Neutral Citation: [2014] IEHC 493

**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2010 No. 890 J.R.]**

**BETWEEN**

**A.P. (ALBANIA)**

**APPLICANT**

**AND**

**REFUGEE APPEALS TRIBUNAL**

**RESPONDENT**

**AND**

**MINISTER FOR JUSTICE AND LAW REFORM**

**NOTICE PARTY**

**JUDGMENT of Mr. Justice Barr delivered the 2nd day of October, 2014**

**Background**

1. The applicant is a national of Albania. In March 2007, the applicant's father was involved in a road traffic accident in Albania. The accident involved a young boy, who was crossing the road. He died as a result of being hit by the car. The applicant states that this event gave rise to a blood feud between the boy's family and the applicant's family. The applicant feared that the boy's family would try to kill him in revenge for the death of the boy. The applicant believed that the family would apply the "*eye for an eye*" or "*blood for blood*" rule and on this basis would seek to kill the applicant. The applicant maintained that the family threatened that "*we are going to kill your son",* meaning him.

2. The applicant arrived in Ireland on 15th November, 2007. He started his trip from the Vlore City in Albania. He got into a large truck. The truck went by ferry to another country. The applicant thinks that it went to Italy and then into France. In France, he got out of the truck for two hours. He then switched to another truck and was taken by ferry to Ireland. He applied for asylum immediately upon his arrival in the State.

3. The applicant's asylum claim was unsuccessful at first instance before the Refugee Applications Commissioner. He appealed to the Refugee Appeals Tribunal (the RAT) but his appeal was also unsuccessful. The applicant seeks to challenge the decision of the RAT in these proceedings. The applicant has a number of complaints about the proceedings before the RAT and also in relation to the content of its decision.

**Failure to grant an adjournment to remedy interpretation difficulties**

4. In an affidavit sworn on 29th June, 2010, Ms. Siuna Bartels, the applicant's solicitor has set out in detail difficulties encountered by the applicant in presenting his case to the RAT. Her account has not been challenged by any replying affidavit on behalf of the respondent. As this is a central part of the applicant's claim against the RAT, it is necessary to set out Ms. Bartels' account in some detail, as follows:-

> *5. I attended the hearing of the applicant's appeal on 6th May, 2010. At the outset of the hearing, the Tribunal Member inquired whether the applicant had a chance to speak to the interpreter. It was indicated to the Tribunal Member that they had a small chat. The Tribunal Member then asked the applicant whether he was happy with the interpreter and whether dialect and accent affected understanding between them. The applicant indicated to the interpreter that he could understand her but not that well and this was stated to the Tribunal. It was explained to the Tribunal by the interpreter that she and the applicant were from different parts of Albania and that they each spoke a different dialect of the Albanian language and that this presented a problem. The interpreter confirmed to the Tribunal that some words used in the respective dialects were different. On that basis, counsel applied for an adjournment stating that any misunderstanding in interpretation could seriously prejudice the applicant. The presenting officer tried to suggest that there was a difference of accents only. The Tribunal Member stated that the hearing would proceed and that no good reason had been shown to 'postpone ' the hearing.*
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> *6. Counsel and I had serious concerns that there could be a serious problem in interpreting the applicant's evidence and counsel sought a short adjournment for jive minutes so that a discussion could take place among the applicant, the interpreter, counsel and me. The Tribunal Member granted this short five minute adjournment. Accordingly, the applicant, the interpreter, counsel and I had a discussion outside the hearing room. The interpreter confirmed that there was a difference of dialects with some words being different. The applicant expressed his concern that he could not fully understand the interpreter. Accordingly, when the hearing resumed, counsel renewed the application for an adjournment. The interpreter told the Tribunal that she could understand the applicant's dialect. The interpreter was asked whether she was satisfied she could give a true interpretation and she replied 'not really' and that she might not be able to give a true interpretation of the applicant's evidence.*
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> *7. The Tribunal Member stated that she was not impressed with the application. The Tribunal Member stated that this was 'a very simple story' and that the applicant speaks some English. Counsel stated to the Tribunal that the applicant does not have a great grasp of English and that his standard of English was rudimentary at best. The Tribunal asked counsel how he took instructions before the hearing. Counsel indicated to the Tribunal that he had difficulty speaking with the applicant in English immediately prior to the hearing but that I had previously taken instructions from the applicant with the assistance of a person who could interpret between the applicant and me.*

*8. The Tribunal Member then again asked the interpreter was she saying she could not give a true interpretation. The interpreter this time replied that she could. I consider that from the tone of voice used by the Tribunal Member, the attitude of the Tribunal Member and the manner in which the Tribunal Member asked this question that at this stage the interpreter felt compelled to answer the question in the way that she did, lest a different answer be taken as a slur on her competence by the Tribunal. The applicant then clearly stated to the Tribunal that he could not understand the interpreter completely.*

*9. The presenting officer asked the interpreter whether there were very extreme divergences so that if, for example, the applicant said the word 'car' in his dialect whether she would interpret that as 'dinosaur' and whether there such monstrous differences between the two dialects. The interpreter of course confirmed that there were differences but that they were not as extreme as the example posited.*

*10. The Tribunal Member stated that she was refusing the application for an adjournment and that the hearing would go on. The Tribunal Member stated that she did not want to take the applicant short but that a difference in accents and some words were not enough.*

*11. Counsel stated to the Tribunal that the applicant had clearly stated he did not understand the interpreter but, there were problems and that some words were different. Counsel having spoken with me and taking instructions informed the Tribunal that we would proceed under protest.*

*12. The Tribunal then stated that the hearing was proceeding on the basis that there was a difference of accents only and not a difference of dialects. Counsel stated that it was a difference of dialects. The Tribunal stated that an interpreter with a specific dialect had not been requested. The Tribunal stated that if the applicant had a difficulty with the interpretation 'we can go slowly or it can be repeated'.*

*13. At all stages of the consideration by the Tribunal of the applications for an adjournment, the Tribunal seemed to disbelieve that there could be any difference of dialects in the Albanian language spoken within the territory of Albania. The Tribunal seemed to believe that there could not possibly be a difference of dialects within the Albanian language spoken in Albania.*

*14. Over the course of the hearing when the applicant was giving his oral evidence several problems with the interpretation manifested themselves. When the applicant was asked through the interpreter when did he find out the name of the person killed by his father and the name of that person 's father, the interpreter translated the applicant's answer as 'after the court'. Counsel and I both knew from having taken instructions from the applicant that he meant after his interview with the Refugee Applications Commissioner. When counsel, through the interpreter, sought to clarify with the applicant what was meant by 'court'. There then followed a discussion between the interpreter and the applicant. Such discussion should not take place during a hearing. The interpreter is expected to interpret everything spoken by the applicant and there should be no un-translated discussion between them and the applicant. The interpreter then translated the answer of the applicant stating 'when we went to the court they asked me the name of the person - dead person so I asked my cousin'.*

*15. Counsel again asked the applicant through the interpreter what did he mean by 'court' in an attempt to clarify the word used by the interpreter. The Tribunal unaware of the intended evidence, and mistakenly assuming that some actual 'court' must have been intended, then asked was the applicant's father prosecuted as a result of the accident. The applicant then tried to answer in English. Counsel stated to the Tribunal that the applicant was not able to express himself properly in English. The Tribunal asked the applicant how long had he been in Ireland and the applicant stated 'two years'. The Tribunal Member asserted to the applicant that when she asked him a question he could understand her before the question was translated into English. The applicant stated in English that some questions he could not understand. The applicant explained as best he could in English that he could not speak English especially when he was nervous as he was at the hearing. The applicant indicated as best he could that he did not feel fully comfortable giving his evidence in English. The Tribunal stated to the applicant that she was 'going to pay you the compliments that your English was good'. The applicant stated that he could understand some questions.*

*16. Counsel then renewed the application for an adjournment. Counsel reiterated that the applicant was more comfortable giving evidence in Albanian. The Tribunal stated that an adjournment was 'not an option unless the applicant is completely prejudiced'. The Tribunal then alluded that there might be some sort of ulterior motive for an adjournment. Counsel stated that there was no ulterior motive for an adjournment. I was surprised and disappointed when the Tribunal stated that there might be an ulterior motive for the adjournment request. If anything, an adjournment would have inconvenienced us, when we arrived at the Tribunal fully prepared to run the case.*

*17. Counsel stated that it was in everyone's interest that the hearing proceed fairly. Counsel stated that we felt there was a risk of prejudice and that we were compelled to request an adjournment despite inconvenience to us. I was then somewhat surprised and taken aback when the Tribunal Member responded: 'contrivance is not a reason'. Counsel then stated that we were not satisfied that there would not be problems with the interpreter. The Tribunal Member questioned whether counsel was alleging that the interpreter was incompetent and it seemed as if the Tribunal could not believe that there could be any problem with dialects. Counsel stated that no allegation was being made against the interpreter but that we were not satisfied that with the difference of dialect the interpretation would be fully accurate.*

*18. The Tribunal then rejected the adjournment application and stated that the word issue was 'court' and that the Tribunal had no objection to the applicant being led somewhat and that some latitude would be allowed regarding leading questions. Counsel then asked the applicant through the interpreter: 'when you say 'court' do you mean that you had your interview with the Refugee Applications Commissioner?'. There then followed another discussion between the interpreter and the applicant. The interpreter then asked the following answer for the applicant 'Yes. That's what I call what we do here - court'.*

*19. Shortly after that exchange, counsel asked the applicant had he previously asked his father for the name of the person killed prior to when he spoke with his cousin by phone. The applicant stated in somewhat broken English 'he wouldn't give full. If he give he know which one kill my father. If I don't know the name the person then I cannot get revenge'. The interpreter then somewhat bizarrely decided to translate the applicant's English back into Albanian for him. The applicant then began to speak in English again but it was clear he was having difficulty fully explaining himself The Tribunal Member suggested that the applicant could answer the next question in Albanian through the interpreter.*

*20. At this particular point, counsel and I were quite concerned that the Tribunal might fail to grasp the exact explanation being given by the applicant for why his father refused to give the applicant the name of the person killed and the name of the family. This was a central aspect of the appeal, given that the lack of knowledge held by the applicant in that respect was a fundamental reason for why the Commissioner had rejected his credibility and had recommended he not be declared a refugee. The applicant had previously instructed counsel and myself that the reason his father had refused to give the applicant a name of the person killed or the name of the family, was because the father feared that if he was killed in the blood feud, the applicant would avenge his death and continue the blood feud. Counsel and !feared that the interpretation difficulty could lead to this vital evidence not being properly given to the Tribunal.*

*21. In the circumstances, having regard to the severe interpretation difficulty and since the Tribunal Member had clearly stated that she would allow some latitude towards leading questions, counsel asked the applicant whether his father was reluctant to give him the name in case that the blood feud was continued by the applicant taking revenge in case his father was killed. To this question which was interpreted for the applicant through the interpreter replied yes that his father was scared that he would continue the blood feud The Tribunal then indicated that it was 'clear to me in English, I have to say' a reference to the broken English evidence given by the applicant to which I have already referred No further application for an adjournment was made on the applicant's behalf as the Tribunal had already rejected firmly the previous adjournment application more than once.*

*22. Later in the hearing during the course of cross examination by the Presenting Officer, the applicant stated that his father knew that by telling the applicant the names the applicant would take revenge if something happened to his father. He stated that his father knew the applicant would have taken revenge. "*

5. The ability of the applicant to understand the proceedings and to be understood during the proceedings is a basic requirement of fairness of procedures. In *Ming v. Canada* [1990] 2 FC 336, the court struck down a decision because the applicant had difficulty understanding the proceedings due to the fact that the interpreter spoke a different dialect of Chinese, spoke too fast and inserted English words into her translation of the words that had been spoken. In the course of the judgment, MacGuigan J.A. held that the ability to understand and be understood was a minimal requirement of due process and that the applicant was entitled to a competent interpreter. In the view of the judge, the issue raised in relation to the interpreter was an important one. The learned judge stated as follows:-

*"In my view the objection raised by the applicant's counsel was a serious one. Once raised, it required resolution. It could not be dismissed by the adjudicator without inquiry although it is doubtful that an inquiry as formal as a voir dire as used in a criminal trial would be necessary or desirable. Given the fact that the applicant's counsel could not communicate with the applicant during the hearing except through the very interpreter whose competence vis a vis his client was in question, I cannot take as decisive the counsel's failure to continue to press his objection after a negative ruling by the adjudicator. It was the adjudicator's responsibility to assure himself that the interpretation was competent.*

*Nor can I take as decisive the subsequent affirmation by the applicant that he understood the proceedings. No doubt he was able to follow in a general way, but the very objection he raised at the beginning of the third session, in the face of previous similar avowals that he understood, must stand as a caution.*

*Moreover, the issue is not only whether the applicant understood. It is also whether he could adequately express himself through the interpreter. This factor assumes special importance in light of the reliance of the panel on the applicant's credibility in arriving at its conclusion. It was the 'contradictions' in his evidence that caused the panel (Case at p. 47) to question his claim to have a well founded fear of persecution based on his particular social group.*

*Taking the issue of the competence of the interpreter in its total context, I must conclude that the applicant did not receive a fair hearing."*

6. The issue of interpreters and the fairness of proceedings was raised before Hedigan J. in *KEA v. Refugee Applications Commissioner & Anor* [2008] IEHC 366. In the course of his judgment, the learned judge set out the following general principles:-

*24. Although certain of these authorities deal with fair procedures in the context of criminal proceedings, it is clear from the decision of Feeney J. in Hakizimana v The Refugee Applications Commissioner [2006} IEHC 355 that only high standards of fairness will suffice in the asylum process, and that the requirements identified as being necessary in criminal proceedings represent the highest requirements for fair procedures.*

*25. From a thorough analysis of these authorities, I have drawn the following general principles which, in my view, equally are applicable in this jurisdiction:-*

*a. The right to understand and be understood is a minimal requirement of fair procedures. It is necessary for an applicant to be given the opportunity to put his or her case in as full a manner as is possible; where possible, applicants should have the same opportunity to understand and be understood as if they were conversant in English.*

*b. There is, however, no absolute obligation for ORAC to provide an interpreter who speaks a language that is the applicant's mother-tongue, a language that the applicant speaks fluently or with a maximum of ease, or a language of his of her choice.*

*c. The true benchmark is whether the applicant has sufficient proficiency in the language of the interpreter. The assessment of proficiency will include consideration of whether the applicant is capable of following the interview, making out his or her claim, conversing with some fluency, and making known any difficulties that he or she might have.*

*d Account should be taken of whether the applicant would be prejudiced or disadvantaged by proceeding in the language of the interpreter.*

*e. The right to interpreter assistance may be denied if there is "cogent and compelling evidence" that an accused's request for an interpreter is not made in good faith, but rather for an oblique motive (R v Tran [1994] 2*

*SCR 951).*

*f It is not open to an asylum seeker to refuse to be interviewed in his or her first language.*

*g. Account must be taken of the fact that there may be instances where the limited resources of a small country such as Ireland are unable to provide an interpreter in the first language of every asylum seeker; in such small countries, it is often the case that there is only a limited pool of competent, experienced interpreters.*

*26. This list of principles is not exhaustive and must be viewed as a whole; furthermore, the application thereof will depend on the circumstances of each case.*

*27. In my view, the appropriate person to make the assessment of an applicant's proficiency is the ORAC interviewer; this is not a decision that is to be made by the applicant or his legal advisers, although representations may, of course, be made with regard to proficiency. "*

7. In the circumstances, the RAT was under a duty to act judicially in determining whether or not to grant an adjournment to the applicant. Finlay Geoghegan J. in *C.G. v. Appeal Commissioners* [2005] 2 I.R. 472, said the following in relation to the duty on a Tribunal to act judicially:-

*"Notwithstanding this, it is well established that there are circumstances in which a tribunal exercising administrative functions may be under an obligation to act judicially. It is not disputed on behalf of the notice party that the respondent is under an obligation to act judicially in hearing and determining appeals. It follows that the respondent must also be obliged to act judicially in any application in relation to the appeals including an application such as that at issue herein, namely, an adjournment of the appeal hearing by reason of an alleged potential interference with the constitutional rights of the applicant. "*

8. If a competent interpreter and by that I mean an interpreter who was conversant with the dialect spoken by the applicant, was not provided, errors in translation would be likely to happen. If an applicant cannot make himself properly understood, he would be at a disadvantage in putting his case before the RAT. The applicant in this case alleges that he was the subject of just such an element of confusion in the evidence given by him in relation to why his father would not tell him the name of the boy's family.

9. In the course of its decision, the RAT found as follows in relation to the applicant's lack of knowledge of the name of the boy's family:-

*"The applicant's recall and testimony, pre-hearing, in relation to the alleged accident of March 2007, the consequences thereof as alleged, his lack of detail and not knowing the family name with whom he suggested his family was in a blood feud, the fact that he had no detail of threats as allegedly made is incredible. He has vague information and, as the presenting officer puts it, paucity of detail. This all undermines his credibility and the veracity of what he purports to state. He has sought to enhance the detail of his purported claim post interview to ameliorate such claim. It is simply incredible that if this applicant's story were true, he would not know the name of the opposing family. He claims to have had to leave his home in March 2007, going to stay with his aunt and several friends until November 2007, when he quit his country of origin and, further, he claims that his family had to leave and go to Greece in or about March 2008. It is implausible to this Tribunal that the applicant would not have known the name of the family who allegedly threatened his family and his father. His story quite simply is not accepted by the Tribunal. Further his suggestion that his father was afraid to tell him the detail and to tell him the information lest he would seek revenge against that family again runs counter to the country of origin information in relation to blood feuds. If this were a true blood feud in accordance with Kanun Lek, which the applicant claims, then it would be the Todri family who might seek retribution. In short, his father killed a member, albeit by accident of that family and if this were a blood feud it would then be the fact of it that the Todri family by traditional right would seek revenge on the applicant's family.*

*He suggested that his father was afraid to give him the information lest the applicant might seek revenge. This is absolutely implausible. "*

10. The Tribunal reached the conclusion that the applicant gave evidence that his father did not tell him the name of the family, lest the applicant might then seek immediate revenge against them. In fact, according to Ms. Bartels, the applicant's evidence was that his father did not want to tell him the name of the family, lest in the event of that family killing the applicant's father, the applicant would then avenge his father's death. The applicant's evidence was not that his father was afraid that the applicant upon learning the name would immediately attack them before they attacked the applicant's family. Ms. Bartels was of the opinion that the Tribunal Member's error of fact in this regard was caused or at least contributed to by the serious difficulties with interpretation, which affected the applicant's appeal due to the refusal of the Tribunal Member to grant an adjournment.

11. It was submitted by the applicant that the Tribunal placed reliance on a fundamental error of fact in the credibility assessment, in rejecting the applicant's explanation as to why his father did not tell him the name of the other family involved in the blood feud.

12. I am satisfied that the RAT erred in not allowing the applicant have the adjournment requested so as to procure the services of an interpreter who spoke the same dialect of Albanian as the applicant. This was necessary in order to enable the applicant to understand what was going on and to make himself properly understood. This was a fundamental element in the right to fair procedures enjoyed by the applicant.

13. I am also satisfied that there was an error of fact on the part of the RAT in concluding that the applicant had said that his father would not tell him the name of the other family, lest the applicant would go immediately and try to carry out a revenge killing against them. I am satisfied from Ms. Bartels' evidence that what the applicant meant was that his father would not tell him the name so that if his father was killed the applicant would not then go and carry out a revenge killing. This was a significant error of fact on the part of the Tribunal. It appeared to be an important element in the finding by the Tribunal that the applicant was not credible.

14. In the circumstances, I will grant *certiorari* of the decision of the RAT dated 14th May, 2010 and notified to the applicant on 9th or 10th June, 2010.

**Error concerning the birth certificate**

15. At the hearing, the applicant produced an un-translated version of his Albanian birth certificate. The Tribunal was not impressed

by the late production of this document. It stated as follows in relation to identity documentation:-

> *"(a) Section 11B(a), (b) and (c) are particularly pertinent in this instant application. The Tribunal considers that the applicant has not provided a reasonable explanation for the absence of any ID documentation albeit that the Tribunal accepts that he sought to produce an un-translated birth certificate to this Tribunal as of the date of hearing. He is in this jurisdiction since 2007 and his interview was in March 2008. The birth certificate is in his possession for a considerable period of time but he did not produce it until the date of hearing."*

16. By invoking s. 11B(a) of the Refugee Act (as amended) as being "*particularly pertinent*", it would appear that the Tribunal had determined that the birth certificate produced by the applicant did not qualify as an identity document. The applicant has pointed out that s. 20 of the Refugee Act 1996 (as amended) deals with certain criminal offences such as destruction or alteration of an asylum seeker's identity documents. Section 20(1) defines "*identity documents*" as including a birth certificate. The applicant submitted that there was no reason why the term "*identity documents*" in s. 11B should be given a different interpretation to its meaning of section 20(1). It was submitted that a birth certificate was an identity document for the purposes of an asylum application.

17. The applicant submits that his birth certificate is, as a matter of law, an identity document. The applicant submits that the Tribunal failed to accept it as such for the purpose of making its decision. Furthermore, the Tribunal identified the lack of identity documents as "*particularly pertinent*" to his adjudication and it was the first reason listed by the Tribunal as warranting a rejection of credibility.

18. The applicant referred to the decision in *A.M. v. Refugee Appeals Tribunal* [2008] IEHC 171, where it was held that what purported to be the applicant's hezb-iIsalami membership card was an identity card and should have been treated as such by the Tribunal.

19. The applicant submitted that in its decision, the Tribunal made an error of law, a material error of fact and failed to consider relevant evidence in the form of the birth certificate. It was submitted that in finding that the applicant had not provided a reasonable explanation for the absence of identity documents and in relying on this finding to reject his credibility, the Tribunal made an error of law and of fact.

20. The applicant also complains that the RAT did not consider the birth certificate because it had not been translated into English. The applicant submits that the correct position is that the Tribunal was under a duty to have the birth certificate translated into English so that it could be adequately and meaningfully considered by it.

21. The respondent submitted that the applicant had been aware from his questionnaire and from his interview that identity documents were particularly relevant. In his interview, he had stated "*I will have them sent by post*". It was submitted that the Tribunal Member was entitled to conclude that the applicant did not provide a reasonable explanation for the absence of these documents.

22. In the course of argument, the applicant referred to the decision in *T.M. v. Minister for Justice* [2007] 4 I.R. 553. In that case, the High Court held that the Tribunal had determined an appeal in breach of s. 16(6)(e) of the Refugee Act 1996, as amended, and in breach of fair procedures by failing to translate and to consider certain documents relied on by the applicant in support of his asylum application. The court held that the appeal had therefore not been decided in accordance with law, and granted *certiorari* of the decision. The court relied on s. 16(6)(e) of the 1996 Act rather than s. 16(6)(d) as these documents had been furnished to ORAC rather than produced at the oral hearing before the Tribunal, but the applicant submitted that the principle was the same and that the facts of that case are analogous to what happened in the instant case concerning the birth certificate. They submitted that it was apparent from the judgment in *T.M. v. Minister for Justice* that there was a duty on the Tribunal to translate documents submitted by the applicant, where those documents are identified as significant. They submitted that the birth certificate in this case was significant as it was an identity document and the Tribunal expressly relied on the absence of identity documents as a "*particularly pertinent*" factor calling for a rejection of credibility.

23. I am satisfied that the Tribunal Member was entitled to draw an adverse inference from the fact that the applicant produced an un-translated copy of his birth certificate at the hearing. The decision maker was, in my view, entitled to come to the conclusion that she did in relation to the identity documentation. In his interview held on 19th March, 2008, the applicant had stated that he would get "*them*" (meaning the identity documents) sent on by post. It was only at the hearing on 6th May, 2010, that he produced an un-translated copy of his birth certificate. In these circumstances, the comment of the RAT in relation to the late production of the document, was something that she was entitled to remark upon.

**View of the Tribunal that the dispute was not a blood feud**

24. In the RAT decision, it was stated that in the Tribunal's view this was not a dispute which could be characterised as a blood feud at all. The applicant submits that this view was formed at least in part due to the misunderstanding of the applicant's evidence as to why his father would not give him the name of the other family, lest the applicant might take immediate revenge against that family. In fact, as set out above and as averred to by the applicant at para. 20 of his affidavit, the applicant's evidence was that his father did not want to tell him the name of the family, lest in the event of that family killing the applicant's father, the applicant would then avenge his father's death. The applicant submits that in determining whether the dispute could be said to be an authentic blood feud, it would appear that the Tribunal was influenced by this significant error of fact. The Tribunal expressly commented at p. 24 of the decision that *"if this were a true blood feud in accordance with the Kanun Lek",* it would be the Todri family who might seek retribution rather than the applicant. The error of fact led the Tribunal to conclude that whatever this dispute may have been, it could not be characterised as a blood feud.

25. The applicant further submits that the Tribunal acted in breach of fair procedures by failing to draw the attention of the applicant and his legal advisers to its view that the dispute was not one which could be characterised as a blood feud at all. In her affidavit, Ms. Bartels has stated that had this view been drawn to the attention of the applicant's legal team, detailed legal submissions would have been made addressing this point and explaining exactly how the dispute should be characterised as a blood feud. The applicant further submitted that if a matter is going to be of significance to a Tribunal decision, that matter should be drawn to the applicant's attention and the applicant should be given an opportunity to address it.

26. The applicant cited the decision of Finlay Geoghegan J. in *Olatunji v. Refugee Appeals Tribunal* [2006] IEHC 113, where the judge accepted the statement of law as set down by Clarke 1. in *Idiakheua v. Minister for Justice, Equality and Law Reform & Anor* (Unreported, High Court, Clarke J., 10th May, 2005), in which he considered the requirement on a member of the RAT to put matters of concern and/or perceived discrepancy to an applicant and give them an opportunity of dealing with them. In that decision, he stated at p. 9-10:-

*"If a matter is likely to be important to the determination of the RAT then that matter must be fairly put to the applicant so that the applicant will have an opportunity to answer it. If that means the matter being put by the Tribunal itself then an obligation so to do rests upon the Tribunal.*

*This remains the case whether the issue is one concerning facts given in evidence by the applicant, questions concerning country of origin information which might be addressed either by the applicant or by the applicant's advisors.*

*In setting out the above I would wish to make clear that the obligation to fairly draw the attention of the applicant or the applicant's advisors to issues which may be of concern to the Tribunal arises only in respect of matters which are of substance and significance in relation to the Tribunal's determination. "*

27. The respondent submitted that the RAT member was not obliged to advise the applicant of her views or thoughts on the evidence. It was submitted that the applicant's complaint on this aspect was wholly without regard to the role of the Tribunal Member to assess the evidence and reach a decision. They stated that every aspect of the applicant's claim was explored with him and a comprehensive decision issued. The respondent relied on the following passage from the judgment of O'Neill J. in *Nicolai v. RAT* [2005] IEHC 345, where he referred to a similar complaint and stated:-

*"There is no doubt in my view that the Tribunal has a duty to ensure that the applicant is given every reasonable opportunity to deal with all of the factors which could materially influence the decision. However the Tribunal is entitled to have regard to the procedures already completed and the knowledge necessarily gained by the applicant from that process and in particular a Tribunal is entitled to have due regard to the fact that the applicant was legally represented. That being so it was not necessary for the Tribunal to in effect act as counsel, as a court would do with a lay litigant. Having regard to the fact of legal representation the Tribunal could quite properly, not ask questions or seek to lead evidence where that was not done by the legal representatives of the applicant. All the matters of which complaint is now made, of not being put, arose from information given by the applicant in the course of the questionnaire, or the interview or in oral evidence. "*

28. I accept this submission made by the respondent. The RAT was entitled to reach its decision on the evidence as to the existence of a blood feud. It was not obliged in the course of the hearing to canvas with the applicant every possible result which it might reach on a thorough consideration of all the evidence produced at the hearing. It was up to the applicant to prove that there was a blood feud in existence. The Tribunal Member was entitled to reach a decision on that issue when she had considered all the evidence.

**Failure to resolve complaint in country information regarding State protection**

29. The applicant submitted that certain country of origin information (hereinafter COI) being the UK Home Office Operational Guidance Note of December 2008, suggested that State protection against blood feuds might be available from the police. However, there was other COI which suggested that the police were ineffectual in dealing with such disputes.

30. The applicant submitted that while the Tribunal was entitled in principle to select the relevant COI, it could not ignore such significant COI which tended to support the applicant's arguments, without affording a reasoned opinion for why that body of information was not being accepted.

31. In response, the respondent argued that the consideration of the COI is a matter for the decision maker. In support of their argument, they referred to the decision of McDermott J. in *R.P. v. Minister for Justice, Equality and Law Reform* 2014 IEHC 125, where the judge stated as follows:-

*"A decision maker is not obliged to cite or quote each and every report or article submitted on behalf of the applicant. However, the court is satisfied that extracts from the Immigration and Refugee Board of Canada reports were quoted in the determination. It is entirely a matter for the decision maker to consider the reports and their contents and to assess the information submitted That information may contain some negative components, but it is for the decision maker to assess the broad thrust of the information as was clearly done in this case. "*

32. McDermott J. continued at p. 18 of his judgment:-

*"41. I am satisfied that all documents (including the police report) were considered appropriately by the officials and that the issue of the applicant's credibility in respect of the inconsistency must be viewed in the context of the overall conclusions reached in this case. It is not appropriate to deconstruct a decision by subjecting its individual elements to isolated examination. The court is satisfied that this was not a case in which the decision maker simply adopted conclusions on credibility reached by the Refugee Appeals Tribunal. Insofar as it considered the issue of credibility, it did so by reference to the inconsistencies apparent from the papers in the case. This matter was a relatively minor element of the overall assessment made. The court is satisfied that the substance of this decision lies in its consideration of the country of origin information in respect of state protection for those said to be in fear from a blood feud. I am not satisfied that the applicant is entitled to relief on this basis.*

*42. A further claim is made of a more general nature that the respondent failed to consider the country of origin information adequately and, in particular, failed to have proper regard to those aspects that favoured the applicant's case. I am satisfied that there is no basis for this submission. It is a matter entirely for the decision maker to consider the country of origin information available and to assess it appropriately. In this case there is nothing to suggest that the decision maker arbitrarily preferred one piece of country or origin information over another and, indeed, there is no major conflict in all of the material submitted as to the incremental if slow improvements in the functioning of the police and judiciary and other arms of the Albanian State since in or about 2001."*

33. I am of opinion that there was a conflict in the COI before the Tribunal at the time of its decision. The decision maker was entitled to prefer one piece of COI over another. This was a matter for the Tribunal. I do not see that there is any criticism to be made of the Tribunal in this regard.

**Error regarding brother's date of birth**

34. An error was made when translating the applicant's brother's date of birth. In the original version, the applicant stated that his brother was born in 1992. In the English version of the questionnaire, this was mistakenly inserted as 1982.

35. The error is referred to in para. 1(f) of the Tribunal decision. This was dealing with the issue as to whether his mother had sought

police protection on behalf of the family. In his evidence, he had stated that his younger brother was under 18 years of age and for that reason it was the applicant who was primarily at risk from the revenge attack. In the Tribunal decision, it was noted that in the questionnaire, the applicant had given his brother's date of birth being 1982 which would make his brother at least 25 years of age at the time of the accident in March 2007. The Tribunal Member continued: "*if this date of birth is correct, then, it is materially inconsistent with what the applicant purports to state*". The applicant submits that this error of fact significantly infected the Tribunal's assessment of credibility and thus, in the applicant's submission invalidates the decision. The applicant also complains that the Tribunal failed to draw attention of the applicant or his legal advisers to this view of the Tribunal that there was a material inconsistency between the date of birth given for the applicant's brother in the questionnaire and the date of birth given by the applicant in his testimony. It is submitted that if this issue had been brought to the attention of the applicant's legal team, they would immediately have referred the Tribunal to the original un-translated questionnaire and pointed out to the Tribunal the error in the English translation. The applicant states that the failure on the part of the Tribunal to give him notice of this mistake is another matter which vitiates the decision.

36. I am satisfied that while an error was made in relation to the brother's date of birth, it was in relation to a peripheral issue concerning whether the applicant or his mother sought police protection. I would not strike down the decision of the RAT on this account.

**Failure to consider explanation for discrepancy on relocation**
37. The applicant notes that at sub para. (g) of the Tribunal decision, in identifying reasons for the rejection of credibility, the Tribunal made a finding that there was an unexplained material discrepancy in the applicant's claim as follows: in the applicant's questionnaire he stated that he did not attempt to relocate in Albania, whereas his evidence at hearing was that he stayed in different places with different friends in Tirana and elsewhere. The applicant submitted that he had in fact given an explanation of this inconsistency when he was asked about it at his s. 11 interview. The following exchange between the interviewer and the applicant is noted at p. 11 of the interview notes:-

> *"Q. Today you have identified that you moved to other parts of Albania to avoid those that want to kill you but in your application questionnaire you indicated that you did not move elsewhere in your country. Can you account for this apparent inconsistency please? [applicant shown 26(a) of questionnaire]*
>
> *A. I thought that the question in the questionnaire meant that I move with my home and family altogether. I didn't understand it as meaning did I move elsewhere as an individual person. "*

38. The applicant submits that the Tribunal failed to take into account this explanation given by the applicant at the interview for the apparent inconsistency. The applicant submitted that if an applicant had presented an explanation for a matter of concern to the Tribunal, it was incumbent on the Tribunal as a matter of fair procedures to consider and assess that explanation in the decision if reliance is validly to be placed on that matter in a negative credibility assessment. The applicant submitted that the failure to consider and adjudicate on the explanation provided by him was a breach of fair procedures warranting an order of *certiorari*.

39. The respondent submitted that the Tribunal Member was entitled to have regard to question 26(a) of the applicant's questionnaire wherein the applicant clearly stated that he did not move to "*a different town or village or another part*" of the country to avoid the persecution he feared. The applicant subsequently stated that he had moved within Albania and he was given an opportunity to explain the discrepancy. The applicant maintains that "*maybe I made a mistake when I filled it out*" and "*I just filled it out. I do not know. I just wrote the way I wrote it".* The respondent submits that it was open to the Tribunal Member to assess this evidence and conclude that there was a "*material discrepancy*" in the applicant's evidence.

40. Where there was a discrepancy between the applicant's answers at the interview and at the hearing, the decision maker was entitled to have regard to that discrepancy in reaching her decision. I do not think that the decision can be criticised on this account.

**Failure to consider COI on effectiveness of reconciliation**
41. The RAT noted that the applicant had not tried reconciliation with the Todri family and in particular no offer of monetary compensation had been made. The applicant submitted that in reaching this conclusion, the RAT had failed to take account of the COI from the Immigration and Refugee Board of Canada issue paper which was before the Tribunal to the effect that reconciliation committees offered little or no protection to people involved in blood feuds.

42. I am satisfied that this finding was reached by the Tribunal on a consideration of the COI before it. The RAT was entitled to come to the conclusion that the applicant had not tried reconciliation and that this affected his credibility. However, this was not a central plank in the decision reached by the Tribunal.

**Speculation/Conjecture**
43. The applicant submitted that a number of findings of the RAT were based on pure speculation and conjecture on the part of the Tribunal. In particular, he made complaint in respect of the following findings:-

> *"• If the family was genuinely at risk of a blood feud it is incredible that they might have been able to live unharmed until the date of the questionnaire, 27th November, 2007 (subpara. (g), p. 27)*
>
> *• The applicant's 'entire story simply does not ring true and is rejected' (subpara. (g), p. 27)*
>
> *• The fact that there has been no retribution killing in all of this time is telling of itself (subpara. (g), p. 27)"*

44. It was submitted by the applicant that the Tribunal could not base credibility decisions on speculation or conjecture; the decision cannot be based simply on a gut feeling or a view based on experience or instinct that the truth has not been told. In this regard, the applicant relied on the decision in *S.O. (a minor suing by his next friend NO.) v. Minister for Justice, Equality and Law Reform & Ors* [2010] IEHC 151, wherein it was stated as follows by Edwards J.:-

> *"The law is quite clear that the Tribunal member should not base credibility decisions on speculation or conjecture. In Zhuchkova v Minister for Justice, Equality and Law Reform [2004] IEHC 404 Clarke J., relying upon the judgment of Peart J in the Da Silveiria v Refugee Appeals Tribunal (Unreported, High Court, Peart J., 9th July, 2004) observed that:*
>
> > *'.... there is a wider principle, being the one identified by Peart J., when he says that the decision cannot be based simply upon a gut feeling or a view based on experience or instinct that the truth has not been told A finding of lack of credibility, it is at least arguable, must therefore be based on a rational analysis which explains why, in the*

*view of the deciding officer, the truth has not been told. "*

45. I am satisfied that the portions of the decision criticised under this heading are not based on speculation or conjecture, but are reasonable inferences to be drawn from the facts established in evidence before the Tribunal.

**Finding in relation to not having sought asylum in France**
46. The Tribunal stated at subpara. (m) of its decision:-

> *"The applicant did not apply for asylum in France and it is considered that it was within his competence to so do. Whereas it is accepted that no asylum seeker must apply for asylum in his first safe destination country, it is nonetheless considered that anyone fleeing a systemic and/or systematic type harm might do so without delay upon reaching such first destination country. Definitively this was France. It is considered cumulatively that the applicant intended and planned to leave his country of origin and intended and planned to access this jurisdiction. These are not the actions of a bona fide refugee flee (sic) suggested persecution. "*

47. The applicant maintains that the decision of the Tribunal is internally inconsistent, by the Tribunal accepting that "*no asylum seeker must apply for asylum in his first destination country*" but by going on to find that "*anyone fleeing a systemic and/or systematic type harm might do so without delay upon reaching such first destination country and by making a negative credibility finding because the applicant did not apply for asylum in France*". The applicant claims that the Tribunal has thus failed to comply with the duty to give cogent and adequate reasons for his decision and in particular for a rejection of credibility.

48. The respondent states that the Tribunal Member noted that the applicant was unable to give specific details in relation to his travel to France and furthermore that he failed to seek asylum in France suggesting that he was not a *bona fide* refugee fleeing persecution. The applicant complains that an asylum seeker is not obliged to seek protection in the first safe country and it was submitted that no adverse inference can be drawn from this evidence. The respondent states that this submission is without regard to s. 11B(b) of the Refugee Act 1996 and the decision of Clark J. in *A.R. (Georgia) v. Refugee Appeals Tribunal* [2010] IEHC 487, wherein she stated as follows:-

> *"The final negative finding relates to the applicant's failure to give a reasonable explanation for not seeking asylum in the first safe country in which he arrived. His explanation for staying in Russia for more than a year without seeking protection was that he might have experienced difficulties as a Georgian. However he travelled through several countries including France before coming to Ireland and the only explanation offered for not applying there was that people told him to come to Ireland. The Tribunal Member cannot be criticised for concluding that the applicant had failed to substantiate his claim that Ireland was the first safe country in which he arrived. He was perfectly entitled to rely on this aspect of s. 11B of the Refugee Act 1996 to doubt the applicant's credibility. "*

49. The conclusion reached by the decision maker was one that was open to her on the evidence. She was entitled to draw an inference from the fact that the applicant did not apply for asylum in France. The finding that the applicant intended to leave his country of origin and come to this jurisdiction was a finding that was open to the Tribunal. Similarly, her finding that these actions were not the actions of a *bona fide* refugee fleeing persecution, was a finding that was open to her on the evidence.

**Conclusions**
50. For the reason set out herein, I find that the RAT erred in not granting an adjournment to the applicant so that an interpreter who understood and spoke the applicant's dialect of Albanian could be found. I am satisfied that the absence of such an interpreter was a causative factor in relation to the evidence of the applicant being taken to mean that his father would not tell him the name of the other family, lest the applicant would go and carry out a revenge killing straightaway. This was not what the applicant meant in his evidence. I am satisfied from the evidence of Ms. Bartels that what the applicant meant was that his father would not tell him the name of the other family, so that if anything happened to the father, the applicant would not be able to go and carry out a revenge killing. This error was a significant element in the finding of lack of credibility on the part of the applicant. In the circumstances, I will quash the decision of the RAT dated 14th May, 2010, and direct that the matter be remitted to the RAT for reconsideration by a different Tribunal Member.