

17. The applicant contends that the Tribunal decision ought to be quashed because:-

(i) The decision is poorly reasoned and insofar as reasons have been given, it is not clear if core aspects of his claim have been believed or disbelieved;

(ii) There is no indication that the documents furnished including the COI furnished were considered, in breach of Regulation 5 of the *ECs (Eligibility for Protection) Regulations 2006* (S.I. No. 518 of 2006) and the principles restated in *I.R. v. The Refugee Appeals Tribunal* [2009] IEHC 353; and

(iii) The finding on internal relocation was insufficiently considered. The Tribunal Member failed to deal at all with the COI on the situation in Georgia and in South Ossetia. The Tribunal is a primary fact-finder when it comes to subsidiary protection and was obliged to consider his responsibility in this regard. There is an ongoing armed conflict between Georgia and Russia in South Ossetia and in those circumstances the Tribunal Member ought to have taken more care.

18. Generally, the respondents rely on the many inconsistencies between the applicant's evidence at first instance and for his appeal. They focus on his failure to disclose at first instance his years as a policeman/security guard when he had every opportunity in his questionnaire and at interview to mention that he worked for the Shevardnadze security police.The respondents argue that while the conflict in South Ossetia is not disputed, COI on localised difficulties is not readily available. They accept that the decision is silent as to the documents and COI furnished by the applicant but argue that he fails to identify what that COI was. He has not been able to point to any report which states or suggests that a person of Georgian ethnicity could not relocate to Tbilisi.

19. Having accepted that the Tribunal made no reference of any kind to the documents furnished, the respondents nevertheless conducted a detailed analysis of the documents which the applicant had provided to establish that he lived in South Ossetia or that he was attacked while living there. The respondents sought to seriously impugn credibility by pointing out that nothing in the documents indicated that the applicant was in fact from Tskhinvali, that he owned a house in the city or that he had ever suffered persecution there. They further submit that the claim was inconsistent and incoherent and they rely on *S.Z. v .The Refugee Appeals Tribunal* [2013] IEHC 325 where MacEochaidh J. held that a Tribunal Member is entitled to reject general credibility and "*if this has the effect of not deciding the applicant's core claim, in my view, such an approach is lawful" as "it is possible to characterise the rejection of the applicant's credibility as a rejection of the applicant's core claim*".

20. Finally, the respondents argued that it flowed from the Tribunal Member's core finding that if the applicant did not fear state actors, he could relocate to Tbilisi. Within that core finding the Tribunal Member very clearly considered future risk in the light of the applicant's claimed personal circumstances. He noted that he had a third level education and was of Georgian ethnicity and that he simply had not given sufficient consideration to returning to Tbilisi.

THE COURT'S ANALYSIS

21. This has been a troubling case for the Court as the applicant's own actions have undoubtedly contributed to the rejection of his claim but the process by which the Tribunal made its decision may be defective.

22. There is little doubt that when he applied for asylum in December 2007 the applicant's only claim was one based on ethnic persecution as a Georgian living in Tskhinvali in South Ossetia where no protection would be available to him. It would appear to the Court that the objective threshold for establishing such a claim would not be particularly high once the subjective elements were generally accepted. Such a claim would be well supported by reliable country of origin information (COI) reports which outline the ethnic tensions and outrages which have occurred in the troubled region and the large numbers of displaced persons created by the conflict. Indeed the Commissioner agreed that such problems exist and his easy answer was '*if you were persecuted as you say, then your answer lies in relocation to Tbilisi'*.

23. However, the obvious relocation answer to a Georgian finding himself in a minority in an increasingly hostile environment changed between the consideration of his case by ORAC and his appeal. The applicant furnished COI including the Human Rights Watch 2008 report to the Tribunal ahead of his oral appeal hearing. That and other reports described that the situation had deteriorated considerably following the bombing by the Russian Federation of Georgian areas of South Ossetia which had been preceded by Georgian army attacks on Ossetian areas. Thus the conflict had spread outside of South Ossetia.

24. Prior to 2008, the obvious answer to persecution of Georgians in South Ossetia was that as such persecution was confined to a particular geographic region, relocation to parts of Georgia where the ethnic conflict was absent would be an option. Whether such a move was reasonable in light of the applicant's personal circumstances would involve some careful evaluation of whether he would actually be safe in the areas of Georgia unaffected by conflictand could access meaningful state protection there, and whether he would suffer discrimination from Georgians as a former resident of South Ossetia would have to be determined by the Commissioner or the Tribunal, as appropriate. Similarly, whether any discrimination established would reach the threshold of persecution would be a matter for determination by the Commissioner or the Tribunal. In this case, the Commissioner and the Tribunal both appear to have found that the applicant did not establish a well-founded fear of persecution without making any finding on his claim that he was a Georgian in Ossetia. The question is whether the Tribunal decision is a lawful one notwithstanding the absence of any specific finding on his origins because of the three clear credibility findings on other issues.

25. In the Court's view, the decision challenged in this case really reduces to two composite findings:

> (i) The applicant's claim of past persecution in South Ossetia is not credible and his claim of a fear of future persecution because of his past in the police security services is equally not credible.
>
> (ii) Even if what he says happened did in fact occur, he could reasonably be expected to relocate outside of South Ossetia, for example to Tbilisi where he had spent considerable time in the past.

Credibility

26. As indicated at the hearing, the Court considers that the credibility findings made by the Tribunal Member were not unreasonable in light of the discrepancies in the applicant's evolving narrative and the Court is not in a position to upset those findings. The three issues highlighted were the implausibility of his account of how he arrived in Ireland; the unexplained evolution of the details given in relation to the burning of his house; and the implausibility of his failure to mention his connection to Shevardnadze at an earlier juncture taken together with the minimal details provided of his duties as a security officer guarding the former President.

27. The least significant of the three findings relates to his travel from Turkey to Ireland. It suffices to say that his narrative of more or less living in an otherwise empty container with water, a duvet and a pillow and a cup, with windows which could be opened, was reasonably rejected. While such a finding could not undermine his entire claim and did not relate to the core issues before the Tribunal Member, it was nonetheless an item worthy of consideration as part of his general credibility assessment.

28. The other two credibility findings made by the Tribunal Member related partially to the core of the applicant's claim. While those findings were ones which were lawfully within the range of findings open to the Tribunal Member the Court is not satisfied that the credibility issues raised were sufficiently material to dispose of the claim as the applicant's main fears were not actually addressed. While the credibility findings which were made cannot be displaced by the Court, it is unfortunate that they were based on demeanour and vagueness without further expansion. The very restricted focus of the Tribunal Member's credibility findings is also unfortunate as the sole reason given for rejecting the credibility of the claim of past persecution in South Ossetia was the embellishment of the number of men involved in the burning of his house in 2007 and vagueness in his description. The applicant correctly complains that this findingis unduly narrow and further that it is unclear whether the Tribunal Member either accepted or rejected his claimed links to South Ossetia. It seems to the Court that an assessment of whether the applicant was a Georgian living in or near an Ossetian area in the balkanised South Ossetia, where the ethnic conflicts and mutual persecution are a reality, was crucial. A legitimate finding that he had changed/enhanced his evidence relating to the alleged burning of his home is not a sound reason for holding that he has no legitimate fear of persecution as a Georgian in/near Ossetian controlled territory.

29. The documents he produced may well have established that he was from South Ossetia. The photographs may have been of his house. B in the K municipality district may be a conflict area on the Georgian/Ossetian border. COI furnished before the appeal hearing stated that K had been bombed by Russian planes leading to an inference that it was Georgian controlled. None of this information was referred to in the decision. His driver's licence issued in 2003contains evidence of identity which is consistent with information contained in his questionnaire and which is consistent with all the other documents furnished. The applicant's evidence has been consistent that his grandparents' homes were in areas under Georgian administrative control but that Ossetians crossed with ease to attack Georgians there.

30. The Court readily accepts total ignorance of the geography, municipalities, villages and towns in South Ossetia and Georgia and equally accepts that B and Z may in fact be in South Ossetia or if not, at least close to areas of ethnic tension and therefore unsafe for relocation from Tskhinvali. These issues were never determined. While none of the documents furnished by the applicant corroborate his asserted birth and upbringing in Tskhinvali, that he returned there in his 20s or that he suffered persecution there in 2007 they were not referred to in the decision. It is possible that the Tribunal Member accepted that the applicant was from Tskhinvali / South Ossetia as he had claimed and accepted that the areas where his grandparents live was in an ethnically Georgian enclave and therefore found the documents redundant but the Court is merely speculating as the Tribunal Member made no findings in that regard. It is not appropriate that the applicant and the Court should be left to speculate as to the meaning of a Tribunal decision.

31. For these reasons it seems to the Court that the important assessment of the applicant's connection with South Ossetiais unclear or was not made at all. The finding was either that the burning of the house and seizure of his shop was not believed therefore he was not from South Ossetia at all or that he was not credible but is from South Ossetia and can therefore relocate to Tbilisi. Neither alternative is clearly reasoned.

32. The third credibility issue related to the applicant's claim, first presented on appeal, that he was engaged in security duties for the former president. This was undoubtedly the most significant change in the applicant's evidence and his explanation for his reluctance to mention the claim to the Commissioner was clearly rejected by the Tribunal. Again, although that finding was a reasonable one open to the Tribunal, no reasons were provided for rejecting his explanation apart from demeanour. While Ms Cogan BL for the respondents argued that he was given every opportunity to put his case in full to the Commissioner in his questionnaire or at interview, this was not a finding expressed by the Tribunal. While the Tribunal may well and understandably have viewed the change in the applicant's evidence (relating to the time spent at university acquiring his diploma, whether he consulted a doctor after he was attacked in Z, who attacked him there, his training as a policeman/security guard, his duties as a security guard, and his escape from the Georgian police under Saakashvili) to be evidence of a want of candour, he did not say so. Instead, he made an unusual finding that leaves an objective reader wondering whether (a)the claim that he was a policeman on security duties was actually accepted but because he was a low level policeman and because of the lapse of time he would have no fear of arrest or (b) he was in fact a policeman but he had never been threatened with arrest because his description of how he escaped arrest was vague or (c) he was never a policeman because his claim to have been engaged as such was not disclosed at an earlier stage. It is not clear which, if any, of these findings were made in this case. The Court is therefore satisfied that the reasons given for the rejection of the applicant's credibility lacked clarity and that the grounds relied upon for rejecting his credibility were not sufficiently related to the core of his claim as to warrant a rejection of his overall credibility.

The Documents

33. Turning then to the applicant's complaint about the treatment of his documents it seems to the Court that some clarity might indeed have been provided had the Tribunal Member provided clearer reasons for his decision rather than relying on unexplained demeanour and vagueness. The decision would certainly have been more transparent and generally fairer had it explained that the documents including the COI reports on the worsening political and humanitarian situation had been considered. It is always preferable

that a protection decision-maker gives a clear indication that documents furnished have been considered and, if they are *prima facie* relevant to the claim, why they have been rejected (see e.g. *I.R. v. The Refugee Appeals Tribunal* [2009] IEHC 353).In the case of the particular documents put before the Tribunal and considered by this Court, it is clear that while they may place the applicant's past in or near South Ossetia, only the photographs of a burned out house could possibly advance the claim of the attack on his house. The omission to record the assessment of their content could not therefore constitute an omission of such substance to affect an otherwise valid decision. The question is whether the decision is an otherwise valid decision. It is necessary therefore to examine the final ground of challenge relating to internal relocation.

Internal Relocation

34. Having rejected the applicant's claim on credibility grounds without properly addressing the core of the applicant's substantive fears, the Tribunal Member went on to make an "even if the claim were credible" finding in relation to internal relocation. If the Court were satisfied that the Tribunal made lawful and reasonable findings rejecting the credibility of the applicant's fundamental claim, there would be little utility in examining the Tribunal's reasoning on the availability of internal relocation. However, the decision does not properly address the substantive claims nor does it apply a forward looking test having regard to the COI furnished to the Tribunal. In the circumstances, it is not immediately clear whether it was appropriate for the Tribunal to consider internal relocation at all.

35. The obligations of a Tribunal Member when he decides to consider internal relocation are found in UNHCR Guidelines on International Protection: Internal Flight or Relocation Alternative (2003) and in Regulation 7 of the ECs (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006), commonly known as the 'Protection Regulations'. Regulation 7(1) provides that as part of the assessment of protection needs, a protection decision maker (such as the Tribunal) may determine that an applicant is not in need of protection if he can reasonably be expected to stay in a part of his country of origin where there is no well-founded fear of being persecuted. Regulation 7(2) provides that in carrying out such an examination, "the protection decision-maker shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant". However, it is very well established that where the protection decision maker determines that an applicant is not in need of protection because his asserted fear of persecution is not credible, it logically follows that there is no requirement to conduct an investigation on circumstances prevailing either in the proposed venue for relocation (here, Tbilisi) or into the applicant's personal circumstances.

36. In this instance, the lack of clarity in the reasoning means that the Court is unsure whether it was accepted that the applicant was in fact a Georgian who was at risk of persecution in South Ossetia and/or that he had been a policeman engaged in security duties for the former President Shevardnadze. If either of those alternatives had been accepted, then the issue of internal relocation as an antidote/alternative to refugee status would require very careful consideration. It is only when effective state protection is not available to an applicant who fears persecution for a Convention reason and when it is established that the persecution he fears will be absent in part of the same country that such an analysis is required. Had it been accepted that the applicant had a well-founded fear of persecution in a part of Georgia such as South Ossetia and that international protection was therefore prima facie required, the analysis of internal relocation conducted in this case would have failed the test. A glance at the applicant's third level qualification and his familiarity with Tbilisi more than a decade previously would not necessarily be adequate to assess the applicant's personal situation. Moreover the Tribunal Member neglected or omitted to have regard to the general circumstances prevailing in Tbilisi and the question of whether the applicant would be at risk of persecution or could access effective protection there. An enquiry would have to be conducted in consultation with the applicant as to whether there was a reasonable possibility of finding a place to live, and whether he and his family could access meaningful protection in the face of the claimed suspicion and discrimination faced by ethnic Georgians from South Ossetia who have relocated to Tbilisi. No examination at all was conducted of the position facing a previous/ presumed supporter of Shevardnadze in Tbilisi and it is not known what reality was afforded to the applicant's asserted fears of arrest and imprisonment. COI furnished by the applicant showed that Tbilisi was suffering severe housing shortages and economic distress following massive displacement of Georgians from South Ossetia and the surrounding areas in the aftermath of the so called six day war with Russia. None of this was referred to in the decision. In sum, the consideration of the relocation alternative was inappropriate if the Tribunal Member found that he did not establish a fear of persecution, and it was inadequate if such a fear was found to have been established.

The Subsidiary Protection Issue

37. Finally, the Court wishes to make some brief observations on an argument advanced by Mr de Blácam that the Tribunal Member, as a primary decision maker, had fact-finding obligations in anticipation of a future claim for subsidiary protection. This argumentwas not contained in the statement of grounds. Objection was correctly taken to any pursuit of the argument and the Court acceded to the objection and the matter was not fully argued. The Protection Regulations provide that eligibility for subsidiary protection is assessed only if refugee status is refused. Unless or until it is determined that the Regulations have been incorrectly transposed or the law is amended, it is the Minister who must consider all applications for subsidiary protection and it is the Minister and not the Commissioner or the Tribunal who is a primary fact-finder at the subsidiary protection stage. As the decision of Hogan J. in *M.M. v. The Minister (No. 3)* [2013] IEHC 9 (31stJanuary 2013) is under appeal to the Supreme Court and there is some lack of clarity on the meaning of the judgment of the Court of Justice [22nd November 2012 (Case C-277/11)] in the same case, there was no point in adjourning the point for an exchange of pleadings to enable further argument.

Conclusion

38. The applicant is correct in his contention that the decision is poorly reasoned and that insofar as reasons have been given, it is not clear whether his claim was rejected in its totality or whether it was accepted that he was a Georgian in South Ossetia who had never been persecuted or a Georgian who had never been in South Ossetia. Similarly, it was not clear whether it was found that the applicant was untruthful about his past as a policeman engaged in securing part of the former president's home or whether he was such a policeman but was not at risk of persecution. Credibility findings were made on discrete aspects of the claim but not on the whole. Further, the lack of clarity in the Tribunal's findings makes it impossible to know whether the internal relocation alternative was appropriately applied.

39. In *R.O. (an infant) v. The Refugee Appeals Tribunal* [2012] IEHC 573, MacEochaidh J. considered the necessity to provide adequate reasons for credibility findings in asylum claims and having surveyed a number of seminal judgments in that regard he suggested the following guidelines:-

> (i) Reasons must be intelligible in the sense that the reasons should enable the reader to understand why the applicant for protection is disbelieved on a certain point and/or generally […]
>
> (ii) Reasons must be specific, cogent and substantial […].

(iii) Reasons must be drawn from correct facts and must bear a legitimate connection to the adverse credibility findings […].

(iv) Reasons must relate to the substantive basis of the claim and not to minor matters […].

40. To that the Court would add that when a decision is read as a whole, the reasoning for the conclusions must be plain to the reader.

41. As previously mentioned, this case has a difficult one for the Court as the applicant did not help himself by materially changing his evidence and failing to volunteer some clarity on the location of Tskhinvali relative to the other areas of South Ossetia and Georgia. While part of the problem may have originated in the superficial investigation conducted by the primary decision maker who is tasked with investigating conditions on the ground in Georgia, which at the time was a significant refugee generating country, the applicant was nevertheless obliged to present his appeal in a coherent and clear fashion. This will be reflected in a reduction in costs awarded. The decision will be quashed and sent for fresh assessment to a different Tribunal Member.

[1.] Georgia broke away from the Soviet Union in 1991. In the same year Abkhazia broke away from Georgia and South Ossetia declared itself a republic