THE COURT OF APPEAL

Neural Citation Number: [2017] IECA 297

No. 2016 288

Finlay Geoghegan J.
Irvine J.
Hogan J.

BETWEEN/

R.A.

APPLICANT/

APPELLANT

AND

REFUGEE APPEALS TRIBUNAL, MINISTER FOR JUSTICE AND

EQUALITY, ATTORNEY GENERAL AND IRELAND

RESPONDENTS/

RESPONDENTS

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 15th day of November 2017

1. This is an appeal taken by the applicant from a decision of the High Court (Humphreys J.) delivered on 4th November 2015 which rejected the applicant's application for judicial review of a decision of the Refugee Appeal Tribunal dated 25th November 2011: *see RA v. Refugee Appeals Tribunal (No.1)* [2015] IEHC 686. In a subsequent judgment delivered on 21st December 2015, Humphreys J. granted the applicant the requisite certificate for leave to appeal to this Court pursuant to s. 5(6)(a) of the Illegal Immigrants (Trafficking) Act 2000 (as substituted by s. 34 of the Employment Permit (Amendment) Act 2014): see *RA v. Refugee Appeals Tribunal (No.2)* [2015] IEHC 830.

2. The certified point of law was in the following terms:

> "Whether an asylum decision maker is obliged to engage in a narrative discussion of country of origin information in a case where such information is not being positively rejected (in the sense that the decision is positively inconsistent with such information, as opposed to simply that the information is not considered to be relevant, necessary for the decision or sufficiently supportive of the claim made) including where the credibility of the applicant is being rejected generally."

3. Before considering any of these legal issues, it is first necessary to examine the factual background to these proceedings.

4. On the 12th May 2011 the applicant, Mr. A., arrived in Ireland and immediately claimed asylum. His case was that he had previously been the leader of the youth section in his own local area of the Ivorian Popular Front in the Ivory Coast ("Front Populaire Ivoirien") ("FPI") and that he had been forced to flee the country in May 2011 after the outbreak of extensive civil conflict.

5. The first and second rounds of the Ivoirian Presidential election were held in October and November 2010. According to the country of origin ("COI") information supplied by the UNHCR and exhibited by the applicant (Ref World, "Gbagbo Supporters Tortured, Killed in Abidijan" dated 2nd June 2011), the outcome of these elections was disputed. Eventually, the previous incumbent, President Laurent Gbagbo (the leader of the FPI), was ousted from power and replaced by President Alassane Ouattara in April 2011. Following the arrest of Gbagbo and his indictment before the International Criminal Court, the FPI announced a boycott of the parliamentary elections which were scheduled for the following November.

6. According to the COI reports, Gbagbo supporters had been targeted by Ouattra supporters after the latter had come to power. Killings (including many summary executions), torture and the torching of buildings were all reported by human rights observers in the weeks that followed President Gbagbo's arrest on 11th April 2011. This is also borne out by the COI information utilised by ORAC in considering the present application. Thus, for example, a report in *The Daily Telegraph* of 19 April 2011 ("Ivory Coast: Laurent Gbagbo general betrayed by lover") reported that "pro-Gbagbo fighters are said to fear that they will be tortured or murdered if they surrender." An Amnesty International Report dated May 2011 provided a contemporary account of wanton killings by both forces, the indiscriminate use of live ammunition and mortar shelling to suppress street protests, extra-judicial killings and summary executions.

7. Mr. A.'s case is that on that day (*i.e.*, 11th April 2011) he went to work on that morning in Abobo (a northern suburb of the capital, Abidjan), but he was informed by his neighbours that his house had been burnt down. He then said that he was first arrested as an FPI supporter, but that he was later released as Ouattra supporters feared that army units loyal to Gbabgo might return. Mr. A. then says he went into hiding, staying at the house of an uncle. His uncle then paid for him to take a flight out from Abidjan and that Mr. A. arrived here on 12th May 2011, having travelled first by plane to Germany.

8. Mr. A.'s case was first considered by the Office of the Refugee Appeals Commissioner ("ORAC"). While in a decision dated 1st July 2011 the ORAC found as a fact that Mr. A. was from Abobo, it also found against the applicant's principal claims due to credibility issues. The ORAC found that he could not, for example, name prominent members of the FPI nor any of the militias that were active during this period. He likewise gave accounts of the fighting during the conflict which were inconsistent with established COI reports. When asked, for example, what had happened at a particular marketplace in Abobo on 17th March 2011, he maintained that traders had been slaughtered by Ouattra supporters, whereas the COI information available to the ORAC (from the Amnesty Report) was to

the effect that the killings had been caused by shelling of the area by army units loyal to President Gbagbo. These and other inconsistencies in his narrative accordingly led the ORAC in a very careful ruling to make adverse credibility findings against Mr. A.

The decision of the Refugee Appeal Tribunal
9. In its decision of 25th November 2011 the Tribunal concluded that the applicant's account contained such inconsistencies that his general credibility was undermined. Some examples can now be given.

10. First, the applicant had been asked in the course of his s. 11 interview to name the "leader of the FPI in your area" to which he had replied: "Kuadio Fibel, he was the president of FPI in my area." By contrast at the hearing before the Tribunal the applicant had given the name "Bamba Youssouff" as the leader of the FPI in Abobo. When this inconsistency was put to the applicant, he said that at the s. 11 interview he had been asked to identify the name of the local secretary and that is why he gave Mr. Fibel's name.

11. Second, he had been asked at the s. 11 interview to identify the name of his local member of Parliament, to which he had replied: "He was an ex-soldier, General Bruno: he was also my uncle." Before the Tribunal Mr. A. said that Mr. Youssouff was the local member.

12. Third, he was asked to identify the names of the security forces and the youth militias loyal to President Gbagbo. Apart from the generic title of "Gendarmerie" and the name of "Con Commando", he could not identify the particular names of any of these units by reference to the COI information. (I would observe, however, that the Amnesty Report does refer to the activities of an anti-Gbagbo militia known as the "Invisible Commando" and it also stated that these organisations had a myriad of names.)

13. Finally, in his original application Mr. A. had stated that he believed that his wife and children had fled to Ghana, yet in evidence before the Tribunal he stated that he did not know where they were. When this inconsistency was put to him, he said that the interpreter had possibly made a mistake. He also explained that he had been told by some Church members that others had fled to neighbouring countries such as Ghana or Togo. He maintained that he had never said that he had actually located them in Ghana.

14. The Tribunal next noted that some of the documents submitted by the applicant contained a number of errors. His electoral card ("Carte d'Électeur") misspells his first name by omitting the word "h". There is a further error in that the entry for date of birth reads as follows: "Date de naissance: 20 Mais 1978", so that the French word for "May" is misspelt.

15. The Tribunal member concluded:

> "Whilst I have had full regard to the documentation submitted by the applicant purporting to confirm the applicant's activities with the FPI party and the difficulties he claims to have experienced arising from same, in light of the issues arising in the applicant's own evidence, I cannot accept that these documents represent a truthful account of circumstances.
>
> I have considered all of the documentation, medical evidence, photographs, country of origin information, grounds of appeal, submissions and case law relied on in support of this applicant's claim. This information does not assist the applicant in circumstances where his credibility is found wanting to such a degree that the very basis of his claim is not believed. I do not believe the applicant. I found him to be vague and evasive in his manner of answering questions raised by the Tribunal and I cannot accept that his manner of answering such questions was anything other than a deliberate attempt by him to confuse the evidence."

16. The Tribunal accordingly found against the applicant.

The decision of the High Court
17. The applicant then sought judicial review of a decision of the Refugee Appeal Tribunal, which application was rejected by Humphreys J. in a detailed reserved judgment. A key part of that judgment addressed the issue of the extent to which the decision-maker was obliged to consider COI information.

18. In this regard the applicant placed particular reliance on the terms of Article 5(1) of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006)("the 2006 Regulations") which provides:

> "The following matters *shall be taken into account* by a protection decision-maker for the purposes of making a protection decision:
>
> (a) all relevant facts as they relate to country of origin at the time of taking a decision on the application for protection, including laws and regulations of the country of origin and the manner in which they are applied;
>
> (b) the relevant statements and documentation presented by the protection applicant, including information on whether he or she has been or may be subject to persecution or serious harm…." (emphasis supplied)

19. A key submission in the High Court was that Article 5(1) of the 2006 Regulations (and particularly the highlighted words) had altered pre-existing law and had obliged the Tribunal to consider the COI in all cases. Prior to the commencement of the 2006 Regulations in October 2006, the leading authority on the extent of the obligation to consider COI material had probably been the judgment of Peart J. in *Imafu v. Minister for Justice, Equality and Law Reform* [2005] IEHC 416.

20. In that case the applicant, a Nigerian national, had claimed that she had been trafficked to Italy for the purposes of prostitution and that she faced persecution if she were to be returned to Nigeria. Peart J. observed that there was no need to have resort to COI which stated the obvious, "namely, that women are trafficked from Nigeria to Italy and that on their return to Nigeria they may become the object of attention by the authorities in relation to a possible offence." As Peart J. stated in that judgment, the position was otherwise where the matter is an unusual one "which would have to be checked out before one could assert with any reliability that the applicant was not being truthful."

21. As it happens, the specific argument advanced in the present case regarding the effect of the 2006 Regulations had been expressly rejected by Clark J. in *VO v. Minister for Justice, Equality and Law Reform* [2009] IEHC 21. She noted that prior to 2006:

> "…the best practice in the assessment of the credibility of asylum claims was to consult country of origin information to establish whether the applicant's story, as outline, could be true in the context of the situation prevailing in his country of origin, this was not a hard or invariable rule. There are always circumstances where a decision on credibility can be

arrived at without consulting country information."

22. She added that on the particular facts of that case any consultation of COI would have been of little value, as it could not "assist in making the applicant's story of persecution more credible to the Commissioner." Subject to one possible exception which I will next consider, this general approach has been consistently followed by the High Court in the multitude of asylum credibility cases which have followed in the years that followed.

23. There are, of course, many cases where the necessity to consult the COI is manifest. An example here is the decision of Eagar J. in *MMS (Sri Lanka) v. Minister for Justice and Equality* [2015] IEHC 659. In that case, the Tribunal member rejected the applicant's claim that he had been persecuted on grounds of his Tamil ethnicity on credibility grounds. The applicant had claimed to this end that he been held incommunicado at a particular prison, but that his brother in law had arranged for him to escape. The Tribunal member rejected this claim on credibility grounds but he had made no reference to the COI which had documented 35 instances of detainees escaping from that prison by paying a bribe to the prison guards. Eagar J. did, however, say that in view of the 2006 Regulations "the qualification suggested by Peart J. [in Imafu] can no longer be relied on", albeit without reference to the post-2006 Regulations case law such as *VO*. It was this latter holding which troubled Humphreys J. in the present case.
24. On this point the judge said:

> "The applicant's argument essentially is that the approach I have been discussing only held good up to 2006. The adoption of the European Communities (Eligibility for Protection) Regulations 2006, the applicant says, fundamentally changed that situation, because regulation 5(1) of the Regulations requires the tribunal member to have regard to all documentation submitted to it. It is suggested that the obligation to consider all documentation now supersedes the previous approach and requires the tribunal member to analyse country of origin information in a narrative form, addressing the extent of which it supports the applicant, in every case, even where the tribunal member is otherwise inclined to reject the credibility of the applicant."

25. Humphreys J. then continued:

> "There are a number of reasons why this submission is unsustainable. As a matter of first principles, as I have said, it is irrational and pointless to require a decision maker to consider something in a narrative form if such consideration does not affect the ultimate decision. Secondly the 2006 Regulations only require "relevant" documentation to be considered, and documents which become irrelevant because of the applicant's overall lack of credibility are not relevant in this sense. A third fundamental logical difficulty with this approach is that the tribunal member's obligation to consider the documentation is not something that was created out of whole cloth in 2006. That obligation was in any event a basic obligation under the Refugee Act 1996, so in this respect, as Clark J. put it in *V.O.*, "nothing has changed in relation to the method of assessment of credibility of refugee applicants" (at para. 23).

26. The judge continued further by saying:

> "Section 16 of the Refugee Act 1996 (as amended by the Immigration Act 1999) has identified a number of matters that the tribunal must consider, including the report of the Commissioner, "the evidence adduced and any representations made at an oral hearing, if any" and include any documents, representations in writing or other information furnished to the Commissioner pursuant to section 11". Pursuant to s. 16(5) the Commissioner is obliged to furnish the tribunal with copies of any such reports, documents or representations in writing submitted under s.11 and an indication in writing of the nature and source of "any other information relating to the application which has come to the notice of the Commissioner in the course of an investigation by him or her". Clearly this provision has no purpose if the tribunal is not obliged to consider information so furnished.
>
> In short the Tribunal has always been under an obligation to consider relevant documentation, and at the level of principle, in this respect, regulation 5(1) of the 2006 Regulations does not alter that, or usher in any kind of new regime."

27. Humphreys J. then went on to discuss the (then recent) judgment of Eagar J. in *MMS* on which the applicant had relied:

> "It seems to me abundantly clear that Eagar J. was only in a position to arrive at the conclusion that the *Imafu* decision was not applicable because a great deal of the previous case law had not been opened to him, particularly the analysis of Clark J. in *V.O.* ….I feel confident in saying that Eagar J. could not have arrived at the conclusion he came to in *M.M.S.* if he had had opened to him the full range of authorities which I have had the benefit of in the present case."

28. In such circumstances Humphreys J. felt that he was not obliged to follow *MMS* in view of the established principles enunciated by Parke J. in *Irish Trust Bank Ltd. v. Central Bank of Ireland* [1976-1977] I.L.R.M. 50, as that decision had been given per incuriam as relevant earlier authority which was directly on point had not been opened to the Court

29. Humphreys J. then went on to consider whether there was an obligation on the Tribunal to assess the COI in a narrative fashion. He concluded that in view of the Tribunal's rejection of the applicant's credibility, there was no such obligation, at least so far as the present case was concerned:

> "However, given the rejection of the applicant's credibility there was no obligation to consider the country of origin information further. It was a matter for the Tribunal as to how to consider the country of origin information, and the Tribunal did not "dismiss" or "reject" that information in the sense I have described namely, by making a finding inconsistent with it. The Tribunal states that it has considered the country of origin information, and in the absence of evidence to the contrary the applicant has not discharged the burden of showing that it has not. Its decision is consistent with the perfectly legitimate approach of considering that there may have been unrest in 2011 but the applicant's version of his role in it is not to be accepted."

30. Humphreys J. then proceeded to uphold the conclusion of the Tribunal and he rejected the applicant's claim. It is clear, nevertheless, from the certified point of law that this appeal now raises more generally the question of the extent to which the decision maker is obliged to have regard to COI. It is to that issue to which I now propose to turn.

The extent to which the decision maker is obliged to have regard to country of origin information
31. It is clear that the obligation on the part of the decision maker contained in Article 5(1) of the 2006 Regulations is to consider only the *relevant* COI. There is no need for the decision maker to consult such COI in a ritualised or mechanistic fashion in every single case, regardless of the personal circumstances of the applicant or the nature of the claim made by the applicant.

32. In that respect, therefore, I consider that the 2006 Regulations largely reflect pre-existing law and practice as explained by Peart J. in *Imafu* and in countless other cases of a similar nature. I further agree with what Clark J. said in *VO* (and, indeed, what many other judges have said in a host of subsequent decisions) to the effect that Article 5 of the 2006 Regulations did not alter that practice or that it *required* that COI be consulted in all cases, regardless of the circumstances. Thus, for example, in *Imafu* Peart J. accepted as a given that Nigerian women were being trafficked for prostitution to Italy, so that it was not necessary in that instance for the Tribunal member to refer to COI to buttress her knowledge of largely undisputed facts. To that extent, therefore, I consider that the dictum of Eagar J. to the contrary in *MMS* is, with respect, out of line with the authorities and cannot be supported. It follows in turn that in the present case Humphreys J. was entitled not to follow that authority having regard to the *Irish Trust Bank* principles.

33. Although the assessment of credibility is, perhaps, often the most important task facing the decision maker in claims for international protection, it is also undeniably one of the most difficult. This is why beyond endorsing the general approach articulated by Peart J. in *Imafu* and by Clark J. in *VO*, the articulation of prescriptive, a *priori* rules regarding the assessment of COI represents a difficult task, as much will naturally depend on the circumstances of any given case.

34. These difficulties were eloquently expressed by Cooke J. in *IR v. Minister for Justice* [2009] IEHC 353, [2015] 4 I.R. 144, 148:"In most forms of adversarial dispute the assessment of the credibility of oral testimony is one of the most difficult challenges faced by the decision-maker. The difficulty is particularly acute in asylum cases because, almost by definition, a genuine refugee will be someone who has fled home in circumstances of stress, urgency and even terror and will have arrived in a place which is wholly strange to them; whose language they do not speak and whose culture may be incomprehensible. Inevitably, many will have fled without belongings or documentation from areas in a state of anarchy or from the regimes responsible for their persecution so that obtaining any administrative evidence of their status and even identity may be impractical, if not impossible. In such cases the decision-makers at first instance have the unenviable task of deciding if an applicant can be believed by recourse to little more than an appraisal of the account given, the way in which it was given and the reaction of the applicant to sceptical questions, to the highlighting of possible discrepancies or to contradictory evidence from other sources. Recourse will also be had in appropriate cases to what is called "country of origin information", but in most cases this will be of use only in ascertaining whether the social, political and other conditions in the country of origin are such that the events recounted or the mistreatment claimed to have been suffered, may or may not have taken place."

35. This was precisely the type of problem which the confronted the Tribunal in the present case. The applicant claimed to have fled the Ivory Coast in fear of his life at a time of what amounted to civil war. There is no doubt at all but that he would have been entitled to international protection if that story was true or perhaps even substantially true. As the details of these events and the fighting between the two factions are not necessarily well known, the first thing, therefore, which the Tribunal had to consider was whether the applicant's account might be true by reference to the available COI: see, *e.g.*, the comments to this effect of Kelly J. in *Camara v. Refugee Appeals Tribunal, High Court*, 26th July 2000 and those of Finlay Geoghegan J. in *AMT v. Refugee Appeals Tribunal* [2004] IEHC 606, [2004] 2 I.R. 607. In *Camara* Kelly J. said:

> "... it is clear that an applicant's credibility is always a relevant issue which falls to be assessed by the examiner. Goodwin- Gill, *The Refugee and International Law* (Clarendon Paperbacks, Oxford) at page 349, puts the matter this way: 'Simply considered, there are just two issues. First, could the applicant's story have happened, or could his/her apprehension come to pass, on their own terms, given what we know from available country of origin information? Secondly, is the applicant personally believable? If the story is consistent with what is known about the country of origin, then the basis for the right inferences has been laid. Inconsistencies must be assessed as material or immaterial. Material inconsistencies go to the heart of the claim, and concern, for example, the key experiences that are the cause of flight and fear. Being crucial to acceptance of the story, applicants ought in principle to be invited to explain contradictions and clarify confusions.' These quotations appear to me to accurately represent the questions which must be addressed by an examiner and the approach which ought to be adopted by the examiner and the Authority."

36. In AMT Finlay Geoghegan J. approved these principles. She quoted from the decision of Judge Pearl in *Milan Horvath v Secretary of State for the Home Department (United Nations High Commissioner for Refugees Intervening)* [1999] I.N.L.R. 7, 17 where he had stated:

> "(21) . . . It is our view that credibility findings can only really be made on the basis of a complete understanding of the entire picture. It is our view that one cannot assess a claim without placing that claim into the context of the background information of the country of origin. In other words, the probative value of the evidence must be evaluated in the light of what is known about the conditions in the claimant's country of origin."

37. Finlay Geoghegan J. then went to add ([2004] 2 I.R. 607, 617):

> "In accordance with the above principles, I have concluded that the Tribunal Member in this case was obliged to assess the applicant's story that, as an illiterate person, he was employed as a driver to Secretaries of top government officials in the context of what is known of the conditions in the Ivory Coast. Further, that by reason of the central importance this part of the story to the assessment of the credibility of the applicant her failure to do so renders the decision invalid."

38. The starting point, therefore, was to examine whether the applicant was an Ivorian national and whether he had come from the Ivory Coast at the time in question. In its ruling the ORAC had concluded – based on an examination of his knowledge of the local geography of the region – that Mr. A. had indeed come from Abobo and there is no doubt at all but that his arrival in Ireland on 12th May 2011 coincided with intense civil conflict in the Ivory Coast.

39. This is borne out by the COI information which was available to the RAT. Thus, for example, the Ref World article for 2nd June 2011 to which I have already made reference stated:

> "Armed forces loyal to President Alassne Ouattara have killed at least 149 real or perceived supporters of the former President Laurent Gbago since taking control of the commercial capital in mid-April 2011, Human Rights Watch said today. Pro-Gbago militiamen killed at least 220 men in the days immediately preceding and following Gbago's arrest on April 11th, when the nearly four month conflict came to a close."

40. The Tribunal did not, however, refer to the COI at all in considering whether the applicant's account might be true. The applicant's claim, after all, was that he had discovered that his own house had been burnt down by Ouattra militiamen on 11th April 2011 and that he had gone into hiding on that day. The veracity of that claim was central to the entire credibility assessment, yet it

could not be dismissed without at least some reference to the COI, As Peart J. put it in *Imafu*, this was precisely the kind of "unusual matter which would have to be checked out before one could assert with any reliability that the applicant was not being truthful."

41. Although there is no finding as to the origin of the applicant in the decision of the Tribunal, it seems at least generally implicit in that decision that the ORAC's finding to the effect that he was an Ivorian national who came from Adobo was accepted. In view, however, of the approach taken in cases such as Camara and *AMT* and the specific requirements of the Article 5(1)(a) of the 2006 Regulations, the failure of the Tribunal to consider the credibility of his claim in the context of relevant COI in itself rendered the decision invalid.

42. Given, however, that this matter will now be remitted to the newly established International Protection Tribunal, it is, I think, important that the other matters raised by the applicant – and, specifically, the handling of documentary material relied on by him – are also addressed.

The approach of the courts in judicial review proceedings

43. The general approach of the courts in judicial review applications of this kind where a request for asylum has been rejected on credibility grounds is well established and was summed up by Cooke J. in *IR* in the following terms ([2015] 4 I.R. 144, 149):

> "It is because in such cases the judgment of the primary decision-maker must frequently depend on the personal appraisal of an applicant, that it is not the function of the High Court in judicial review to reassess credibility and to substitute its own view for that of the decision-maker. Its role is confined when a finding of lack of credibility is attacked, to ensuring that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law."

44. To that comprehensive statement I would add only the following: as this Court pointed out in *NM (DRC) v. Minister for Justice and Equality* [2016] IECA 217, [2016] 2 I.L.R.M. 369, 395, the effective remedy requirement of Article 39 of the Procedures Directive (Council Directive 2005/85/EC) as interpreted by the Court of Justice in Case C-69/10 *Diouf* EU:C:2011: 524:

> "….imposes only one - albeit, critical - requirement, namely, that the remedy in question must remain an effective one. As *Diouf* itself makes clear, this means that the supervisory jurisdiction of the High Court must be ample enough to ensure that "the reasons which led the competent authority to reject the application for asylum as unfounded… may be the subject of a thorough review by the national court."

45. Given the importance of the analysis of this difficult issue which is contained in *IR*, together with the clarity of thought and expression found in that judgment, it is, I think, helpful to examine Cooke J.'s approach in a little detail. Returning, therefore, to the judgment in *IR*, Cooke J. next stated that ([2015] 4 I.R. 144, 149):

> "…. the starting point for the decision-makers is, of course, the statutory provisions and guidelines relating to the process which they are required to follow in assessing claims to refugee status and to subsidiary protection. Both the Commissioner and the Tribunal in this jurisdiction are required by s. 11B of the Refugee Act 1996 to have regard to the thirteen particular matters listed at paras. (a) to (m) of that section when assessing credibility. For the most part these are factors or indicators which any experienced adjudicator will have in mind as a matter of common sense such as the truth of the explanation given as to how an applicant travelled to the State; why asylum was not sought in safe countries traversed en route and the use of forged documents for the making of false representations.
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> That mandatory check list is supplemented by the more pedagogic requirements of regulation 5 of the European Communities (Eligibility for Protection) Regulations 2006 which both prescribe matters to be taken into account in assessing facts and circumstances and, in subs. (2) and (3) give guidance as to the evaluation of persecution or serious harm already suffered and as to the circumstances in which aspects of statements unsupported by documentary or other evidence will not require confirmation. Furthermore, authoritative guidance as to the approach to be taken in evaluating claims, in handling the burden of proof and according the benefit of doubt to an applicant is given in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (Geneva, 1992) (see in particular the section "Establishing the Facts" at paras. 195-205)."

46. Cooke J. then observed that ([2015] 4 I.R. 144, 150):

> "The present case is one in which the decision of the Refugee Appeals Tribunal of 17th April 2007 now sought to be quashed, turns entirely upon the credibility of the applicant's account of his personal history and raises a number of the broad issues which are frequently encountered:
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> (i) how is this decision-maker to strike a correct balance when required to weigh evidence in different forms and of different quality:
>
> (ii) if the decision-maker doubts the plausibility of an account given in personal testimony what duty, if any, is there to consider and assess the probative value and effect of documentary evidence or other secondary information which appears to be supportive of the doubted testimony: and
>
> (iii) where the decision-maker rejects as incredible the personal testimony of an applicant what is the extent of the obligation, if any, to state the reasons for the rejection or discounting of other inconsistent documentary evidence or secondary information?"

47. Having reviewed much of the pre-existing case-law on this topic, Cooke J. then set out the following principles which have been consistently followed ever since ([2015] 4 I.R. 144, 151-152):

"So far as relevant to the issues dealt with in this judgment it seems to the Court that the following principles might be said to emerge from that case law as a guide to the manner in which evidence going to credibility ought to be treated and the review of conclusions on credibility to be carried out:-

> "(1) The determination as to whether a claim to a well founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision-maker and not by the Court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision-makers.

(2) On judicial review the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or of any principle of natural or constitutional justice.

(3) There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded.

(4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.

(5) 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.

(6) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given.

(7) A mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim.

(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.

(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.

(10) Nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the applicant as addressee, and the Court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached."

48. Although, as I have already observed, it is not easy to prescribe a priori rules governing the assessment of credibility issues, it would nonetheless be difficult to improve upon the statements of principle (and summary of existing case-law and practice) found in this judgment.

The application of the *IR* principles to the facts of that case

49. It may be useful next to consider the manner in which these principles were actually applied by Cooke J. in *IR*, since the facts of that case bear some passing resemblance to the present one. In that case the applicant was a Belarusian who had claimed that he had beaten up and imprisoned for taking part in protest marches organised by an opposition party of which he had been a member. He also said that following his release from prison he had taken part with his girlfriend in another protest rally at Minsk. He maintained that his girlfriend then wrote a newspaper article concerning the protest which was published the following day, for which he said he took the photographs. As a result, her family house was raided and searched by police a few days later.

50. At first instance the ORAC recommended that the applicant be not declared a refugee essentially upon credibility grounds. That assessment was made on the basis of the applicant's apparent lack of knowledge when questioned about the opposition party ("BPF") and its leadership. The report referred to the documents produced by the applicant but said "the authenticity of the documents submitted cannot be verified or refuted".

51. These issues were then raised on appeal before the Tribunal. The Tribunal member observed that had the applicant been a member of the BPF and been imprisoned on this account, then "One would assume that this applicant should have a basic knowledge of the Belarus Popular Front". The Tribunal member found that the applicant lacked a basic knowledge of the BPF and gave a number of examples of discrepancies in this regard which were said to arise from his answers at interview.

52. First, the Tribunal member cited country of origin information describing the role and political history of one Zianon Pazniak, a prominent Belarusian politician and founder of the BPF party who is described as having fled from Belarus in 1996 to avoid being killed by Alexander Lukashenko, the President of Belarus. The Tribunal member found that when questioned about Mr. Pazniak, the applicant gave wrong or inaccurate answers. Second, the applicant was also questioned about elections in Belarus between 2001 and 2006, but in his replies omitted any reference to parliamentary elections held on 17th October 2004. Third, he was questioned about what the Tribunal member said there was a "well publicised split" in the BPF which took place in 1999. The applicant said it took place in 1994.

53. Cooke J. then referred to these matters and then observed ([2015] 4 I.R. 144, 155-156):

> "Thus, it is on the Tribunal member's appraisal of the applicant's lack of basic knowledge of the history, leadership, and activities of the party in which he claims to have been a member and for which he went to jail, that the negative finding on credibility is reached.
>
> If, as in other cases, the applicant's claim turned entirely on his personal testimony, it would be difficult to persuade the Court to interfere with that assessment. The applicant has been interviewed by the Commissioner and had an oral hearing before the Tribunal member. Both decision-makers have seen and heard him and concluded that he lacks credibility. The observations made by the Tribunal member are based on questions put to him which arise directly and logically out of the applicant's own account. On that basis, it could not be said that it was perverse or irrational for the Tribunal member to consider that a better knowledge of the BPF could be expected from someone with the applicant's level of education who claims to have had the involvement in that party which he described."

54. Cooke J. then noted, however, that the applicant's case also rested on documentary evidence, including a police report, a court decision and verdict, a handwritten letter said to be from the applicant's cell mate in the Belarus prison, the newspaper article said to

have been written by the applicant's girlfriend with his photographs and a sample of a "wanted" poster or leaflet said to have been issued by the Belarus authorities naming the applicant and one other individual. Cooke J. then said ([2015] 4 I.R. 144, 157):

> "The court considers that what is crucial about this material so far as concerns the legality of the process by which the conclusion on credibility in the contested decision was reached, is that none of it is referred to anywhere in that decision except insofar as it might be said to have been included in the phrase "The Tribunal has considered all the relevant documentation…" which appears in the conclusion at section 7….. It is true, of course, ….that the mere existence and submission of such documents does not necessarily render untenable a judgment as to the lack of credibility of the oral testimony of the applicant. Indeed, counsel pointed out that even on a cursory examination of the translations of the court documents there were discrepancies which might put their authenticity in question. Different amounts appear to be given for the same fine and the Bereza court verdict of 15th May, 2004 refers to the applicant having no previous convictions and yet a few lines later it refers to a previous conviction as an aggravating factor in the sentence."

55. The judge added ([2015] 4 I.R. 144, 157-158):

> "Indeed, it might well be that on closer scrutiny, some or all of these documents might be shown to be false and even to have been fabricated for the very purpose of the asylum application. However, the girlfriend's article, for example, looks superficially to be in an original newspaper surrounded by other typical items, advertisements and so on, but it could conceivably be shown perhaps that the names of the author and the photographer in the byline are names the girlfriend and the applicant have adopted in order to claim asylum. Thus, it may all be shown to be an elaborate contrivance and fraud.
>
> Nevertheless, unless and until such issues are addressed by the appropriate decision-maker, from the point of view of the validity of the contested decision as it now exists, the fundamental point is that this was, at least on its face, original, contemporaneous documentary evidence of potentially significant probative weight in corroborating key facts and events. If it is authentic, it may prove that the applicant has suffered persecution for his political activities. If that is so, then the judgmental assessment that is made of the quality of his answers to the questions about the BPF may possibly assume an entirely different weight when all of the evidence, both testimony and documentary, is objectively weighed in the balance."

56. All of this led Cooke J. to the following conclusions ([2015] 4 I.R. 144, 158-159):

> "The court accepts that there may well be cases in which an applicant relies partly on oral assertions, partly on documents, and partly on country of origin information and in which the decision-maker has sound reason to conclude that the oral testimony is so fundamentally incredible that it is unnecessary to consider whether the documents are authentic and whether the conditions in the country of origin are such that the claim could be plausible. The decision-maker in such a case is finding that what the applicant asserts simply did not happen to him. In the present case, however, the situation is materially different because the adverse finding of credibility is effectively based on the Tribunal member's premise as to the level of knowledge to be expected and the apparent lack of that knowledge, while the documents have the potential to establish that specific events did happen and happened to the applicant. It is this which gives rise to the need for the whole of the evidence to be evaluated and the analysis to be explained.
>
> In the Court's judgment, the process employed by the Tribunal member in reaching the negative credibility conclusion as disclosed in the contested decision was, therefore, fundamentally flawed because the documentary evidence which had been expressly relied upon before the Commissioner and in the notice of appeal and which was on its face relevant to the events on which credibility depended, was ignored, not considered, and not mentioned in the contested decision. It is correct, as counsel for the respondents submitted and as is confirmed by the case law summarised at the beginning of this judgment, that a decision-maker is not obliged to mention every argument or deal with every piece of evidence in an appeal decision at least so long as the basis upon which the lack of credibility has been found can be ascertained from the reasons given. However, in the view of the Court, that proposition is valid only when the other arguments and additional evidence are ancillary to the matters upon which the substantive finding is based and could not by themselves have rendered the conclusion unsound or untenable if shown to be correct or proven.
>
> That cannot be said to be the case here. When the Tribunal member says in the decision, "He claims to have spent six months in prison on account of his political activities," and then finds that the applicant lacks the political knowledge one would expect from someone with that commitment, the Tribunal member is clearly indicating that he believes the applicant was never in prison or, at least, never imprisoned for the political offences he claimed. But if the documents are authentic and are correctly translated, the applicant was indeed in prison and the premise on which the conclusion has been made is therefore no longer tenable. The process is, therefore, flawed and the analysis incomplete.
>
> Accordingly, the Court finds that the contested decision in this case is sufficiently flawed to warrant its being quashed. The Tribunal member has erred in law in failing to consider all of the relevant evidence on credibility and adequately and objectively to weigh it in the balance in reaching a conclusion on that issue. Where, as here, documentary evidence of manifest relevance and of potential probative force is adduced and relied upon, the Tribunal member is under a duty in law to consider it and if it is discounted or rejected as unauthentic or unreliable or otherwise lacking probative value, there is a duty to state the reason for that finding."

The application of the *IR* principles to the present case

57. As I have already indicated, the present case bears some resemblance to the facts of *IR*. Although both applicants claimed to have suffered (in admittedly different ways) by reason of their participation with political parties in their respective countries of origin, their oral testimony was found in both instances to be unsatisfactory by reason of unexplained inconsistencies. It may be said of both the applicant in *IR* and in this case that adverse credibility findings were each made against them on the basis that if their respective accounts regarding political involvement were correct, they both would surely have been more knowledgeable about political events and personalities in Belarus and the Ivory Coast respectively than was disclosed in their respective interviews during the asylum process.

58. Just as in *IR*, the applicant's case is not, however, based solely on oral testimony, but it also involves reliance on a number of documents. I have already discussed the issues which surround the electoral identity card. The applicant also produced, however, an Ivorian identity card and an FPI membership card. While the ORAC stated that it could neither prove or disprove the authenticity of

either document, both appear - it is impossible to put the matter any further – to be genuine, although it may be that – again, to echo the language of Cooke J. in *IR* – upon closer inspection and scrutiny the documents will prove to be inauthentic and the product of an elaborate contrivance and fraud.

59. The applicant also produced a notification ("convocation") from the Chief of Police dated 20th June 2011 which stated that he had been reported by the "special forces of the President of the Republic" and that he was liable to be arrested for incitement to hatred and civil disobedience, matters which "will be severely punished in our Republic." He also sought to rely on a letter dated 21st June 2011 from a (named) Bishop attached to the Church of the Latter Day Saints of Jesus Christ in Abidjan where he stated that he had been "severely threatened by the rebels having learnt the rumour that he was housing the family of [RA]." Again, while the ORAC was unable to offer any views on the authenticity of these two documents, the Tribunal member made no specific finding in relation to any of these four documents (namely, the identity card, the RPI membership card, the notice from the Police Commissioner and the letter from the Bishop) because he concluded that, as I have already stated, this information "does not assist the applicant in circumstances where his credibility is found wanting to such a degree that the very basis of his claim is not believed."

60. It seems to me that in this respect the Tribunal member fell into essentially the same error as did the Tribunal member in *IR*, namely, to conclude that because the oral testimony of the applicant was so unsatisfactory from a credibility perspective there was no need in the circumstances to consider the documentary evidence which had also been proffered by him. Yet just as the Belarusian documents relation to conviction and imprisonment, the newspaper article concerning the rally etc., would, if shown to be authentic, have demonstrated that the Tribunal member's premise in *IR* that the applicant could not have been imprisoned or otherwise persecuted for his political beliefs was fundamentally flawed because of his general lack of knowledge of the leadership structures in the main opposition party in Belarus, the same can just as readily be said in the present case.

61. The Tribunal member concluded that the applicant in the present case could not have been at risk because of his basic lack of knowledge of certain details concerning the political state of affairs in the Ivory Coast in the first five months or so of 2011 and the nature of the conflict between the Gbagbo and Ouattara factions. The premise of the adverse credibility findings was that anyone who had in fact participated in these political activities would have had a far greater knowledge of the relevant detail than this applicant appeared to have had. Yet if, indeed, the applicant was a member of the FPI or he had been summoned by the Chief of Police for his political activities or a Bishop of the Church of the Latter Day Saints was threatened in a menacing fashion by militants because it was rumoured that he had given the family of Mr. A. shelter as these documents all appear to show – assuming, again, that they were shown to be authentic - then the position would be very different.

62. This case presents yet another example of where the fourth principle identified by Cooke J. in *IR* assumes such importance: the assessment of credibility must be made "by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed." Given that it is not disputed that Mr. A. is an Ivorian national who arrived in Ireland at a time of intense civil conflict – in effect, what amounted to a civil war – in the Ivory Coast, the fundamental question was whether his account of involvement with the FPI and the consequent risks to his life and limb was credible. But given the alleged provenance of the documents and their obvious relevance to his claim, if true, it was incumbent in these circumstances on the Tribunal member to assess such documentary evidence – if necessary, by making findings as their authenticity and probative value - so that that very credibility could be assessed by reference to all the relevant available evidence. The potentially serious consequences for Mr. A. if an otherwise meritorious claim were to be rejected – assuming again, of course, that his account was a valid one – demanded no less.

63. It is, in any event, clear since the coming into force of the Qualification Directive (Directive 2004/83/EC) that the grant of asylum is fundamentally governed by EU law: see Case C-57/09 and C-101/09 *B and D* EU:C: 2010: 661. As this Court has already made clear in *NM (DRC)*, the requirement of Article 39 of the Procedures Directive means that the supervisory jurisdiction of the High Court in judicial review proceedings must nonetheless ensure that "the reasons which led the competent authority to reject the application for asylum as unfounded… may be the subject of a thorough review by the national court." This further underscored the necessity *in the present case* for the Tribunal member to have examined the documentary evidence advanced by the applicant, precisely because without an assessment of that evidence there could not have been a full assessment of credibility.

64. One may put all of this another way by saying that in the circumstances of the present case the Tribunal member was required to have regard to the documentary material supplied by the applicant in support of his case, because, just as in *IR*, that material – if it were to be accepted as authentic – would tend to bear out a claim (namely, that he escaped to avoid a real risk to his life and person during the course of an intense civil conflict) which is also generally consistent with the available COI. Accordingly, this is an instance of where the Tribunal erred in failing to have regard to "relevant statements and documentation presented by the protection applicant" (Article 5(1)(b)), specifically, by failing to examine whether they were or might be authentic.

65. In these circumstances, just as in *IR*, the decision of the Tribunal cannot be allowed to stand and I consider that the High Court fell into error in not quashing the decision on this ground. This conclusion is further underscored by the considerations identified by the Court of Justice in *Diouf* and by this Court in *NM (DRC)*, namely, the obligation to ensure that the reasons which led the Tribunal to reject the asylum application as unfounded must be "the subject of a thorough review" in the course of any judicial review proceedings contesting the legality of that decision. It would be clear from any such review that the Tribunal's decision rested only on a partial assessment of all the relevant evidence bearing on the applicant's credibility.

Conclusions

66. It remains only to summarise my conclusions.

67. First, I agree with the conclusion of the High Court that Article 5(1)(a) of the 2006 Regulations does not impose an obligation to consult COI in every case, regardless of the circumstances. The decision-maker is obliged to do so only where such information is relevant in the circumstances of the particular case.

68. Second, the general question posed in the certified question does not readily lend itself to fixed, *a priori* rules, since the extent to which (if at all) the decision maker should consult COI and refer to such material in the decision must depend on all the relevant circumstances. The principles articulated by Cooke J. in *IR* nonetheless provide very useful guidance in any assessment of credibility issues in cases of this kind.

69. Third, the Tribunal member was, however, obliged in this instance to consider the COI relevant to any credibility assessment of the applicant's claims, given that these claims involved particular and specific details in relation to events which allegedly took place in April and May 2011 and which were not generally known to those who did not live in the Ivory Coast. His failure to do so in this instance amounted to a breach of the requirements of Article 5(1)(a) of the 2006 Regulations and rendered the decision invalid and the High Court fell into error in failing to quash the decision on this ground.

70. Fourth, while the Tribunal member was in principle entitled to draw adverse credibility findings from the inconsistencies contained in the applicant's own testimony (and, specifically, his apparent lack of knowledge of key political and military events in the Ivory Coast in the months leading up to his departure in May 2011), he nonetheless fell into error in failing to consider key documents relied on by the applicant. If these documents (such as an RPI identity card or the notification from the Police Commissioner) were indeed authentic, they would place the applicant's claims regarding his political involvement in an entirely new light. The Tribunal member's obligation was to make an overall assessment of credibility based upon an evaluation of all potentially relevant information and not just some of that material.

71. To that extent, therefore, the Tribunal member failed to comply with the obligation in Article 5(1)(b) of the 2006 Regulations to examine all relevant documents supplied by the applicant. It further follows that the High Court also fell into error in failing to quash the Tribunal's decision on this ground.

72. For all of these reasons I would accordingly allow the appeal and grant an order of certiorari quashing the decision of the Tribunal.