

**THE HIGH COURT**

**JUDICIAL REVIEW**

**Record No. 2008/1262 J.R.**

**BETWEEN**

**N.M. [TOGO]**

**APPLICANT**

**-AND-**

**DENIS LINEHAN ACTING AS THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM**

**RESPONDENTS**

**JUDGMENT OF MS JUSTICE M. H. CLARK, delivered on the 16th day of September, 2013.**

1. This challenge to a decision of the Refugee Appeals Tribunal concerns the manner in which credibility was assessed and in particular the treatment of documents described as capable of corroborating the applicant's credibility. By agreement, the case proceeded as a telescoped hearing which took place on the 25th April, 2013. Mr. Hugo Hynes, S.C. with Mr. James Healy, B.L., acted for the applicant and Ms. Sinead McGrath, B.L. acted for the respondents.
2. An extraordinary delay has occurred between the applicant's arrival in this State in September 2003 and the hearing of this application for judicial review. He was almost 12 months in the country before his first Section 11 interview was conducted. That interview was extensive and two months later a second interview took place. In January 2005, the applicant was informed of the Commissioner's negative recommendation in a very brief Section 13 report. He appealed this decision. His first appeal decision was challenged by way of judicial review proceedings which were compromised in his favour. His second appeal was not successful and it is that decision which is being reviewed before this Court. The applicant is now almost 10 years in this State without a decision on his asylum claim.
3. At the telescoped hearing, the applicant confined his challenge to the legality of the Tribunal decision to the following grounds:
  - (a) The Tribunal Member's failure to assess or mention the corroborative documentation which the applicant produced in support of his claim before the Commissioner;
  - (b) The Tribunal Member's excessive reliance on replies made to questions posed at the applicant's two Section 11 interviews without conducting his own enquiries in clarification of issues identified in the Section 13 report and the failure to provide any outline of what was said by way of submissions at the oral appeal hearing; and
  - (c) The Tribunal Member's failure to have adequate regard to the medical reports furnished and to consider whether the applicant had been a victim of torture when assessing his evidence.

**Background to the Claim**

4. The applicant applied for asylum in September 2003. He claimed to be in his early 30s and to have fled persecution in his native Togo due to problems associated with his membership of an opposition party. According to his narrative, in Togo he worked as a salesman of second hand office equipment and in 1995 had joined the *Union pour la Force du Changement* (UFC). His activities on behalf of the UFC involved attending meetings, encouraging people to become members, collecting dues and distributing anti-Eyadema literature which on occasion he composed, typed out and photocopied with the prior approval of senior named members of the party. He signed his name to these tracts.
5. The applicant volunteered considerable detail on the origins and structure of the UFC in his asylum questionnaire and was able to answer fairly searching questions about the structure and day to day operation of the party in Togo at his Section 11 interviews. The reason he fled Togo lay in his arrest and detention during the Presidential elections of June 2003. He described two separate detentions which were directly associated with his support of the UFC. He said that in 1999 his political activity involved encouraging opposition to a particularly costly celebration planned by the President to commemorate his seizing of office at a time when the Togolese had no food and when civil servants' salaries were unpaid. On his way back from the rally, the bus in which the applicant was travelling was halted at a road block and he was removed and arrested. Thereafter he was held in very poor conditions until eight months later when his brother, who was a policeman, negotiated his release and he was "permitted" to escape. He then moved to a different part of Togo where he lived in peace until the Presidential election in June 2003. During the election government agents came to his house, searched it and found documentation indicating his support of the UFC. He was again arrested, detained and tortured but this time to a greater degree. He was then transferred to another detention centre which was notorious for being a place of execution and was known as the Red Camp. A school friend who was a guard there saw that his life was in danger. He pretended to beat him in front of other people to divert suspicion and then came to his cell where he provided him with clothes to escape the prison. The applicant made his way to Ghana and then to Accra where his aunt lived and was then assisted by her to come to Ireland with a woman who pretended he was her husband. He did not contact the UFC before coming to Ireland.
6. Country of origin information (COI) reports on Togo shows that there was strong opposition to the Eyadema regime which, by the time of the elections in 2003, had lasted more than thirty five years. The UFC was in fact the largest opposition party and it was suspected that the reason it was unable to win elections was due to rigging of results. The reports show that human rights are not respected in Togo, that the judiciary are controlled by the ruling party and that the police and gendarmerie are pro-government and tend to belong to the president's ethnic group. The National Assembly appeared to have no function apart from approving the

proposals of the President and the government. Criticism of the regime was not tolerated and the media was very strictly controlled.

### **Documents Produced**

7. A number of documents were submitted to the ORAC in support of the applicant's claim including his birth certificate; a sample of the political leaflets which he claimed he wrote, distributed and signed; a letter from the UFC headquarters in Lomé attesting to his membership of the party, his membership details and his detentions; and a letter from his GP stating that he had a scar on his buttock and his hand which he said were a result of torture.

### **The Section 13 Report**

8. The author of the Section 13 report appears to have accepted that the applicant was from Togo and was involved at a low level in the UFC, but found that he would be unlikely to attract the attention of the Togolese authorities if returned. This conclusion was drawn from an appended document from the Research Directorate Immigration and Refugee Board in Ottawa which detailed a telephone interview with the UFC executive vice-president in 2002. The vice-president was reported as saying that he was *"unaware of a single incident in which a UFC party member had been subjected to ill treatment by government authorities"*. The Commissioner found no reports of arrests of UFC members in the period up to March 2002, but a number of militants (all named) were arrested and held for several days for encouraging people not to vote in the October 2002 elections. The applicant's name was not on that list.

9. The Commissioner's negative recommendation was also based on other grounds. The extremely short Section 13 Report concluded that notwithstanding the letter *"allegedly from the UFC [.....]his serious lack of knowledge of a party which he alleges to be a member of, [... ] it was seriously doubted whether he was a member of the UFC"*. The asserted lack of knowledge related to:-

- (i) An incorrect description of the UFC membership card in that he described the card as green when it is in fact yellow;
- (ii) His lack of awareness of the existence of UFC offices abroad;
- (iii) His lack of awareness of the Lomé Framework Agreement; and
- (iv) His lack of awareness of the CENI

10. It was also found not credible that any opposition member would personally sign his name to a political tract and furthermore, his claim that he was only interrogated once when held in 2003 was found to be inconsistent with COI which states that detainees are consistently ill treated or tortured with a view to extracting information and it was therefore considered *'unlikely that the applicant would not have been relentlessly interrogated during his detention'*.

11. This odd conclusion and somewhat inconsistent findings made no reference to the applicant's considerable awareness of the activities of the UFC and concentrated only on what he did not know. It was not at all clear whether his claim that he was detained and tortured was found to be implausible because there is evidence that such things do not happen to low level activists or whether in the alternative it was determined that he was not a member of the UFC, that the document relating to his membership was false and that his claimed injuries were coincidental.

### **The Notice of Appeal**

12. The applicant's Notice of Appeal was extensive and contained 15 grounds. One ground asserts that the Commissioner imposed too high a burden of proof on the applicant in relation to his level of knowledge of the UFC party. Others refer to specific errors in the Section 13 report including the interpretation of a COI extract which stated that arrested persons are invariably subject to torture while interrogated; to the extreme brevity of the Section 13 report relative to the two lengthy interviews and to the trite attention paid to the facts surrounding the applicant's first arrest and detention for eight months and his distress and upset at the incidents which happened to him in Togo. A number of COI reports and extracts were appended to the appeal submissions, dealing extensively with difficulties for journalists who criticised the President and the difficult situation in Togo in 2006 following the death of the former President Eyadéma when his son took over as President and when the human rights situation deteriorated very considerably. All the reports furnished describe the deaths, detentions and maltreatment of many hundreds of opposition supporters with complete impunity. Two short extracts provided by the research section of the arm of the RLS in response to a request for *'information available on the persecution of the UFC in the last two years'*, named those few UFC members who had been detained and held or released around the time of the elections in 2003. The applicant's name was not included on that list. While those reports did not advance the applicant's account of past persecution they showed that the current human rights situation had disimproved in the period after he left Togo.

13. Of importance, the applicant's solicitors furnished a medical report from Dr O'Sullivan who is one of the senior doctors in SPIRASI, for use at the appeal. It can safely be assumed that Dr Sullivan's report was intended to strengthen the GP reports furnished to the Commissioner which described two scars claimed by the applicant to have been inflicted by torture. The GP had merely repeated what the applicant said about his injuries but had not expressed any view on the possible consistency of these injuries with torture. He described the episode of haematuria in October 2003 (shortly after the applicant arrived in this State) as due to uncertain aetiology. The GP reports were therefore of limited evidential value. However, Dr O'Sullivan observed scars on the applicant's buttock and on his hand and sought specific information as to how the injuries were sustained. He reported that the applicant informed him that the scar on his buttock came from a stab inflicted by the prison authorities when he was attempting to escape and the scar on his hand came from car battery acid thrown on him while in detention. Dr O'Sullivan found both scars consistent with the history given of injuries inflicted when he was detained in 1999. He also noted that the applicant *'reported abdominal pain shortly after he arrived and a urine sample confirmed haematuria which he found would be consistent with the history of abdominal trauma that he reports sustaining when he was detained on the second occasion in the place he called the Red Camp'*. Dr O'Sullivan's report concluded that the applicant's psychological assessment revealed symptoms *'which would be consistent with a post traumatic state but could also be related to his recent bereavement'* The applicant's father had died in 2005. *and the situation he finds himself in '.*

14. The applicant also submitted a copy of the death certificate of his father who died on the 1st February, 2005, after the applicant came to Ireland. Like the SPIRASI report it was new to the appeal. The death certificate provided some consistency to the information contained in the applicant's birth certificate and to his claim that his father was a gendarme. The details of the father's age confirm the applicant's evidence as to his age at the time of the applicant's birth.

15. The Tribunal Member therefore faced into an appeal hearing where specific findings were challenged, errors identified, the burden of proof challenged and additional documents furnished.

### **The Tribunal Decision**

16. The decision provides a brief synopsis of the applicant's evidence at the appeal hearing which was confined to details of his two

arrests, detentions and ill treatment and subsequent releases or escapes. The SPIRASI report was noted in the portion of the decision entitled "submissions" and the decision observes specifically that the Tribunal was asked to note that the applicant was traumatised by his treatment in Togo and that this should be taken into account when assessing his evidence.

17. No reference was made to any questioning of the applicant's membership of the UFC. The specific negative credibility findings which led the Commissioner to conclude that there was serious doubt as to whether he was a member of the UFC were not mentioned and the Court is unaware whether these matters were simply not addressed by the applicant or by counsel or whether the evidence was simply not recorded by the Tribunal.

18. The issue for assessment was identified as *'whether the applicant was a low level member of the UFC since 1995 who had as a result been arrested and tortured on two occasions'*. The UNHCR Handbook on the "Assessment of Credibility of Claims" and the benefit of the doubt were quoted extensively. It was found that this issue could be determined by considering both the oral appeal hearing and answers the applicant had provided at his two interviews.

19. The decision details the Tribunal Member's particular difficulties in finding the applicant's narrative credible- he found that there was a lack of elaboration on how the applicant escaped from custody after his first detention and he disbelieved the claims that the applicant's brother, a policeman, would wait 8 months to arrange his escape or that the jailers in the second detention centre would put their careers and lives at risk to assist his escape. The descriptions of his two escapes were assessed as having occurred in an *'easy and off hand manner and were not credible leading to the belief that he had never been in custody at all and provided the Tribunal with some doubt as to whether he was ever a member of the UFC'*. Further negative credibility findings were made on the basis of inadequate replies he had given at his interviews. These included the fact that he had erroneously described his membership card as green rather than yellow and that he was unaware of the Lomé Framework Agreement, of the fact that the UFC is an international organisation and not confined to Togo, and of the date on which CENI (the electoral commission) was founded and its development and workings, and especially his lack of knowledge of the withdrawal of the UFC from membership of the electoral commission. This was considered to be *'basic information which the applicant was unable to supply to the Commissioner and which cumulatively undermined his credibility'*. His ignorance of basic information reinforced the Tribunal's view that the applicant was not a member of the UFC and therefore did not suffer on account of his membership of the organisation.

### **The Applicant's Arguments**

20. The applicant submitted that although the Tribunal decision quoted from the UNHCR guidelines on the assessment of credibility and the benefit of the doubt, there was little evidence that the Tribunal applied those principles. Nothing the applicant recounted or submitted by way of documents was accepted for its consistency or validity. Instead, every deficit in his knowledge was seized upon and every slight error magnified. Further, rather than addressing the appeal and the evidence presented, the Tribunal relied on what had been said at his two Section 11 interviews to the exclusion of the evidence and documents presented at the appeal.

21. The applicant argues that the appeal was generally conducted in an unfair manner including the Tribunal's reliance on a UNHCR report which stated that matters had improved in Togo, without disclosing the report in advance of his decision or alerting the applicant that he was relying on such information. To date the report has not been furnished. The applicant also argues that the Tribunal paid insufficient regard to the COI reports put before him which took a different view of the evidence furnished in support of his claim. Further, the tribunal simply disregarded the personal documents furnished which were internally consistent and of relevance to his claim.

### **The Respondents' Arguments**

22. The respondents argue that the decision is squarely based on adverse credibility findings. The applicant did not display a sufficient level of political knowledge even though his claim was based on his political opinion. Neither the Commissioner nor the Tribunal Member accepted his credibility and therefore his complaint on the treatment of documents has 'an air of unreality to it'. The medical reports are of little probative value as they rely on information given by the applicant and even then the facts given to the SPIRASI doctor differed from facts given to the asylum authorities. Specific acts of torture, such as beating on the soles of his feet, were recounted but injuries consistent with those specific acts were not mentioned by the SPIRASI doctor. The remaining documentation referred to in the challenge had already been before the Commissioner and no specific submission was made to the Tribunal relating to the treatment of those documents nor has the applicant outlined what evidence was proffered or what submissions were ignored.

### **THE COURT'S ASSESSMENT**

23. A reviewing Court is always cautious regarding any interference with credibility findings made by decision makers who have had the advantage of personally hearing and observing an applicant. In this case, there is no doubt that the credibility difficulties identified by the Commissioner and the Tribunal Member were indeed flaws in the applicant's claim and that at his interviews he provided very little elaboration on how he escaped compared with the description of the conditions in which he was held and the maltreatment he received at the hands of his jailers. The record of his Section 11 interviews shows that the contrast lies in the specific questioning by the interviewer. Similarly, Dr Sullivan of SPIRASI concentrated on the maltreatment when in custody. The discrepancy in the detail given at the Section 11 interviews may well have been explained by the fact that the applicant might simply not have been questioned about his escapes. However, this changed at the oral appeal as the very brief narrative of the applicant's evidence included in the decision refers to details of both releases and escapes. It therefore seems to the Court that as a matter of basic fairness if the Tribunal Member, as the appellate decision maker, wanted to know more about these issues relating to his imprisonment, he should have made his own enquiries.

24. It also seems unfair to find that because the applicant did not elaborate on the manner of his releases or that because of the *'coincidental nature'* of the manner of his release from custody on two occasions, he was never in custody and that there was doubt that he was ever a member of the UFC. Although such harshness would not *in itself* invalidate the decision as a whole, the Court is left with concerns relating to what may be described as a series of negative conclusions made on thin grounds which infect the decision with general unfairness, as submitted by the applicant.

25. The Court is concerned in particular about the Tribunal Member's failure to afford the applicant the benefit of the doubt in relation to his level of knowledge expected of a low level activist. The Tribunal Member appears to have imposed an unreasonable burden of proof imposed on the applicant, an asylum seeker. This concern is exacerbated when set against the specific background of a man who did not have a third level education, who did not come from a family tradition of opposition politics. His brother was in the police; his father was a gendarme and he came from the North of Togo a stronghold of the RPT the ruling party. and who never claimed to be anything but an ordinary member. Moreover he furnished documents are capable of being described as internally consistent but which were not considered.

26. A review of the record of the two Section 11 interviews and the asylum questionnaire lead the Court to the view that it is simply

inaccurate to say that the applicant had no knowledge of what were described as '*basic facts*'. He volunteered a very great deal of information on the UFC, on the contents of his membership card, the UFC leadership and the headquarters in Lomé. Whether this was learned information for the purpose of an asylum claim or information acquired by years of membership is not within the competence of the Court in judicial review. Either way, the description of ignorance of basic information may be a little unfair.

27. An examination of the COI relied upon by the Commissioner and adopted by the Tribunal on the Lomé Accord reveals a rather frail series of negotiations in Paris between Togo, the EU and the French speaking nations of Africa, whose aspirations declared within the Lomé Framework Agreement were never realised. The appeal submissions argue that to expect that a person such as the applicant would be aware of the Lomé Framework or the date on which the electoral commission CENI was founded is to impose too high a standard and an inappropriate burden on the applicant. This may be correct. There is no evidence that the submission was considered by the Tribunal Member and no source was provided as to why knowledge of the Lomé Accord I Framework was considered to be '*basic information*'. While COI available to the Commissioner on both the Accord and the CENI describes details of the origin and evolution of those institutions, there is no evidence that the applicant was questioned as to whether such information was disseminated in Togo, where COI indicates a considerable degree of press control. The Court is not at all convinced that this information is correctly described as information so basic that ignorance would inexorably lead to the conclusion that such a person was not a member of the UFC at all.

#### *Treatment of corroborative documentation furnished to the Commissioner*

28. The applicant further argues that the Tribunal paid insufficient regard to the documents furnished in support of his claim. It is apparent that the documents separate into those which potentially corroborate his identity and those capable of confirming aspects of his claim. The applicant's birth certificate and his father's death certificate are internally consistent but required neither assessment nor written comment as no issue was raised as to the applicant's identity. The death certificate records no cause for the applicant's father's death and therefore is not probative of the claim that he was detained and maltreated because of his son's political activities nor does it assist in establishing the applicant's claim although, as previously mentioned, it does provide consistency for the applicant's biological details.

29. The COI reports appended to the appeal documents are important in providing a background landscape to worsening conditions for those who criticised or opposed the Eyadéma regime in Togo after the applicant's departure, but the information does not advance the applicant's claim of detention, torture and fear of execution in the Red Camp. The applicant is not named in the list of seven activists detained and released after a few days in 2002 or in 2003. There were no reports of other UFC members being held or taken to the Red Camp or of ordinary members having their houses searched for anti-government literature during the period when the applicant was in Togo. Similarly, the tract which the applicant produced as an example of the literature which he created and distributed would fall into the category of self-serving documents with little or no objective evidential value. The decision would not be quashed by a failure to specifically mention the evaluation of those documents. However, a fair minded assessor of the claim might have noted that much of the content of the sample tract furnished criticises President Eyadéma for failing to uphold the Constitution and his promise to Europe and African nations not to seek re election for a third term, and for operating a family dynasty. These are coincidentally the very essence of the aspirations contained in the Lomé Accord. It is therefore somewhat irrational that a negative credibility finding was made based on the applicant's perceived lack of knowledge of the political institutions in Togo.

30. Of greater significance is the letter which is stated to have emanated from UFC headquarters, from the administrative secretary of the UFC in Lomé. The author was named by the applicant in his questionnaire and at his interviews as the person who approved the content of his political leaflet and therefore this letter is in a different category of documents. It could, if found authentic, not only have been helpful but actually corroborative of the applicant's claim and is a document which on its face was in the nature of "*evidence of potentially significant probative weight in corroborating key facts and events*" as outlined by Cooke J. in *I.R. v. The Minister & Refugee Appeals Tribunal* [2009] IEHC 353. However, once again this is simply not mentioned in the Tribunal decision. In the Court's view this document required serious assessment and reasoning before discounting its validity or content. Had the document been accepted for its content, there is every likelihood that the benefit of the doubt would have applied cumulatively to the medical reports, the COI, the identity documents and the claim in relation to the detentions and escapes. The applicant's lack of knowledge of the relatively minor issues on which so much reliance was laid might then have been seen in a different light.

31. Turning next to the medical report; while this report does not *per se* contain compelling findings in that it describes the applicant's two injuries as '*consistent with the applicant's description*' of events in 1999 and therefore at the lower end of the probative scale in the Istanbul Protocol, when taken with the other documents it could form a small piece of a jigsaw which when completed was capable of supporting a positive recommendation. This is not to suggest that if the documents had been assessed as an integral series a different decision may not have been made, but such a decision would call for reasons to be given for disregarding the reports. Regulation 5(1) (b) of the *ECs (Eligibility for Protection) Regulations 2006* (S.I. No. 518 of 2006), which transpose Council Directive 2004/83/EC, require the Tribunal Member as a decision-maker to take into account "*the relevant statements and documentation presented by the protection applicant including information on whether he or she has been or may be subject to persecution or seriously harm*". In light of the treatment of the letter and the medical report the Court is satisfied that the Tribunal Member in this case acted in breach of that Regulation.

32. Although the Court is not satisfied that the treatment of the medical reports alone would be a sufficient ground for quashing the decision and although the medical reports on their own were not particularly compelling, it is striking that, as with the other findings made in the decision under challenge, any weaknesses in the medical report were emphasised and any positive aspects were ignored. In particular, it was noted that Dr. O'Sullivan found that the applicant's description of his two arrests was confused, '*which could in itself be consistent with a post traumatic state*', but focus was laid instead upon the observation that this could be attributed to other causes such as his recent bereavement and to the situation he finds himself in. The Court does note however that the applicant had just been diagnosed with a serious medical condition in addition to the stresses of being an asylum seeker.

#### *Excessive reliance on Section 11 Interviews I Failure to outline appeal submissions*

33. While the Court is satisfied that the appeal lacked basic fairness, it will nevertheless deal with the applicant's submission that the Tribunal relied excessively on the applicant's answers in response to the Commissioner rather than on the evidence presented at the appeal. As a general principle of law, there is no doubt that the Tribunal is entitled, indeed obliged, to have regard to the entire asylum file and to the Section 13 report. However, as a matter of general fairness, a tribunal member may not ignore the evidence given at the appeal in favour of the evidence provided at the earlier Section 11 interview without some discussion of the reasons for doing.

34. It would be difficult to imagine that an applicant who has lodged specific grounds of appeal would simply fail to address those grounds at the oral appeal hearing. That detailed submissions were made and focused testimony was given on appeal is all the more

likely in this case bearing in mind that this was the applicant's second appeal hearing. The Tribunal decision makes no reference to the applicant's evidence or explanations as to why or how he described his UFC membership card as green when COI describes it as yellow, why he knew little about the Lomé Accord or the operational details of the electoral commission (CENI). On the other hand, the Court received no assistance from the applicant on what was said at the appeal hearing on these issues. No affidavit was put before the Court suggesting that any other evidence was called at the appeal hearing which was ignored by the Tribunal. He who asserts must prove. If an applicant asserts that a decision maker is in error then it is up to such applicant to put facts before the appeal tribunal at first instance or before the Court in judicial review proceedings in order for the issue to be examined. It is not appropriate to engage in speculation on what could or might have been said at the hearing as occurred in this case. It is for the applicant who appeals the primary decision maker's findings to make his case. The Court is guided by *G.K & Others v. The Minister* [2002] 2 IR 418, where Hardiman J. giving the judgment of the Supreme Court held thus at pp. 426 to 427:-

*"A person claiming that a decision making authority has, contrary to its express statement, ignored representations which it has received must produce some evidence, direct or inferential, of that proposition before he can be said to have an arguable case. "*

35. While the Tribunal Member must approach the appeal with an open mind and adhere strictly to fair procedures and the applicable law on credibility, he is not the appellant's advocate. The Tribunal Member can seek clarification on any point raised, but whether it is his obligation to look behind the case presented and conduct an independent enquiry because the applicant might be suffering from stress or depression is not a point that was fully argued in this case. The Court therefore makes no decision on this point.

36. While criticism can certainly be laid before the applicant for failing to fully address in his affidavit what information he alleges was ignored in the decision, the Court is satisfied that the decision was arrived at in contravention of basic fairness in that documents capable of supporting the applicant's credibility were ignored, the medical report was viewed in isolation and positive aspects of the applicant's evidence were routinely ignored. Generally, the negative findings made in the Section 13 report were repeated and adopted without any reference to whether the applicant's evidence on appeal provided any explanations or modifications. The Court is left wondering what the Tribunal Member made of the primary appeal ground relating to the level of knowledge of Togolese politics expected of the applicant. It is simply not known how these issues were addressed at the appeal hearing as they are not referred to in the summary of the evidence or in the analysis.

37. Despite misgivings, the Court finds an uncomfortable absence of any assurance that the Tribunal had regard to the totality of the evidence in this case. While it was certainly open to the Tribunal to attach low weight to some of the documents, they seem to have instead simply been ignored. Further, the reliance on undisclosed COI reports which had a significant impact on the decision confirms an appeal decision that is indicative of a want of basic fairness. The decision will be quashed for these reasons.

38. As has occurred in other cases and most recently in a challenge with many similarities to this case J.M.(Cameroon) the Court intends to discount the costs which follow from the decision to quash because of the failure of the applicant to support what was asserted in relation to failure on the part of the Tribunal to consider submissions made.