Neutral Citation: [2014] IEHC 563

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 685 JR]

BETWEEN/

N. C.

APPLICANT

AND

[2010 No. 686 JR]

M. C. [A MINOR SUING BY HIS MOTHER AND NEXT FRIEND, N.C.]

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered on the 3rd day of December, 2014

1. The applicants in this telescoped judicial review application are seeking orders of *certiorari* in respect of the decision of the Refugee Appeals Tribunal ("the RAT"), dated 2nd March, 2010, to affirm the recommendation of the Office of the Refugee Applications Commissioner ("ORAC") that the applicants not be declared refugees.

Background

2. The applicants are a mother and her minor son. While they made separate asylum applications, their claims relate to the same source of persecution and the same Tribunal member determined their appeals. The applicant, N.C., was born on 27th September, 1986, in Albania. Her son, M.C., was born on 26th July, 2005, in Greece. They are both Albanian citizens. The applicant claims to have fled from Albania to Greece in February 2000, at the age of 13, to escape from a blood feud which had started in 1997 between her extended family, the Cs, and the Yzeiri family. The applicant claimed to be affected by this blood feud because she is a member of the C. family and stated that "spilled blood must be cleared with blood." In *A.G. v. The Refugee Appeals Tribunal and The Minister for Justice, Equality and Law Reform* [2013] IEHC 252, Mac Eochaidh J. commented on the prevalence of blood feuds in Albania, stating that:

> *"... blood feuds are an acknowledged feature of life in Albania. These disputes involve families of murder victims seeking revenge on the families of the perpetrator. The phenomenon is well documented and features strongly in claims made by Albanian nationals for asylum internationally. Efforts by the Albanian government and non-governmental organisations in Albania to counter the phenomenon and achieve reconciliation between warring families is acknowledged in country of origin information."*

3. The applicant stated that she attended school in Albania for approximately three years. She then recalled not being able to attend school by reason of a feud between her family and the Yzeiris. In 1997, she claims to have witnessed her father's second cousin, B.C., killing one of the Yzeiri sons, as a result of which she and her siblings had thereafter to remain indoors. The applicant stated that B.C. had killed a young Yzeiri family member because he believed the young man was in a relationship with his sister. The applicant claimed that B.C. also killed his sister. The applicant said that her father sought reconciliation after the 1997 incident but this was refused.

4. The applicant claimed that in 1998 a member of the Yzeiri family killed a member of the C. family. The applicant stated that her family also came under attack at this time. She recalled shots being fired at her family's home from a nearby house. As a result of this, the family had to remain indoors. The applicant's father could not work. The applicant claimed that after two days the shooting stopped and the house was repaired.

5. The next incident happened in December 1999, when the applicant claims that her father was shot.She recalled two doctors coming to the house to treat her father's injuries, as he was unable to go to the hospital. The applicant stated that the doctors were friends of her father and that they stayed at the house for between two and four days. According to the applicant's account, her father took around six months to recover from his leg injuries. The applicant said that her father did not tell the family who had injured him and she still does not know.

6. After this, the applicant and her family moved from Berat to her mother's village, Novaj. The Yzeiri family later became aware of this, so the family decided to travel to Greece, which they did in February 2000. The applicant stated that this journey took one week. The applicant claimed that her father worked illegally in Greece and that she and her family lived in an abandoned house. They remained indoors and did not attend school. The applicant stated that they lived in Sikurio in Greece.

7. The applicant married a fellow Albanian in Greece in October 2002 at the age of 16. Her husband had permission to remain in Greece but this was not permanent. In 2003, the applicant states that her father returned to Albania in the belief that things may have changed. The applicant claimed that he was warned by his friends that he was still at risk of being killed in Albania. Although her father did not specify who it was who intended to kill him, he did relate to his family that he had heard that the Yzeiri family continued to seek blood for blood. The applicant stated that her father told his family that they could not return to Albania.

8. The applicant claimed that in 2004 she and her family heard from Albanian people in Sikurio that the Yzeiri family knew they were in

Greece. As a result of this, the applicant stated that they decided to move five hours away to another village in Greece, called Kalkidha. The applicant stated that she left Sikurio with her husband, brother, and parents. In Kalkidha, the applicant claimed that her husband rented an apartment and found a job there.

9. From 2004 to 2007, the applicant stated that she experienced no problems. She described this period as "three years of silence". Her parents came to see her sometimes, and in 2005 she gave birth to her son. She did not work during this period and claims only to have gone out for hospital check-ups during her pregnancy.

10. In 2007, the applicant stated that her husband was stopped by two people who he did not recognise. He was told that there was a problem with the family into which he had married, namely the Cs. The applicant states that when her husband told her of what had happened, they decided to move again within a matter of days. She stated that they went to Athens by taxi, where they stayed with her husband's brother who helped them to rent a house. The applicant stated that they remained in Athens for some two years until 2009.

11. During their time in Athens, the applicant claimed that there were rumours that the Yzeiri family were in Greece. She said that word was sent by her father's friends that blood for blood was still being sought. The applicant stated that her father believed that the Yzeiri family was trying to kill all the C. family, including the parents and children.

12. The applicant had the same temporary visa in Greece as her husband, which had to be renewed every two years. However, she stated that she decided to leave Greece because of her fear of the Yzeiri family. The applicant and her son, the second named applicant, and the applicant's brother, fled from Greece and arrived in Ireland on 23rd February, 2009. The applicant claims to fear being killed by the Yzeiri family if returned to Albania.

Documentation submitted
13. At her section 11 interview, on 21st July, 2009, the applicant submitted three newspaper reports relating to the C.-Yzeiri blood feud, which she had accessed on the internet. She also submitted her passport, a family certificate, and a Greek health insurance document. ORAC stated that it was unable to verify the authenticity of these documents. By letter dated 19th August, 2009, ORAC informed the applicant of its decision to recommend that she not be declared a refugee.

14. The applicant appealed ORAC's decision to the RAT and she submitted some additional documentation to the RAT as part of her appeal. This included a letter purporting to be from the Mayor of the applicant's hometown in Albania, and a medical report from a Dr. Tosca regarding the injuries allegedly sustained by her father. Following an oral hearing on 18th February, 2010, the RAT, in a joint decision, rejected her appeal and the appeal on behalf of her son. This decision, dated 2nd March, 2010, was notified to the applicant by letter dated 19th May, 2010. It is this decision that is challenged in the present proceedings.

15. At hearing, it became apparent that the applicant's submissions may be grouped into the following three categories:

1. Negative credibility findings allegedly made in breach of fair procedures;

2. RAT's alleged failure to consider documentation;

3. State protection findings allegedly based on selective reliance on COI and made in disregard of the applicant's evidence.

Negative credibility findings
16. The RAT found that the applicant was not credible. This negative credibility finding forms the core of the RAT's decision in respect of the applicant. The applicant submitted that the Tribunal erred in law and acted in breach of fair procedures in the manner in which the adverse credibility findings were arrived at. Counsel for the applicant took issue with various aspects of the Tribunal's credibility assessment, which I now turn to consider.

Inconsistencies in the applicant's account of her knowledge of the feud
17. The applicant submitted that the Tribunal's finding that there were inconsistencies in the applicant's account as to her knowledge of the blood feud was erroneous. He referred the Court to para. (b) of the RAT decision, where it is stated:

> *"The original alleged incident commenced in 1997 in which it is alleged her father's second cousin B.C. killed a young Yzeiri man believing him to be in a relationship with his sister and then went on to kill his sister. The applicant was born on 27th of September 1986 and quite rightly at 10/11 years of age did not know the details of this incident or the circumstances thereof, but, she alleges that she herd of the incident from her father. Inconsistently, she then says in her testimony and cross-examination testimony that her father did not give details of the circumstances of the inception of the blood feud as he wished to protect her. Inconsistently again she is aware and alleges that the Yzeiri family killed three C. members and she is vague in her knowledge of the KanunLek... The Tribunal concludes that the applicant cannot have it both ways. On the one hand, she is claiming that at inception of the blood feud she was of such young age that she did not know of the reasons for its commencement and/or its circumstances over the years, yet, she presents as very knowledgeable in relation to other matters and has a competence in languages that demonstrates a smart intellect. In cross-examination evidence she only became vague and hesitant and, indeed, on occasions somewhat upset, when she could not answer clearly and concisely on matters which should be personally and specifically within her knowledge... The Tribunal concludes that she is not a persuasive applicant and her evidence is not persuasive in the answers given to this Tribunal both in direct and cross-examination evidence."*

18. The applicant submitted that when assessing this reason the Court should be mindful of what the applicant said during her s. 11 interview, when asked about the information she had elicited from her father about the blood feud. Question 77 reads: "*If your father wasn't in touch with any of his family in Albania, who warned him about the Yzeiris being in Strum?"* The applicant replied:

> *"Maybe his friends, I don't know. He never talked to us about this. He came back from Albania too quick and told us we'll never go back to Albania. He didn't tell us all the details but we knew that something happened."*

19. Counsel for the applicant submitted that, on a fair reading of this evidence, what the applicant was saying was that her father did not talk about these events and held back information for her own safety, but that she did manage to glean some details from him.

The applicant argued that there is, in fact, no inconsistency here and that the Tribunal's assessment is therefore deficient.

20. The applicant stated that the Tribunal member omitted to explain what matter the applicant had failed to identify clearly and concisely. Counsel said that the Tribunal member should have identified this matter. Counsel suggested that a fair assessment of the interview led to the view that the applicant was a person who was doing her best with answers. Counsel stated that there was no point at which she failed to give an answer and he submitted that this could be seen from the 29 pages of the interview. The applicant further submitted that the interview was a verbatim account of her oral testimony and there were no deficiencies in it such as described by the Tribunal member. This, counsel submitted, was a further weakness in the RAT's decision.

21. In reply, counsel for the respondent said that the applicant was claiming asylum on the basis of a serious and genuine risk to her life in Albania and she was effectively trying to explain why she did not know more. But there was an inconsistency here – surely if her father wanted to protect her, he would have given her more information rather than less. The respondent argued that she could not claim she was in danger from a particular source and then say her father only told her so much. The respondent submitted that it seems reasonable that the applicant would seek further information from her father about these events,which have had such a serious effect on her life.

22. As regards the Tribunal's finding that the applicant responded vaguely to questions and became upset when she could not answer, the respondent pointed out that the RAT was not referring to the 29 page s. 11 interview in its decision – the Tribunal was referring to the cross-examination of the applicant which took place at the Tribunal hearing. The respondent said that the applicant's failure to fill in the gaps in her knowledge both about the Kanun Lek and the details of the blood feud itself undermined her credibility. This was the view reached by the Tribunal and the respondent submitted that it was reasonable in the circumstances.

23. In this section of its decision, the RAT found that it was understandable that, as a child of 10 or 11 years of age, the applicant would not know the details of the incident in 1997 or the circumstances thereof. This finding seems rational. However, the RAT immediately went on to find that it was inconsistent that the applicant knew about the killing of three members of the C. family. It is far from clear how her awareness of the deaths of three members of her family at the hands of the Yzeiris was inconsistent with her limited knowledge of the details or circumstances of the events that transpired in 1997, and which gave rise to the blood feud. As is clear from the text of the s. 11 interview, while the applicant's father was not, on her account, forthcoming with information about the feud, he did impart some details to her. For example, when asked "Why did B. shoot Lefter?" (question 30 of the s. 11 interview), the applicant replied:

> *"As my father says and what the newspaper said about the boy who died. B. thought he had a relationship that was not honourable with his sister – they killed her. This is one part of the history and others say it is because of politics..."*

24. The applicant's father did inform her of the deaths of a number of C. family members at the hands of the Yzeiris; she also gleaned knowledge from newspaper reports. The RAT's reasoning, therefore, which led it to conclude that the applicant's narrative was inconsistent in this respect, seems to stem from an erroneous assessment of the evidence, and is irrational.

Vague knowledge of Kanun Lek

25. Counsel for the applicant also took issue with the RAT's finding that the applicant was "vague in her knowledge of the KanunLek". This finding formed part of the RAT's conclusion that the applicant was not persuasive. In this regard, counsel referred the court to question 128 of the s. 11 interview, where the applicant was asked whether she had ever heard of the Kanun. The applicant replied: "*It's in the north of Albania*." The Commissioner then asked: "*Have you ever heard of the 'Law of Lek'* or of '*Lek Dukagjin*", to which the applicant replied: "*No*." The Commissioner explained that the Kanun of Lek Dukagjini, or the Law of Lek, "*is the formalised rules of the blood feuds in Albania. It is a list of tribal and clan customs passed down from generation to generation. If you are involved in a blood feud it is difficult to understand how you have not heard of this*." The applicant replied: "*It doesn't exist in the place of Albania where we were*." In this regard, the RAT found, at para. (c) of its decision:

> *"The Tribunal again refers to the intelligence of this applicant and concludes that if genuinely involved in a blood feud, through her association with her family since 1997, it is incumbent upon her to have informed herself of the traditional rite of KanunLek and to give clear, concise and thorough evidence to this Tribunal in relation to same. She has failed to do so."*

26. Counsel for the applicant submitted that the applicant could not have been expected to know a great deal about the Kanun, and he pointed out that she had said the Kanun was not in her part of Albania, and that it applied in the north of the country. Counsel then drew the court's attention to the Home Office report from which the Commissioner seemed to be getting her information about the Kanun. Counsel quoted the following extracts from para. 6.130:

> *"The rules of the blood feud have become known as the Kanun of LekDukagini, in popular parlance the Law of Lek, which is a voluminous compendium of tribal and clan customs, passed down largely unchanged since ancient times. It is claimed that in the absence of a strong criminal justice system 'The Law of Lek' has become a popular form of justice by which a family's honour is defended through the killing of any male member of an offending family."*

27. Counsel then drew the court's attention to paras. 6.135 and 6.136, which state:

> *"6.135. The code has traditionally served as the foundation of social behaviour and self-government for the clans of northern Albania. In particular, the Kanun regulates killings in order to stop the total annihilation of families...*
>
> *6.136. Despite efforts by the Albanian government to wipe it out, the Kanun of LekDukajini has, following the fall of communism, reappeared throughout northern Albania."*

28. Counsel for the applicant submitted that the applicant was from Berat, which is in south central Albania, and that the Tribunal's criticism of her not knowing about the Kanun was consequently not well founded. The applicant knew the Kanun was in the north, as is shown by her direct answer to q. 128, and the accuracy of that response is borne out by the country of origin information. Counsel submitted that the Tribunal's finding that the applicant did not know about the Kanun was therefore flawed.

29. In reply, the respondent said that Albania is a small country; that the applicant claimed to have been part of a blood feud there; and that, in these circumstances, it was entirely rational for the Tribunal to find it odd that the applicant did not know about the Kanun Lek. The respondent submitted that this constituted a "curious lacuna" in the knowledge of an Albanian national claiming to be in danger of a blood feud since, in the circumstances of this case, the Kanun was directly relevant to the applicant.

30. The country of origin information suggests that Albanian blood feuds are regulated by the Kanun Lek. In this regard, the RAT found that the applicants' knowledge of the Kanun was vague despite its relevance to her circumstances. This finding formed part of the RAT's conclusion that the applicant was not persuasive. However, as is clear from her replies at the s. 11 interview, the applicant was aware that the Kanun applied in the north of Albania. The fact that her knowledge accorded with the available country of origin information is significant. Furthermore, the fact that the Kanun is more commonplace in the north, while the applicant is from the south, and indeed has lived in Greece since the age of 13, may explain why the applicant was vague in her knowledge of the Kanun. The RAT ought to have had regard to these factors in its assessment. The fact that it did not renders its assessment unfair and irrational.

RAT's finding that there was an inconsistency in the applicant's account of her father seeking reconciliation
31. The applicant said that the RAT seemed to be criticising her on the grounds that there was an inconsistency in her evidence because, at hearing, she said it was her father who sought reconciliation. The applicant opened para. (e) of the RAT decision, where it was stated:

> *"According to all Country of Origin Information in relation to blood feuds in Albania, it is not incumbent upon her father to seek reconciliation, as he was not the first target of any proposed retribution, but, rather, it was the task of Mr.B.C.'s family and not her father. At pre-hearing evidence she stated it was members of the C. family, but, at hearing, she said it was her father sought reconciliation post the incident of 1997."*

32. Counsel for the applicant argued that there was, in fact, no inconsistency between that statement to the RAT and the applicant's earlier pre-hearing evidence. Counsel drew the court's attention to question 33 of the s. 11 interview, which reads: "*What was the next killing that took place in this blood feud after B. killed Lefter?"* The applicant replied:

> *"I don't know how many days or weeks, but as my father said the families of C. wanted to talk to the Yzeiri, wanted to ask them to forgive. My father went there as well. The Yzeiris didn't accept this and they still wanted to do bad things."*

33. The applicant submitted that she clearly indicated here that her father was involved in the reconciliation efforts, along with C. family members. Thus the Tribunal's finding that there was an inconsistency in this respect was erroneous and constituted a further reason why this decision should be quashed.

34. Therespondent admitted that there was an error here but argued that it was not fatal to the Tribunal's decision. He said that the real point the Tribunal member was making was that there were no follow up attempts to obtain reconciliation.

35. There is, clearly, an error of fact on the Tribunal's part in this section of its decision. On its own, this reason may not be fatal to the RAT decision. However, when viewed in the context of the other flaws in the RAT's assessment of the applicant's credibility, it takes on some significance.

Flawed reasoning underpins finding that applicant is not a bona fide asylum seeker
36. The applicant took issue with the RAT's finding that her actions were not indicative of a *bona fide* asylum seeker fleeing persecution. He did so on the basis that the applicant had said that the risk she faced from the blood feud continued in Greece – that she was threatened there by the Yzeiris, via her husband – and that this was why she fled from Greece. Counsel referred to para. (i)of the RAT decision, where it is stated:

> *"The applicant did not apply for asylum in Greece and the Country of Origin Information submitted by the applicant's adviser in this regard is carefully noted. However, an asylum application in Greece is hardly appropriate when she has a right of residency in Greece through her association with her husband and her husband has a right of residency in Greece, by her own testimony, and indeed, a right to work in Greece. It would fly in the face of reason to make any application for asylum in Greece in such circumstances of held official documentation in that country. The Tribunal concludes that this would make no sense and the point being made that Albanians are not welcome in Greece and/or that Albanian asylum seekers are mistreated in Greece is not found pertinent to this applicant who has resided there since 2000, who speaks Greek and who has a right to remain in Greece. Whereas, it is accepted that no asylum seeker must apply for asylum in her 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 her first safe destination country. It is considered cumulatively that the applicant intended and planned to leave her country of residence and intended and planned to access this jurisdiction. These are not the actions of a bona fide refugee fleeing persecution."*

37. The applicant submitted that this reason was flawed because it ignored or failed to adequately assess the applicant's evidence in respect of the continuing threat from the blood feud and the Yzeiris in Greece.

38. I am satisfied that the Tribunal's reasoning here is defective for the following reasons. First, the applicant was a child of 13 when she arrived in Greece and her failure to apply for asylum there when she first arrived cannot fairly or rationally be held against her for the purposes of assessing her credibility now. Second, the Tribunal itself notes that because the applicant had a right of residency in Greece following her marriage at the age of 16, it would not have made sense for her to make an asylum application there. If the RAT accepted that it would not have made sense for someone in the applicant's circumstances to apply for asylum in Greece, it is irrational tosimultaneously find that "*it is nonetheless considered that anyone fleeing a systemic and/or systematic type harm might do so without delay upon reaching her first safe destination country*." Finally, the RAT failed to refer to or to assess the applicant's stated reasons for leaving Greece, which must necessarily form part of any assessment of whether Greece was the first safe country that she reached, and whether the applicant's decision to leave Greece was the action of a *bona fide* asylum seeker. The RAT's confused and illogical reasoning in this section of its decision led it to conclude that the applicant's actions were not those of a *bona fide* asylum seeker. I am of the view that because the RAT's reasoning here is irrational, this finding is defective and cannot be allowed to stand.

Speculation and conjecture by the RAT
39. Counsel for the applicant submitted that the RAT engaged in speculation and conjecture in finding that certain aspects of the applicant's narrative lacked credibility. I now turn toconsider counsel for the applicant's submissions in respect of each of these findings by the RAT.

(i) Applicant could have paid €10,000 for forgiveness
40. At para. (e) of its decision the RAT discusses the possibility of reconciliation between the C. and the Yzeiri families. The Tribunal notes that since the Yzeiris refused reconciliation in 1997, no further efforts were made to seek reconciliation either directly or through NGOs or government sponsored reconciliation authorities. In this regard, the RAT concluded:

> *"This applicant is, as aforesaid, intelligent and resourceful. She paid allegedly €10,000.00 for herself and her son to get to this jurisdiction but no move was made by her on her own behalf and/or through her father and/or through her husband and herself to initiate forgiveness with the Yzeiri family by offering to pay this money for forgiveness by way of compensation. It may be that reconciliation was not possible in 1997 or 1998 or indeed even when the applicant's family left Albania in 2000, but, it is considered, and the Convention is forward looking, that such reconciliation facility is available to the applicant now if returned to her country of origin."*

41. Counsel for the applicantsubmitted that the criticism made here was that the applicant could have spent her money seeking reconciliation, rather than ontravelling to Ireland. The applicant argued that this was pure speculation on the Tribunal member's part. Counsel pointed out that there is nothing to suggest that a payment of €10,000 by the applicant or members of her family to the Yzeiri would alleviate the problems she might have in Albania.

(ii) The Yzeiri may have been appeased by the killing of 3 C. family members
42. At para. (f)of its decision, the RAT found that the Yzeiri may have been appeased by the killing of 3 members of the C. family. The RAT stated:

> *"The applicant here was never harmed and no attempt was made on her life and it may be that the offended family has been appeased by the fact that, according to her own testimony, three C. members have already been killed."*

43. The applicantsubmitted that this was entirely speculative. While the applicant had never been harmed, the Tribunal ignored the fact that there were serious attacks made on her father and that she was threatened through her husband. The RAT continued:

> *"In accordance with country of origin information on the KanunLek, it is not the C. family's turn for retribution, if indeed, this blood feud is continuing to be perpetuated."*

44. The applicant argued that this is also speculative. Counsel stated that the newspaper articles disclosed that it is not possible to predict what would happen; and that thus far there had been unpredictable, tit-for-tat type killings, which had resulted in the deaths of ten people. The applicant submitted that in such circumstances the decision maker could not reasonably form a view as to whose turn it was for retribution. Counsel for the applicant submitted that the RAT's suggestion that the Yzeiri family may have been appeased by the fact that three C. members had been killed, and that it is the C. family's turn for retribution, was purely speculative and not a proper basis for rejecting the applicant's claim for asylum.

(iii) The applicant's married name will protect her
45. The RAT, at para. (f) of its decision, found that the applicant's married name would protect her. It held:

> *"[The applicant's] name is now Ce. by marriage. The Yzeiri family indicated to her husband that the family had no difficulty with him. She and her children bear his surname. This serves to diminish further any risk that she might suggest she continues to have as a result of the alleged blood feud."*

46. This, counsel for the applicant argued, was a flawed reason especially since the husband had, in 2007, received a threat from the Yzeiris in Greece, and the terms of the threat were to the effect that while the husband was not at risk, members of the C. family were; this included the applicant and her son, M.C., the second named applicant. The Tribunal member was of the view that the applicant's change of name protected the applicant. But the threat made against her, delivered via her husband, indicates this was not the case. Counsel submitted that this reason was speculative and lacked any basis in logic.

(iv) The applicant's parents will be targeted first
47. At para. (h) of its decision, the RAT found that the applicant's parents would be targeted before she was. It stated:

> *"The Tribunal again refers to Albania's OGN, 8th December 2008 at 3.6.3 in relation to the classic blood feud wherein, inter alia, it is stated, "at Paragraph 3.6.3, "the classic blood feud can only pass through the male bloodline. In modern blood feuds, it is reported that people no longer adhere to strict rules such as the minimum age requirement of 16 years. Women, traditionally exempt from blood feuds, are said to have become targets..." This information assists the Tribunal in concluding that her parents at the very least will be targeted before her and the fact that she is married to her husband and has a different surname since 2002 again undermines the veracity of what she purports to state as to the risk she has from the Yzeiri family and/or as to the risk her son has from the Yzeiri family either in Greece and/or in Albania. The Tribunal rejects her claim on this point."*

48. Counsel for the applicantstated that here the Tribunal member recited country of origin information favourable to the applicant – which shows that women and children are at risk – and from this drew the conclusion that the applicant's parents will be targeted before her; and that the fact that she is married undermines her veracity as to the risk she faced. The applicant was strongly critical of the RAT's reasoning in this paragraph, which he said was speculative and irrational. He argued that this was a further defect in the RAT's decision.

49. It is clear from the case law that the RAT must not engage in speculation when assessing an applicant's claim. As Cooke J. held in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353: "*A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding*." More recently in his decision in *M.E. v. The Refugee Appeals Tribunal &Ors. [*2014] IEHC 145, Mac Eochaidh J., at para. 13, found that the Tribunal had made "*significant credibility findings on the core claim based on speculation*." The learned judge thus concluded, at para. 15 of his judgment: "*It seems to me that to reject credibility based upon such speculation creates an unlawful credibility finding unfairly against the applicant*."

50. In this case, as can be seen above, the Tribunal has found that the applicant's claimed fear of persecution lacks veracity for a number of reasons, which are based on speculation and conjecture. These reasons are: (i) that she could have paid €10,000 for reconciliation; (ii) that the Yzeiris may have been appeased by the killing of three C. family members; (iii) that the applicant is safe because she changed her name upon marriage; and (iv) that if the Yzeiris desire further revenge, they will target the applicant's parents first. I am satisfied that these findings, which go to the heart of the applicant's claim, were based on speculation and conjecture and that this aspect of the decision of the RAT runs contrary to the *dicta* of Cooke and Mac Eochaidh JJ. as set out above, and is consequently defective.

Conclusion on the RAT's negative credibility finding
51. I am satisfied that, taking the RAT decision as a whole, the applicant has established that the Tribunal's negative credibility

finding in respect of her is unsound. As Cooke J. observed in I.R.:

> *"8) When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person."*

52. In this case, four important reasons underpinning the RAT's negative credibility findings are flawed. They are: (i) that there were inconsistencies in the applicant's account of her knowledge of the blood feud; (ii) that the applicant's vague knowledge of the Kanun Lek undermined her persuasiveness; (iii) that there was an inconsistency in the applicant's account of her father's involvement in reconciliation efforts; and (iv) that the applicant's actions in leaving Greece were not those of a *bona fide* asylum seeker. These flaws are significant. Furthermore, the RAT erroneously relied on speculation and conjecture in reaching conclusions about the veracity of the applicant's claim. For these reasons, the Tribunal's decision is defective and must, accordingly, be quashed.

Mayor's letter not properly assessed

53. The applicant submitted that Tribunal erred in law in failing to have reasonable regard to documents supportive of her claim, including documents of a case-specific nature. In this respect, the applicant took issue with the Tribunal's failure to adequately consider the letter from the Mayor of the Kutalli municipality, which states:

> *"Mr.L.C.'s family is based in the village of Rerez in the municipality of Kutalli. It is made up of six members: L., his wife F. and their four children E., N. and T.*
>
> *As was the case for many other families, due to the dire nature of the year 1997, this family too was involved in a blood feud, with the Yzeiri clan, and their problems remain acute to this day.*
>
> *On account of this, all the children in this family have emigrated abroad in order to escape this blood feud and they would be in danger should they return to their homeland."*

54. The applicant suggested that this is a case specific document and is directly relevant to the applicant's claim. Counsel referred to Cooke J's decision in *I.R.*, and submitted that this decision places a clear obligation on the RAT to carefully assess case specific documents that have a bearing on the applicant's claim. Counsel said that the RAT's treatment of the Mayor's letter fell below the *I.R.* standard.

55. The RAT rejected the Mayor's letter in the following terms, at para. (i) of its decision:

> *"[The applicant] has sought to produce documentation post the Section 13 Report, to ameliorate her case the provenance of which and the probative value of which, in the Tribunal's opinion, is questionable. The Tribunal in arriving at this conclusion relies upon the demeanour of the applicant, her intelligence and the manner in which she presented at hearing and presented her evidence at hearing. This presentation and demeanour, together with the fact that she sought to produce Dr.Toska's certification and the Mayor's declaration subsequent to the Commissioner's decision detracts from the applicant's credibility."*

56. The applicant submitted that the Tribunal's finding that the documents were "questionable" was ambiguous and vague. Counsel further stated that the decision maker was under an obligation to explain why the applicant's demeanour was unsatisfactory, and that the Tribunal member's bald statement that the applicant's demeanour was not satisfactory was insufficient. Counsel said he could see why the Tribunal member would be unsatisfied with Dr Toska's report, which is vague and lacks dates, but that the letter from the mayor of the applicant's town in Albania was important. The applicant argued that this letter provides confirmation that the C. family was involved in a blood feud with the Yzeiri clan, and that the children of this family had emigrated. Counsel suggested that if the Tribunal member considered there was a question about this document's authenticity, she should have referred it to ORAC for further investigation. If, however, there was no question about its authenticity, then the document required to be dealt with in accordance with Cooke J's dictum in *I.R.*

57. Counsel for the respondent submitted that the letter from the mayor, even if taken at face value, was ambiguous because it gave no factual information and it failed to specify what was meant by "the dire nature of the year 1997". The respondent argued that the letter was extremely general, that it had no probative value, and did not add to the applicant's claim. The respondent further submitted that, as was noted by the RAT, the belated submission of the documents detracted from the weight to be attached to them; the documents were only submitted after ORAC's recommendation that the applicant not be declared a refugee.

58. Although the applicant did not refer the court to a specific part of the *I.R.* decision, the following passage seems to me to be relevant to the Court's consideration of this issue:

> *"9) Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated."*

59. Cooke J. further held, at para. 29 of his decision, that in circumstances where "*the documents have the potential to establish that specific events did happen and happened to the applicant*" this gives rise to "*the need for the whole of the evidence to be evaluated and the analysis to be explained*." Similarly, in *S.B.H. v. The Refugee Appeals Tribunal* [2013] IEHC 164,Clark J. held:

> *"22. With regard specifically to the documentation produced by the applicant, it is very well established that the extent to which a decision-maker is required to expressly consider, weigh and evaluate a document furnished to him / her in support of a claim depends on the nature of the document itself. Common sense must prevail. If a document has the potential to corroborate an aspect of the claim then it merits a reason why it is not afforded weight. Clearly, if a document is no more than a sum of its content and does not have any probative value, it is unnecessary for a Tribunal Member to outline the weight attached to the document in the decision."*

60. The letter from the mayor, if accepted, would have established that the applicant was a member of the C. family from Rerez, and that she and her siblings emigrated in order to escape the blood feud with the Yzeiri family. This document therefore had the potential to corroborate a core aspect of the applicant's claim. Accordingly, in line with the *dicta* of Cooke J. in *I.R.* and Clark J. in *S.B.H.*, this document required to be evaluated and assessed. However, in rejecting the Mayor's letter, the RAT decision merely states that the provenience and probative value of this document is questionable, and that the Tribunal, in arriving at this conclusion, "*relies upon*

the demeanour of the applicant, her intelligence and the manner in which she presented at hearing and presented her evidence at hearing." The RAT concludes: "*This presentation and demeanour, together with the fact that she sought to produce Dr.Toska's certification and the Mayor's declaration subsequent to the Commissioner's decision detracts from the applicant's credibility*."

61. It is curious, in light of the rational and detailed assessment the RAT carried out in respect of Dr. Tosca's report (at para. (d) of the RAT decision), that the Tribunal does not subject the Mayor's letter to a similar analysis. I am satisfied that the letter from the Mayor was an important part of the applicant's case. If the RAT was going to dismiss this document, it was incumbent on the Tribunal to set out clearly why it was rejecting the document. There was no adequate analysis of this document and the RAT's decision in this respect is therefore defective.

State protection findings

62. The applicant submitted that the Tribunal erred in law in making findings in respect of state protection which were unsupported by the evidence. The applicant submitted that the Tribunal's findings in respect of the availability of state protection in Albania and the applicant's failure to avail of that protection fly in the face of the applicant's evidence and the authoritative country of origin information. The RAT's finding in respect of the availability of state protection is set out at para. (g) of its decision, in the following terms:

> *"In the applicant's case she sought to offer evidence that State Protection is both inadequate, ineffectual and ineffective but at no time did she seek such protection for herself with the assistance of her husband and/or her father who clearly helped her to travel. Whereas, it is accepted that any victims of a blood feud in Albania may be at risk of persecution, it is not considered that this applicant has sought on her own behalf or with the assistance of her husband or father to resolve the issues through either police protection and/or the reconciliation authorities as aforesaid. The Convention is forward looking, and, notwithstanding the newspaper extracts and Country of Origin information produced by the applicant's adviser, the Tribunal would again refer to the Albanian OGN of December 2008 at Paragraph 2.8 and notes that the government is making efforts to address the problems of corruption which pervades all areas of life in Albania. New anti-corruption strategy for 2007-2013 has been drafted and the report discloses that, "A strategy shows a positive change in approach from short term solutions to more effective and sustainable measures." There is no evidence to suggest that she and/or her family are not safe to return to Albania at this point and/or that the police would not offer protection or that she might not seek to be reconciled with the Yzeiri family at this point in time. In short, she has done nothing to take any steps of redress in Albania but simply seeks to say that redress is not possible. This is not the fact of it."*

63. Counsel for the applicant submitted that the Tribunal's comment that the applicant did not seek state protection overlooks the clear evidence given by the applicant in her s. 11 interview to the effect that her father did report the attack to the police. Counsel referred the court to questions 118 and 119, and the applicant's replies:

> *"Q 118: You said your father reported the 1998 attack to the police. How did he manage to report this to the police since the house was under attack and you were all hiding in the basement?*
>
> *A: The police heard all this and they were coming there just for formality. My father told them help us because our house is under attack. They were looking at the house but they didn't do anything. They said they were going to help us and fix everything, the same thing they always say.*
>
> *Q 119: You said your father reported the other attacks to the police also. Did your father ever follow up with them to see if they were investigating or to try to speak to a more senior police officer?*
>
> *A: No. In this period the police didn't talk with you and they discriminate you. There was not any government there is Albania and still there is not. (sic)"*

64. The applicant submitted that the applicant's account is supported by country of origin information on the availability of state protection in Albania. He drew the court's attention to research compiled by the Refugee Documentation Centre of Ireland on 17th July, 2009, in respect of Albania. At p. 153, the research report cites information taken from a US State Department report, which states:

> *"The extent of protection offered by the Albanian government to citizens who are involved in blood feuds is 'rather little' (Young 18 Dec. 2007) and 'marginal' (Austin 10 Dec. 2007). While the government is not in favour of blood feuds, it is unable to deal with blood feuds effectively or offer significant protection to affected citizens (Fischer 19 Dec. 2007; Marku 7 Dec. 2007; see also Pano 20 Nov. 2007). Albanian legislators have acknowledged that in Albania there is an 'absence of the rule of law' According to the AIIS, the existence of blood feuds 'undermine[s] the very functioning of Albanian state institutions, public security and state legitimacy. Pesha stated that although legislation exists to deal with people who commit blood feuds, there is no special law to protect victims of blood feuds. (4 Jan. 2008)."*

65. Counsel for the applicant then referred the court to p. 154 of the same research document where references are made to the effectiveness of prosecutions in Albania. The report notes that Alex Standish, a recognised expert on blood feuds, has stated that "*relatively few blood feud cases go to court and the sentences for the cases that do are 'particularly derisory' (20 Nov. 2007)."* The report continues:

> *"In slight contrast, Pesha noted that people involved in blood feud murders receive harsher sentences than those who commit 'normal murders' but end up being released from jail after only two or three, or at most, five years. The AIIS states the following with respect to prosecution and sentencing:*
>
> *"The Prosecutors Office... encounters problems with regard to the testimonies of the witnesses in blood feud murder cases. The witnesses would testify to the judicial police officers or the prosecutor that a murder was committed by someone in order to take the blood of a relative. However, before the court, the witnesses change their testimony, denying that the murder was motivated by blood feud..."*

66. The report further states:

> *"According to the AIIS, the Albanian state 'has shown itself unable to punish those guilty of murder due to conflicts on issues such as land, water, honour, jealousy and therefore these murders bring about blood feud. (AIIS 2007, 37). Young stated that, generally, the prosecution of people who engage in blood feuds has not been effective."*

67. The applicant submitted that this authoritative country of origin information showed that the protection offered to people involved in blood feuds in Albania was "rather little" and "marginal". Counsel also took issue with the Tribunal's finding that the applicant did not seek protection herself, pointing out that her father sought police protection on behalf of himself and his family, but that this was of no avail. In the applicant's submission, the RAT's findings in this regard are consequently untenable.

68. In reply, the respondent submitted that the applicant had not sought state protection in Albania and nor had she shown that it was not available. Counsel submitted that the onus was on the applicant to demonstrate that State protection was unavailable in Albania. In this regard, counsel referred to Birmingham J's decision in *G.O.B. v. Minister for Justice, Equality and Law Reform* [2008] IEHC 229 where the learned judge held, at para. 28 of his judgment:

> *"I feel I must also have regard to the principle, accepted both domestically and internationally, that absent clear and convincing proof to the contrary, a state is to be presumed capable of protecting its citizens... There must be few police forces in the world against which some criticism could not be laid and in respect of which a trawl through the internet would fail to produce documents critical of their effectiveness and sceptical of their capacity to respond."*

69. Counsel for the respondent further submitted that the RAT had correctly found that state protection was available in Albania to people who, like the applicant, were involved in blood feuds. In this respect he drew the court's attention to para. 3.6.8 of the Home Office Operational Guidance Note (December 2008), which is quoted at p. 11 of the Refugee Documentation Centre's July 2009 report. The Home Office report states:

> *"...the law provides for 20 years to life imprisonment for killing linked to a blood feud and blood feuds are punishable by a 3-year life sentence. The government has set up a special crimes court and a witness protection programme. There have been prosecutions in blood feud murder cases... There is no evidence to indicate that individual Albanians fearing the actions of those seeking to carry out a blood feud cannot access protection from the Albanian police and pursue these through the legal mechanisms that have been set up to deal with blood feuds."*

70. This extract seems to have informed the Tribunal's finding as to the availability of state protection in Albania.

71. In *Idiakheua v. The Minister for Justice, Equality and Law Reform and the RAT* [2005] IEHC 150, Clarke J. considered the assessment of the availability of state protection based on country of origin reports. He held that "*selective quotation from a report the overall conclusions of which do not favour the establishment of adequate state protection amounts to a legally incorrect decision*." In this case, the Refugee Documentation Centre's report, which the RAT relied upon in reaching conclusions about the availability of state protection, does not reach an overall conclusion to the effect that state protection is unavailable to those affected by blood feuds in Albania. Rather, it brings together disparate evidence about blood feuds and the efforts of the Albanian state to deal with them. Unfortunately, this evidence is conflicting: some reports, like the Home Office OGN from December 2008 finds that state protection is available; on the other hand, the Issue Paper from the Refugee Board of Canada indicates that the availability of state protection to those involved in blood feuds is limited.

72. The fact that the RAT focused solely on COI which supported the view that state protection was available, and ignored contrary evidence which accorded with the applicant's own account, renders the RAT's findings on state protection unsound. This failure to properly engage with the country of origin information led the RAT to conclude:

> *"There is no evidence to suggest that she and/or her family are not safe to return to Albania at this point and/or that the police would not offer protection or that she might not seek to be reconciled with the Yzeiri family at this point in time. In short, she has done nothing to take any steps of redress in Albania but simply seeks to say that redress is not possible. This is not the fact of it."*

73. The RAT fell into error in finding that there was "no evidence" to show that the Albanian police would be unable to protect the applicant when, clearly, there was COI – in the same Refugee Documentation Centre compilation that the RAT relied upon – which suggested that the state protection available to persons affected by blood feuds is "rather little" and "marginal". This accords with the applicant's own claims as to the absence of effective state protection.

74. Furthermore, the RAT's finding that the applicant did not seek state protection either personally or with the assistance of her father flies in the face of the evidence given by the applicant both in her s. 11 interview and to the RAT at hearing. A similar issue arose in *A.G. v. The Refugee Appeals Tribunal and The Minister for Justice, Equality and Law Reform* [2013] IEHC 252, where Mac Eochaidh J. stated, at para. 16 of his judgment:

> *"16. My view of the evidence is that it is not fair to conclude that the applicant did not pursue a complaint with the police or did not seek the assistance of organisations who might assist. It seems to me that the weight of the evidence was entirely the other way and the mere fact that he did not make contact with the police or organisations separately from his father or by visiting the police personally or visiting the organisations personally does not permit a conclusion that he was somehow personally disconnected from the problem. A reasonable decision maker would not have decided that the applicant had not complained or sought remedy."*

75. The learned judge thus held:

> *"20. Assessment of an asylum application involves an examination of the applicant's expressed fears and an examination of whether those fears are well founded by reference, for example, to the availability of state protection. The issue of state protection was tainted by an unfair finding that the applicant had personally failed to seek the assistance of the police or other organisations, as outlined above."*

76. I am of the view that the RAT's findings on the availability of state protection and the applicant's failure to avail of that protection were flawed and must, therefore, be set aside.

Conclusion

77. Accordingly, for the reasons stated above, the RAT decision in respect of both applicants (N.C.'s case, Record No. 2010/685 JR; and M.C.'s case, Record No. 2010/686 JR), dated 2nd March, 2010, will be quashed and the matter remitted to the Tribunal for determination by a different Tribunal member.