THE HIGH COURT

[2021] IEHC 26

[Record No. 2019/919 JR]

BETWEEN

R.F.H.

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY AND THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered electronically on the 15th day of January, 2021

Introduction

1. The applicant seeks to set aside the decision of the second respondent made on 18th November, 2019 declaring that the applicant should not be given refugee status; nor that he was entitled to subsidiary protection under the International Protection Act 2015, which was based on the finding made by the second respondent that there was no reasonable risk that if the applicant were to be returned to Iraq he would face a well-founded fear of persecution or serious harm.

2. In summary, the applicant seeks to set aside the decision of the second respondent on the grounds that it failed to take into account country of origin information (hereinafter referred to as "*COI*") which had been submitted on behalf of the applicant; or alternatively that if they had taken such material into account, they had failed to give any, or any adequate reasons as to why they had rejected that COI in reaching the findings that it had done and in the further alternative, it was submitted that the findings made by the second respondent were not based on the evidence and were accordingly irrational.

3. On behalf of the respondents it was submitted that the second respondent had taken account of all the relevant documentary and other evidence that was before it and in particular, had had regard to the fact that, while the applicant had been interrogated by the security forces in the Kurdistan region of Iraq in 2014, due to posts that he had made on his Facebook page, he had not had any further difficulties with the authorities in the four years between 2014 and 2018, when he came to Ireland. It was submitted that in these circumstances the findings of the second respondent had been entirely rational; had been based on the evidence before it and the reasons why it had reached its decision were entirely clear from the decision itself. Accordingly, it was submitted that there was no basis on which to either set aside the decision of the second respondent, or remit the matter to them for further reasons.

Background

4. The basic elements of the applicant's story were not greatly in dispute and indeed, were largely accepted by the second respondent at the hearing of the appeal from the recommendation of the International Protection Officer.

5. The applicant is 31 years of age, having been born on 1st March, 1989. He is an Iraqi national and resided in the Kurdistan region of Iraq. He arrived in Ireland, via Dublin

Airport, on 3rd June, 2018. He stated that he was from the town of Arbat in Kurdistan. Before he left for Ireland, he had worked for a telecoms company and as a receptionist in an organisation for economic development. He had also worked as a taxi driver.

6. In or about 2012/2013, he had opened his first public Facebook account; on which he had placed a number of postings which were critical of the government in Kurdistan. As a result of these postings, he came to the attention of the authorities. He was taken in by the security services, known as the Asayish, in 2014. He was interrogated for some time about the content of his postings. He was released when he agreed to shut down his Facebook account, which he did while in custody.

7. The applicant stated that he did not place any postings on Facebook for a number of months after his release. However, he then opened a private Facebook account, to which only approximately 100 "*friends*" were given access. However, the applicant continued to have some public aspect to his opposition to the government, in particular, he would "*like*" and "*share*" postings critical of the government made by others on their own social media accounts.

8. The applicant stated that he also had a number of public arguments with supporters of the government and some members of his own family who supported the government, when he was out on the street.

9. The applicant accepted that he had not received any adverse attention from the authorities, or the security services, in the period after his release in 2014, until he left the country for Ireland in 2018.

10. That is the background against which the second respondent made its decision on 18th November, 2019.

The Decision of the Second Respondent

11. Broadly speaking, the second respondent refused protection to the applicant because it found that, while there was undoubtedly COI to support the proposition that journalists, media outlets generally and opposition activists, who were critical of the government, suffered adverse consequences at the hands of the authorities, and their agents; there was no evidence that individuals, who posted material on the internet critical of the government, were necessarily targeted by the authorities or their agents. In addition, the Tribunal found that as the applicant had engaged in both public and more private criticism of the government on the internet and in the street after his release in 2014, but had not been the subject of any attention from the authorities in the four years prior to leaving for Ireland in 2018, taking all these matters into account, there was not a reasonable chance that if he were to be returned to Iraq he would face a well-founded fear of persecution.

Submissions on Behalf of the Applicant

12. It was submitted on behalf of the applicant that it was significant that the Tribunal had accepted as credible a very large portion of the account given by him. In particular, they had accepted that he had been interrogated by the security forces in Kurdistan in 2014; that he had closed his public Facebook account as a result of that interrogation and that

he had had public arguments with supporters of the government party in the period after his release and prior to his departure for Ireland.

13. The tribunal had noted that the European Court of Human Rights case law underlined that "*real risk*" was lower than the threshold of "*more likely than not*" in relation to a threat of persecution or serious harm.

14. The Tribunal had also had regard to COI submitted on behalf of the applicant in the form of a U.S. Department of State report dated 2017 on human rights practices in Iraq, which had noted in the section dealing with freedom of expression that "*individuals were able to criticise the government publicly or privately but not without fear of reprisal"*. However, notwithstanding these considerations, the Tribunal had found that the applicant, in the circumstances of his case, did not have a reasonable fear of persecution or serious harm if he were repatriated to Iraq.

15. It was submitted that having regard to the accepted account given by the applicant, and having regard to the relevant COI put forward on his behalf, the second respondent had failed to give any or any adequate reasons as to why it had reached the conclusion that it had in this case. In relation to the duty to give reasons generally, counsel referred to the decision in *Connolly v. An Bord Pleanála* [2018] IESC 31. It was further submitted that where the decision maker was going to reject evidence or COI put forward on behalf of an applicant, or where he or she was going to prefer one piece of conflicting of COI to another, it was incumbent on the decision maker to provide clear reasons for his or her decision: see *D.V.T.S. v. Minister for Justice Equality and Law Reform* [2008] 3 I.R. 476 at p. 496.

16. It was submitted that while the court cannot substitute its own view on the facts for that of the decision maker, it had been held in *R.A. v. Refugee Appeals Tribunal* [2017] IECA 297 that the requirement that there be an effective remedy meant that the court could subject the reasons given by the deciding authority to a "*thorough review*". In addition, the Tribunal was required to have regard to all of the documentary evidence placed before it.

17. A second ground of submission put forward on behalf of the applicant was to the effect that in his notice of appeal to the Tribunal, the applicant had specifically put before the second respondent two additional pieces of COI which supported the proposition that ordinary individuals, not just media outlets, journalists or political activists, were subject to adverse attention from the authorities, if they engaged in any criticism of the government in Kurdistan. It was submitted that once relevant material had been placed before the decision maker, it was incumbent on him/her to address that material and, if he/she was going to reject that material, to set out clearly the reasons why they were so doing. It was submitted that in this case, the Tribunal had not addressed the two articles which had been submitted to it, which showed that individuals were targeted in this way, which articles had been exhibited at RFH-O to the applicant's affidavit.

18. It was submitted that the Tribunal had failed to address these articles, or to give any adequate reasons why they had not accepted the assertions made therein and had come to the conclusion that, as the applicant was not a journalist or a political activist on behalf of an opposition party, he would be unlikely to face persecution if repatriated.

19. The applicant further submitted that at section 8 of his notice of appeal to the Tribunal, he had raised the fact that while his second Facebook account had been private, he had nevertheless engaged in some public discourse critical of the government when he had posted comments as "*likes*" and "*shares*" in relation to comments made by other people on their social media platforms. It was submitted that in circumstances where the government monitored social media activity, it was reasonable to assume that the applicant's conduct in this regard had not gone unnoticed. Accordingly, it was reasonable for him to fear persecution or serious harm in the event that he was sent back to Kurdistan, on account of having made such public comments in relation to other people's social media postings, which had been critical of the government. It was submitted that the Tribunal had simply failed to take this submission into account when reaching its decision.

20. Finally, it was submitted that due to the lack of any, or any adequate reasons on the matters outlined above, the decision reached by the Tribunal, that there was no reasonable chance that if the applicant were to be returned to Iraq he would face a well-founded fear of persecution, was against the evidence that had been placed before it and in the absence of reasons for such finding, it was submitted that the finding was irrational.

Submissions on Behalf of the Respondents

21. It was accepted on behalf of the respondents, that a large element of the applicant's story had been accepted by the Tribunal. It was submitted that the findings made by the Tribunal in this case were justified on the evidence that had been placed before the Tribunal and in particular, having regard to the uncontested evidence that the applicant had continued to engage in his postings on Facebook, albeit on a private platform, and had engaged in public arguments with people in the street, and yet had not suffered any adverse attention from the authorities, or their agents in the four years prior to his departure for Ireland in 2018. It was submitted that in these circumstances, the inferences that had been drawn by the Tribunal, were entirely rational and were supported by the evidence.

22. Counsel referred to the decision of Birmingham J. (as he then was) in *M.E. v. Refugee Appeals Tribunal* [2008] IEHC 192, where it had been held that a Tribunal member was not expected to accept without challenge or question every account given to him or her. Rather he or she was expected to weigh, access, analyse and draw inferences. It was submitted that that was exactly what the Tribunal had done in this case.

23. Counsel referred to the decision of Ryan J. in *A.S.R. v. Refugee Appeals Tribunal* [2010] IEHC 514, where it had been held that the inference drawn by the Tribunal in that case, that, if returned to Afghanistan, the applicant would not be of interest to the authorities,

was one that was open to the Tribunal, given the passage of time that had elapsed since the applicant in that case had left his country of origin. It was submitted that in this case, where the applicant had remained in Kurdistan for four years after his arrest in 2014 and had continued to engage in activities critical of the government; yet had not been rearrested or otherwise come to the adverse attention of the authorities or the security services; these were matters from which the Tribunal had been perfectly entitled to draw the inferences that it had in this case.

24. In relation to the two articles which the applicant complained had not been specifically addressed by the Tribunal in its decision, it was submitted that these articles were of very little, if any, relevance to the applicant's case that ordinary individuals, who were critical of the government, were also likely to suffer harm from government authorities or their agents. The first article, which dealt with the abduction of a teenager who was proficient in IT skills by Lahur Jangi, had nothing to do with people making postings critical of the government. That was an article where it was alleged the teenager had been abducted by the particular man and had been used and that when his requirement for the teenager had ceased, the man had accused the teenager of social security destruction. It was submitted that that article was not relevant to the case made by the applicant and therefore did not have to be specifically addressed by the Tribunal.

25. The second article concerned a kidnapping and attack on a man, who had been a member of the National Security Forces, known as the Peshmarga. He had engaged in criticism of the authorities due to a litany of wrongdoing including: lack of electricity; theft; corruption; an allegation that they stole children and made them join PAK units as National Security Members and his naming of various members of an organisation and on account of his urging people to engage in a revolution against the government, particularly those in the military and in the Peshmarga. It was submitted that that article detailed serious actions taken against the particular man in Barbandikhan City, but it appeared that the motivation for his being targeted may not have been his utterances, but his membership of the Peshmarga. It was submitted that that article was far removed from the circumstances of the applicant's case. As such, the fact that it had not been specifically addressed in the Tribunal decision, was not a defect in the decision.

26. In relation to the extract from the US State Department document, it was noted that that extract was from the section marked Freedom of Expression generally. It dealt with freedom of expression of media outlets, journalists and opposition activists. It was accepted in the COI that media generally, journalists and opposition activists did not have freedom to criticise the government. It was submitted that the issue of internet freedom was dealt with further on in the report. That indicated that 21% of the Iraqi population used the internet in 2017 and that, despite restrictions, political figures and activists used the internet to criticise corrupt and ineffective politicians, to mobilise protestors for demonstrations and to campaign for candidates through social media channels. It was submitted that the findings of the Tribunal to the effect that there was evidence that media outlets and journalists were restricted in their ability to freely express their views, and the finding that the applicant as a low-level individual user of the internet was not

likely to face such persecution, were findings that were open to the Tribunal on the evidence before it.

27. It was further submitted that the Tribunal had to view the COI submitted on behalf of the applicant in the context of all the other COI that was available to it. It was clear that the overall thrust of the COI was to the effect that it was only media outlets, journalists and opposition activists, who were critical of the government, who were likely to face persecution or serious harm from the government or its agents. It was submitted that the Tribunal had been entitled to reach that finding, even if it was in conflict with the very limited COI submitted on the part of the applicant as part of his appeal. It was submitted that the Tribunal had looked at the relevant COI at paras. 5.11 and 5.12 of its decision and had reached conclusions at para. 5.13 that were reasonable and had been open to the Tribunal on the evidence before it. The evidence had been entirely supportive of the view that only those in media or political activists were liable to receive adverse attention from the authorities for their postings or statements.

28. Counsel referred to the decision in *G.O.B. v. Minister for Justice, Equality and Law Reform* [2008] IEHC 229, where Birmingham J. (as he then was) had recognised that there will always be contradictory COI in relation to a particular issue. He had held that when the broad thrust of the COI was leading in one direction, it would be irrational for the Tribunal to go against that by relying on obscure COI which was in the applicant's favour: see para. 22 of the judgment. Counsel further referred to the decision in *M.I.A. v. Refugee Appeals Tribunal* [2008] IEHC 336, where Hedigan J. had held that it was only in cases of serious conflict on the COI, that it was necessary to address the conflict specifically. He referred to the decision of Edwards J. in Simo v. Minister for Justice, Equality and Law Reform [2007] IEHC 305, where he had held that it was only necessary to resolve such conflict where there was "*a major conflict*" in the COI and it was relevant to a core issue in the case. It was submitted that no such resolution was necessary here, because the COI was predominately to the effect that it was only journalists and activists who were at risk from their posts on the internet.

29. In relation to the matters raised at section 8 of the notice of appeal, to the effect that the applicant had engaged in public comment on the internet by posting "*likes*" and "*shares*" in respect of other people's postings on their social media, it was submitted that the Tribunal had in fact taken that into account, because it had stated that it had had regard to all materials submitted by the applicant as part of his appeal. Counsel referred to the decision of Hardiman J. in *G.K. v. Minister for Justice* [2002] 2 I.R. 418 where he had stated as follows at p. 426 – 427:-

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

30. Counsel also referred to the decision of Humphreys J. in *A.B. (Albania) v. Minister for Justice* [2017] IEHC 814 in this regard.

31. In addition, at para. 4.13, the Tribunal had stated that the applicant had not been sought out by the security forces since 2014 despite "*continuing to make comments on social media similar to those which had prompted the security services to be interested in his comments in 2014"*. It was submitted that that statement was broad enough to encompass his "*likes*" and "*shares*" of other people's comments on their social media platforms. It was submitted that in the circumstances it could not be argued that the Tribunal had failed to have regard to this aspect of the applicant's appeal as set out at section 8 of his notice of appeal.

32. Finally, it was submitted that the Tribunal had reached conclusions that were based on all of the evidence, both documentary and otherwise, that had been before it and had given reasons why it had reached the inferences that it had done on the basis of that evidence and in those circumstances it could not be argued that the decision was in any way irrational.

Conclusions

33. Having considered the documents in this case; the submissions of the parties, both oral and written, and the relevant legal authorities, I am satisfied that the decision of the Tribunal in this case is sound and should not be overturned.

34. One has to look at the decision in the round. It is a comprehensive and fair decision, which takes account of all of the relevant matters both in favour of and against the applicant's application. As has been noted already, a very large portion of the applicant's story was accepted by the Tribunal as being true. In particular, it seems to me that the following are the critical facts that were established before the Tribunal:

(a) The applicant had created a Facebook account in or about 2012/2013 and had posted comments thereon that were critical of the government;

(b) as a result of such postings, he had been arrested by the security services in 2014 and had been interrogated about his postings on Facebook;

(c) in the course of the interrogation he had been told that he would have to cease making such postings and he shut down his Facebook account while still in custody;

(d) for some months after his release he did not make any further postings on the internet; however, he then opened a second Facebook account, which was a private one; being only accessible to approximately 100 of his "*friends*"; he continued to put up postings critical of the government on this Facebook account;

(e) the applicant also contributed to the debate online by posting "*likes*" and "*shares*" of other people's postings on their social media platforms which were critical of the government;

(f) he also engaged in arguments with supporters of the government and members of his own family in the public street;

(g) the applicant was not rearrested, attacked or harmed on account of any expression of his views in the four-year period between 2014 and his departure from the country in 2018.

35. The court is satisfied that the preponderance of the COI that was submitted to the Tribunal supports the proposition that media outlets, journalists and political activists, who are critical of the Kurdistan Government are likely to receive adverse attention from them, or their agents. However, the COI does not support the proposition that individuals generally would be in fear of harm or reprisal due to their comments on the internet. The court is of the view that the documents submitted by the applicant as part of his appeal, being the two articles referred to earlier in the judgment, are not greatly relevant and are not supportive of the applicant's submission that individuals would be targeted as a result of their postings on the internet. The first article deals with a teenager against whom an allegation was made by a man who had apparently been using him for his IT skills. That article does not appear relevant to the applicant's case.

36. The second article, while perhaps of marginal relevance, is probably indicative of the fact that such harm as befell the man, was due to the fact that he was a member of the Peshmarga while he was posting his comments critical of the government. It does not support the proposition that individuals generally would face such harm for their postings critical of the government. In these circumstances, it was not necessary for the Tribunal to deal specifically with these two articles that had been submitted on behalf of the applicant. The Tribunal dealt with the broad thrust of the COI that had been submitted and that was sufficient.

37. The Tribunal did deal with the US State Department document that had been relied upon by the applicant and which was arguably of more relevance to his case. It was open to the Tribunal to reach the conclusion that it had done in relation to the fear of reprisals being confined to media outlets, journalists and political activists, as that conclusion was supported by the broad thrust of the COI that had been placed before it. As noted by Birmingham J. (as he then was) in *G.O.B. v. Minister for Justice, Equality and Law Reform* [2008] IEHC 229:-

> *"It is always possible to find some paragraph in a lengthy document offering comfort for almost any proposition. However, a decision-maker is not required to set aside his or her common sense and to proceed on the basis of artificial or contrived hypothesis."*

The Court is satisfied that the Tribunal's conclusion was supported by the broad thrust of the COI placed before it and was supported by the fact that nothing had happened to the applicant between 2014 and 2018.

38. I am satisfied that in reaching the conclusions which it did on this aspect of the case, the Tribunal gave adequate reasons for its decision.

39. The assertion made by the applicant that the Tribunal failed to address the points raised by him at section 8 of his notice of appeal, to the effect that he had engaged in further public criticism of the government by posting "*likes*" and "*shares*" of other people's critical comments on their social media pages, is not of such significance that it had to be specifically addressed by the Tribunal in its decision. I accept the argument put forward on behalf of the respondents that the general statements made by the Tribunal in the decision and in particular the acknowledgement that he had continued to be active on social media and to make public comments when he got into arguments with members of the public on the street, was a sufficient acknowledgement of the position that existed on the ground in the period 2014 to 2018.

40. The court is satisfied that in reaching its decision, the Tribunal had regard not only to the applicant's account and to the documentary evidence submitted in support of his application, together with the relevant COI, but they also had regard to the facts on the ground which showed beyond a question of a doubt that in the period 2014 – 2018, the applicant had continued to engage in criticism of the government, albeit on a lesser public level than prior to 2014, and had not received any adverse attention from the authorities. It was entirely reasonable for the Tribunal to draw the inference from that state of affairs, that the applicant would be unlikely to receive any adverse attention from the authorities if he were to be repatriated to that country now.

41. The court is further satisfied that the Tribunal adopted the correct test, in that, not only did it look at past events, but it also adopted a forward looking test in relation to the well-foundedness of a fear of future persecution. In reaching its decision, the Tribunal was entitled to have regard to the fact that the applicant had lived for four years in the country without being molested or harmed in any way prior to his departure for Ireland in 2018. That showed that he was of little interest to the government or security services for a very considerable period prior to his departure from the country. I cannot see any reason to criticise the finding of the Tribunal that there is no reasonable basis to presume that he would have become of interest to the government or the security services in the intervening period, when he had been out of the country and when he did not allege that he had been making any adverse postings of the government since leaving the country. Similar findings were made by the Tribunal in *A.S.R. v. Refugee Appeals Tribunal* [2010] IEHC 514, and were upheld by the Court on appeal.

42. As there was evidence before the Tribunal to justify the inferences which it has drawn and to make the findings which it has done, there is no basis on which to suggest that the decision reached by the Tribunal was irrational.

43. For these reasons, the court refuses to set aside the decision of the second respondent made on 18th November, 2019. The court refuses the reliefs sought by the applicant in his statement of grounds.