THE HIGH COURT
JUDICIAL REVIEW

[2021] IEHC 430
Record No. 2019/889JR

BETWEEN

NL

APPLICANT

-AND-

INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND MINISTER FOR JUSTICE

RESPONDENTS

JUDGMENT of Ms Justice Tara Burns delivered on 25th June 2021

General

1. The Applicant, who is twenty-five years old, is from the Shkoder region of Northern Albania. He entered the State on 8 August 2016 and immediately made an application for international protection.

2. The Applicant's application was made to and processed by the Office of the Refugee Applications Commissioner. However, on the coming into force of the International Protection Act 2015 (hereinafter referred to as "the 2015 Act"), his application came to be assessed pursuant to the provisions of that Act. An application for International Protection Questionnaire was submitted by him on 10 March 2017. Arising from errors in the translation of the questionnaire, the Applicant submitted an updated supplementary questionnaire on 28 June 2017. The Applicant was interviewed pursuant to s. 35 of the 2015 Act on 24 October 2017 and a s. 39 report issued on 3 May 2018.

3. An International Protection Officer (hereinafter referred to as an "IPO") recommended that the Applicant be granted neither a refugee nor subsidiary protection declaration on 17 May 2018.

4. The Applicant appealed this recommendation to the First Respondent, which, after a long and protracted consideration process, involving four hearing dates, affirmed the recommendation of the IPO on 22 October 2019.

5. Leave to apply by way Judicial Review seeking an order of Certiorari of the First Respondent's decision was granted by the High Court on 20 January 2020.

The Protection Claim

6. The Applicant asserted that his younger brother was murdered in 2010 by three men, EK and BK (who are brothers) and SM (who was a minor at the time), when the Applicant's brother was just 13 years old. His brother had been lured from his house by SM and killed for a gold necklace. The Applicant's father and the Applicant discovered his brother's body in a river, having confronted SM about his whereabouts.

7. The Applicant hails from the Northern region of Albania where an old tradition of Kanun blood feuds remains strong. This tradition requires that revenge be taken by the eldest son in a murdered person's family on the family of the perpetrator by taking a life from that other family: the tradition is described as "blood for blood."

8. The Applicant comes from a very respectable family and has no intention of engaging in this tradition. However, this is not what society expects of him. He asserted that he was constantly questioned by friends, neighbours and extended family as to whether and when he would take revenge on the killers' families. Societal attitudes to a person who does not honor the tradition are poor and such a person is shunned and loses respect within their community which can extend to public displays of shaming.

9. The three men who murdered his brother were convicted and imprisoned in respect of the murder; the Applicant, his father and his mother gave evidence against them. The K brothers have publicly pledged their innocence in respect of the murder, including via media broadcasts. Their father called to the Applicant's father's house and threatened the Applicant's father about his sons asserted wrongful conviction indicating "you will see what will happen to you." The Applicant's father received a phone call from an unknown number making a similar threat regarding the asserted wrongful conviction of the K brothers.

10. BK was sentenced to life imprisonment; EK was sentenced to 11 years imprisonment; and SM was sentenced to 10 years imprisonment. However, on appeal BK's sentence was reduced to 25 years imprisonment; and SM's sentence was reduced to 4 years imprisonment. SM was released shortly after his appeal, although he is now in prison again, having been found guilty of murdering two tourists. EK's sentence ended in mid-2017 (after the Applicant had left Albania) and he was released from prison.

11. The Applicant asserts that he fears for his life. He fears that the K brothers, who are dangerous people, anticipating that the Applicant will seek revenge for his brother's murder in light of the blood feud tradition, will strike first and kill him. Alternatively, they might seek to take revenge for the Applicant giving evidence against them in respect of a murder for which they protest their innocence.

12. The Applicant's family are also concerned for his safety. For these reasons, after the Applicant finished school, he was moved by his family in October 2013 to Sweden, where he claimed asylum. However, as his application was not successful, he was returned to Albania in August 2014. The Applicant has also stayed with his Uncle for periods since his brother's murder. He asserted that he has led a sheltered and careful existence to avoid detection by the murderers' families.

13. The Applicant was the victim of a hit and run accident in November 2015, as a result of which he sustained some injuries and was hospitalised. The Applicant believes that the K family caused this incident, but he was not in a position to identify anybody as he was hit from behind and did not see any faces.

14. After this incident, the Applicant decided to leave Albania to travel to Ireland arising from the fear he had of the K family.

15. The Applicant also claims that the constant pressure placed on him by wider society to take revenge for his brother's death is having a significant negative effect on his mental

health in circumstances when he already is suffering from post-traumatic stress disorder because of his brother's murder. He asserts that should he have continued exposure to this pressure, this would amount to inhuman or degrading treatment within the meaning of serious harm as defined by Article 15(b) of the Qualifications Directive.

Decision of First Respondent

16. The decision of the First Respondent is extremely lengthy, running to 87 pages. Whilst the First Respondent affirmed the negative recommendation of the IPO, it accepted the Applicant's credibility on a substantial number of the facts which he asserted.

17. It accepted that:-

- The Applicant is a national of Albania;
- His name and birth date;
- He was born in the northern village "D", lived where he indicated, and that he also lived with his uncle in Tirana, at various times, after his brother was murdered;
- The Applicant is Catholic;
- The Applicant completed his secondary education;
- The Applicant was unmarried and childless; that his parents were both alive in Albania; and that he had two sisters also resident in Albania;
- His father's previous occupations included working as a policeman and later as a lawyer;
- The Applicant has PTSD, having been severely traumatised by the murder of his brother, but does not have a major depressive disorder;
- The Applicant's brother was murdered on 11 September 2010, aged 13;
- The Applicant's brother was unlawfully killed and that the killing was a murder committed not for vengeance but for the acquisition of a piece of jewelry in an act of criminality;
- BK, EK and SM (a minor) were tried for the Applicant's brother's murder. The three were convicted and received sentences on appeal of 25 years, 11 years and four years imprisonment. BK remains in prison in respect of this sentence. EK was released from prison since mid-2017. SM was released from prison in respect of the murder of the Applicant's brother, his term of imprisonment having expired. However, he killed two tourists and has subsequently been convicted of their killings and is serving a life sentence;
- The Applicant does not intend to kill or enact revenge on the K family or the M family;

- Some comments of "did you do something about it?" were made by some members of his extended family, cousins and neighbours;
- That the village "D" in Northern Albania where the Applicant comes from is the location of prevalent blood feud customs;
- Confusion in classifying murders as blood feuds is common in Northern Albania;
- The Applicant went to Sweden, where he claimed asylum in 2013. However, he was unsuccessful and was returned to Albania over a year later in 2014;
- The K brothers' father threatened the Applicant's father in a face to face exchange and said, "my sons are in prison because of you and you will see what is going to happen next to you;
- The Applicant's father received an anonymous phone call with a message to the effect "our sons are in prison because of you, we are going to make your life hell";
- The Applicant was the victim of a hit and run accident in November 2015 as a result of which he sustained a head trauma and abrasions to his face;
- At the time of conviction for the Applicant's brother murder, EK was also convicted for possession of firearms and received a one year term of imprisonment.

18. The First Respondent did not, however, accept as credible:-

- ☐ That the hit and run accident was caused or occasioned by the K family "where the link between the two is based on belief unsustained by any evidence including any direct evidence from the appellant himself and is too tenuous or speculative";
- ☐ That a blood feud existed between the families;
- ☐ That the threat received by the Applicant's father from the K brother's father and the anonymous phone call he received, constituted a threat to the Applicant;
- ☐ That the Applicant feared the K brothers;
- ☐ That there was corruption attending the investigation, prosecution and trial of the murderers or their appeal;
- ☐ That the photograph allegedly of a corrupt politician and EK demonstrated the powerful political ties of the K family or that it demonstrated a pathway for them to political interference from a corrupt politician;
- ☐ That the photograph allegedly of EK's daughter holding a Kalashnikov rifle evidenced the dominance of the K family;
- ☐ That the K family was dominant to the Applicant's family or that the Applicant's family was in an unequal position.

19. Despite the long list of accepted facts which an analysis of the First Respondent's decision portrays, the First Respondent adopted a much more limited set of facts in its analysis of whether the Applicant had a well-founded fear, setting those out as:-

- The Applicant's name, age, nationality, gender, religion, civil and family status, and education history. The family is well respected, and his father was a lawyer and a police officer who worked in a prison;
- The Applicant's thirteen-year-old brother was murdered by EK, BK and SM;
- The Applicant has been diagnosed with PTSD;
- Some comments were made by members of his extended family regarding seeking revenge. However, the Applicant had no intention of bowing to this pressure;
- BK, EK and SM received the terms of imprisonment referred to above.

20. On the basis of these material facts of the Applicant's claim, which the First Respondent accepted, the First Respondent determined that the Applicant had not established a well-founded fear of persecution and therefore rejected his refugee claim. It stated:-

> "The Tribunal does not accept that the appellant is at risk of persecution based on his accepted personal circumstances, no well-founded fear having been advanced with respect to same. Having rejected the existence of a blood feud…, the Tribunal does not accept that the appellant has a well-founded fear arising from the death of his brother and the subsequent trial and conviction of his killers or the exchanges between MK and his father."

21. The First Respondent proceeded to determine the Applicant's subsidiary protection claim and determined that substantial grounds had not been established for believing that the Applicant was at a real risk of serious harm under Article (a), (b) or (c) of the Qualifications Directive.

22. In relation to Article 15(b) and the question of whether substantial grounds had been established for believing that the Applicant faced a real risk of being subject to torture or inhuman or degrading treatment, the First Respondent rejected this claim on the basis that:-

> "The appellant has lived both in his (nuclear) family home and in his uncle's home. The Tribunal does not accept that exposure of the appellant to these family members has been "unrelenting" or amounts to "intense pressure" whilst he lived in Albania where the comments are not continuous. At its height, the appellant's evidence is that some, but not all, extended members of his family and some neighbours made comments of "did you do something about it?" The appellant is clear and it is accepted that he would not kill."

Challenge to the First Respondent's Decision

23. The Applicant has launched a myriad of challenges to the First Respondent's decision claiming that the First Respondent:-

a) Made a material error of fact and/or came to an unreasonable conclusion regarding the pressure and coercion on the Applicant to take revenge for the murder of his brother; failed to consider relevant information, evidence and submissions with respect to this pressure; failed to consider a medical report when assessing the future risk of the Applicant being subject to inhuman and degrading treatment owing to this pressure; and failed to fairly, properly and/or adequately consider country of origin information relevant to the risk of inhuman and degrading treatment owing to this pressure;

b) Engaged in unwarranted and unfair adverse treatment of the Applicant's position that he would not bow to pressure and coercion to take revenge for the murder of his brother;

c) Made a material error of law and/or misapplication of the Qualifications Directive;

d) Failed to have regard to and/or apply s. 28(7) of the 2015 Act;

e) Unlawfully excluded relevant and accepted facts from its assessment; failed to conduct an assessment on current and future risk; and applied an incorrect standard of proof to its determination of past facts and the assessment of future risk;

f) Misunderstood the purpose or particular elements of the evidence, documentation and information submitted; and/or adopted an unreasonable and irrational approach to same;

g) Failed to appreciate the nature and scope of the claim for international protection; and failed to take relevant matters into account;

h) Erroneously considered the evidence, documents and information and failed to put the Applicant on notice of concerns regarding material submitted;

i) Made unreasonable, irrational and/or illogical conclusions with respect to the evidence, documents and information before it in relation to the K family's association with violence, firearms and their asserted police and political connections;

j) Failed to properly consider country of origin information;

k) Failed to notify the Applicant of certain country of origin information relied on by the First Respondent; and breached s. 46(8)(b) of the 2015 Act in that regard;

l) Erroneously assessed the hit and run accident and made an unlawful finding in dismissing it from its considerations;

m) Engaged in excessive and prejudicial delay;

n) Erroneously relied on the designation of Albania as a safe country of origin;

o) Failed to give adequate reasons for its decision.

24. The Respondents, in summary, assert that the decision is lawful; that many of the Applicant's complaints relate to the manner in which the evidence was assessed by the First Respondent, which is within its remit so to do; that the First Respondent correctly understood the Applicant's claim and the evidence before it and that it correctly assessed that evidence; that the correct burden of proof was applied; that fair procedures were followed; that there was no obligation on the First Respondent in this particular case to make enquiries of its own regarding documentation submitted; and that the decision is reasoned and is not irrational. Their ultimate position is that although the Applicant's credibility was accepted on a significant number of facts asserted by him, the past facts accepted did not amount to past persecution and that, therefore, the statutory threshold was not met.

General Preliminary Comments

25. The decision of the First Respondent could be described as unwieldy. Apart from its length, at times there is a lack of focus and analysis of extremely important matters, yet an in-depth analysis of matters which are of minimal significance. There is an over literal interpretation of the evidence, such as where the First Respondent makes a finding that the Applicant is not dead arising from his evidence that his asserted persecutors killed him the day they killed his brother, when asked had ever threatened him. There is a misinterpretation of the purpose for which documentation was submitted, such as when a photograph from Facebook of a female child with a gun, who is asserted to be the daughter of EK, is interpreted by the First Respondent as not demonstrating a threat to the Applicant as a four-year-old female child could not be classed as such in light of the country of origin information, when this was never the case made by the Applicant. Also, many asserted facts, which are accepted, are put into the category that they will be considered in the round, but what considerations actually take place regarding these facts remains unknown.

26. The Amended Statement of Grounds filed in the matter could also be described as unwieldy. A vast number of grounds of challenge are pleaded, which are set out in summary earlier.

27. This is unfortunate for a case which is simplistic enough at its core. Basically, the Applicant's case before the First Respondent had two arms, namely: the Applicant faces a serious threat from the men who murdered his brother either because they will expect him to take revenge having regard to the tradition of blood feuds in Northern Albania and will strike first, or because they will seek to take revenge for his role in giving evidence against them for a murder which they say they are innocent of. Separate to that, in a situation where the Applicant has been diagnosed as suffering from PTSD arising from his brother's murder, he will suffer significant mental health distress, if returned to Albania,

from the constant pressure from wider society to honour the Kanun tradition and revenge the murder of his brother, which he will not do.

28. Often, a good legal point can be diminished in the myriad of detail and less significant points. Hence the well advised practice of seasoned practitioners – argue your best points, there is no need to argue every point, should be reminded to practitioners in a case such as this.

An Error of Law in the Respondent's Submission

29. Counsel for the Respondent has stated the law to be that past persecution must be established by an Applicant before a finding of future persecution can be found by the First Respondent. It is understandable why Counsel for the Respondent has posited the law in this fashion in light of *MS (Bangladesh) v. IPAT* [2019] IEHC 786, wherein Humphreys J. stated at paragraph 5 of the judgment:-

> "The assessment of risk of future persecution or serious harm is first and foremost based on the account of past persecution as actually accepted in the given case. As assessment is then made, in the light of those findings, of whether there is a reasonable chance of future persecution or a real risk of serious harm. More or less anything could "possibly be true" but the starting point for the assessment of future risk is the finding of facts as to past persecution or serious harm, which is made on the balance of probabilities accompanied by the benefit of the doubt where that applies."

30. However, I do not agree that the 2015 Act requires the First Respondent to approach its task by, in the first instance, determining that past persecution occurred. A finding of past persecution is not a condition precedent for a finding of future persecution. I am unsure whether Humphreys J. meant the meaning contended for by the Respondents and, therefore, will not seek to further interpret this paragraph of his judgment. However, I suspect rather that this dicta relates to the manner in which the First Respondent must approach its task and that its considerations regarding future persecution must be based on its findings of the accepted past behavior, which are asserted to be past persecution by an applicant.

31. In any event, the 2015 Act requires the First Respondent to determine whether a person has a well-founded fear of persecution or serious harm in the future. The manner by which the First Respondent is required to determine this issue is by deciding what material facts of an applicant's claim it accepts on the balance of probabilities giving the benefit of the doubt in appropriate circumstances and then, having regard to those accepted facts, it determines whether there is a reasonable likelihood of persecution or serious harm in the future.

32. Section 28(6) of the 2015 Act is depositive of this issue. It provides:-

> "The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such serious harm, is a serious

indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."

This section, which creates a rebuttable presumption that future persecution or serious harm will occur if past persecution or serious harm, or direct threats of same, have been established, would not exist if there was a requirement to establish past persecution or serious harm in order to succeed in an international protection claim.

33. The error of law in the Respondent's submissions perhaps has little significance to the facts of this case as it appears that the First Respondent did not apply this test when making its determination. However, it is important that the error is commented upon and corrected by this Court lest it is mistakenly taken to be a correct statement of the law.

Standard of Proof

34. The Applicant has argued that the First Respondent applied an incorrect standard of proof in its determinations. Reliance was placed on English case law which adopts a different analysis to asylum claims to that which is adopted in this jurisdiction. An analysis of that case law was recently set out by Barrett J. in *E v. IPAT* [2021] IEHC 220 and this Court does not intend to repeat it.

35. However, the standard of proof to be applied by the First Respondent in considering an asylum claim is well settled in this jurisdiction and does not reflect the test enunciated by the English Courts. See *ON v. RAT* [2017] IEHC 13; *MAMA v. RAT* [2011] 2 IR 729; *SS v. IPAT* [2019] IEHC 868. In this jurisdiction, the First Respondent is obliged to assess the past facts asserted by an applicant and must accept a past fact as established if the First Respondent is satisfied of it on the balance of probabilities. The First Respondent can give an applicant the benefit of the doubt regarding the existence of a past fact and accept it as established if an applicant's general credibility has been established. With respect to the future risk of persecution or serious harm, the First Respondent must have regard to the past facts which it has found and determine whether there is a reasonable likelihood that an applicant will be subjected to persecution or serious harm in the future.

36. The Court does not accept the Applicant's contentions regarding the standard of proof or the manner by which the First Respondent should carry out its task. Neither does the Court accept that the First Respondent applied an incorrect test in its determination. However, as will become apparent, the Court is of the view that the First Respondent significantly erred with respect to its assessment of the case being made by the Applicant and its treatment of accepted past facts in its future risk assessment.

Substantive Challenge to the First Respondent's Decision

37. Rather than strictly follow the grounds of challenge raised by the Applicant, the Court proposes to deal with some of the grounds pleaded by the Applicant in a global manner.

Misunderstanding of the Applicant's Case

38. The First Respondent rejected the existence of a blood feud between the K and L families and, for that reason, determined that a well-founded fear did not exist. It further made

the concerning comment that on the basis of the personal circumstances which were accepted, "no well founded fear had been advanced in respect of same." If the First Respondent meant by that statement that the Applicant had not made a case that he had a well-founded fear based on the personal circumstances which were accepted, then that clearly demonstrates that the First Respondent failed to understand the exact case which was being made by the Applicant and which is noted by it as being made by the Applicant's father in evidence.

39. From paragraphs 4.23 – 4.75, in the course of 30 pages, the First Respondent engaged in a very long and detailed analysis of country of origin information and the evidence before it, and ultimately determined that a blood feud was not in existence between the families. In reality, this was a meaningless exercise. The Applicant's case was not that there was, in fact, a blood feud in existence. It was a far more subtle case which appears not to have been understood by the First Respondent, namely that because of the tradition of blood feuds in Northern Albania, and in the particular in the village where the Applicant was from (which the First Respondent accepted) the K family would anticipate that the Applicant, being the only remaining son in the L family, would take revenge on them and that therefore he was at risk of them striking against him first.

40. This aspect of the Applicant's case was never considered by the First Respondent, who instead focused on whether the facts asserted by the Applicant co-related with the country of origin information so as to establish that a blood feud was in existence. This was a material error on the First Respondent's part.

Hit and Run Incident

41. The First Respondent dismissed the fact that the Applicant had been the victim of a hit and run accident from its considerations, although it accepted that a hit and run incident had occurred. The reason for so doing appears to be twofold: firstly, the assertion that it was the K family who was responsible for the incident was mere speculation by the Applicant; and secondly, the Applicant had not mentioned this incident prior to his appeal to the First Respondent. A factual error exists in relation to the latter assertion, and an error of approach exists in relation to the former.

42. With respect to the First Respondent being of the view that the Applicant did not raise this matter prior to the appeal, the First Respondent stated the following:-

> "The appellant's account of his car accident was not mentioned in his s. 35 interview, in his application for international protection nor in his s. 11 interview. The presenting officer afforded the appellant an opportunity to comment on the fact the appellant had not mentioned that a car had been directed at him in his s. 35. The appellant responded that the interviewer told him if he did not have "paper" to prove then he could not give evidence, so he submitted it after. This explanation is not in fact reflected in the transcript of the s. 35. The appellant was asked if he had any documents with him at question 4 to which the appellant responded "yes I have but I will explain it you later, and a memory stick with some videos." He was asked if he understood the importance of supplying all the relevant information and

documentation to allow the office to make a fair assessment on his claim at question 5 and the appellant responded in the affirmative. The appellant was asked at question 30 to tell the interviewer in his own words the reasons he was claiming asylum. His response makes no reference to the car accident. When asked what he feared if he returned to Albania, the appellant did not refer to the car accident. At his response to question 34, the appellant stated "I have more documents about the case do you want me to send them in" to which the interview responded "Yes any documents that are relevant." There is no reference to the car accident at any point in the s. 35 interview and the exchange regarding documents at question 34 is in relation to the case of the appellant's brother murder. When he was asked at page 10, if he had told all of the reasons why he was afraid to return to Albania, the appellant responded "Yes these are the reasons." At page ten, he also confirmed that he understood the questions, understood the interpreter and that the information recorded was correct. At hearing the appellant's legal counsel contended in the middle of cross examination that the evidence was submitted after interview and the Presenting Officer submitted that it was crucial that a previous attempt on his life would be cited in the interview. While it is the case that information regarding the accident was submitted after the s. 35 interview (and indeed the s.8 interview, the s. 11 interview and application for international protection questionnaire), it was not submitted at any stage prior to the s. 39 report and any reference to the accident or evidence with respect to same was not furnished prior to the appeal. Having regard to the entirety of the s. 35 report, on the balance of probabilities and considering the matter in the round, the Tribunal rejects the explanation for the inconsistency provided by the appellant at hearing."

43. The First Respondent made a factual error in this regard. The Applicant's s. 35 interview was in October 2017. On 5 February 2018, he submitted documentation to the IPO from the hospital where he was treated after the hit and run accident. It was indicated in his solicitor's letter enclosing this documentation that he was unable to access this documentation prior to his personal interview, and it was requested that this additional documentation also be considered in his claim. It was further indicated that he understood that he may be required to appear in person at the IPO and that he was happy to do so. The s. 39 report did not issue until May 2018. Accordingly, the information in relation to the hit and run accident was submitted before the s. 39 report, before the IPO recommendation and before the appeal process commenced.

44. The First Respondent made a factual error in asserting that this documentation was not submitted until after the s. 39 report issued and after the appeal process began. In light of the significance of this incident, it is important that if the First Respondent was going to make an adverse finding in relation to it that it was done on the correct factual basis. This clearly is not the case in light of the analysis set out above.

45. With respect to the fact of the hit and run accident, the First Respondent dismissed its occurrence from its considerations, although it accepted that it had occurred. It dealt with this issue in the following manner:-

> "Where the appellant's own account was that he had not seen the parties' faces, the vehicle having struck him from behind and he believed the Kodras were the only ones who would do that, this belief when considered in the round, is speculative. The Tribunal is bolstered in this conclusion by the account in the medical report of the appellant's views on the accident. Accordingly, taking account the inconsistency between the s. 35 and s. 11 interviews and the account at hearing, Dr Bracken's report and the documentary evidence of the accident from Albania, considered in the round, on the balance of probabilities, while the Tribunal accepts the appellant was in a hit and run accident, it does not accept as credible that this accident was caused or occasioned by the Kodras where the link between the two is based on belief unsustained by any evidence including any direct evidence from the appellant himself and is too tenuous or speculative. This will be factored in the round."

46. This is a significant error on the First Respondent's behalf. It dismissed the incident because it would not give the Applicant the benefit of the doubt that it was the K family who carried this out, but there never was any evidence emanating from the Applicant that it was the K family who were the cause of the incident; it was only ever speculation from the Applicant which he was careful to be specific about. Accordingly, the height of the evidence before the First Respondent in this regard could only ever have been that the First Respondent had been the victim of a hit and run. Giving the Applicant the benefit of the doubt in this regard could never have converted the Applicant's speculation about the involvement of the K family to evidence.

47. It was a matter for the First Respondent to determine whether it accepted that the Applicant was credible regarding being the victim of a hit and run, but once it determined that he was, it was required to consider this accepted fact in its determination of the reasonable future likelihood of persecution or serious harm for the Applicant. How it determined that matter and whether it would have drawn an inference of association between the accepted incident and the asserted fear of the K family is a separate issue.

48. The Respondents argue that the effect of the First Respondent not putting the fact of the hit and run accident into the mix as an accepted fact did not prejudice the Applicant as there was a limitation with respect to inferences which it could have drawn from this fact in light of the evidence. At one level, that may be so, but the difficulty with that argument is that a consideration of the future risk which the Applicant faced never took place having regard to this element. Furthermore, the Applicant did not have the benefit of his general credibility being assessed having regard to this accepted fact from the perspective of the benefit of the doubt being applied to his claim.

Threats

49. Although the First Respondent accepted that the K brothers' father had had an exchange with the Applicant's father in the nature already described and that the Applicant's father received an anonymous phone call of a threatening nature, it did not accept that these exchanges constituted a threat to the Applicant having regard to country of origin information relating to blood feuds, the source of the exchanges, the wording used and

the impact which they had on the Applicant's father. Accordingly, it discounted these two threatening events, which it accepted occurred, when considering the future risk to the Applicant. This was an error on the part of the First Respondent.

50. Firstly, assessing this evidence having regard to the country of origin information relating to blood feuds is demonstrative of the First Respondent's failure to understand the case being made. More importantly, however, is the fact that this was an incorrect manner to deal with the accepted fact of these events. Rather than being dismissed from its consideration of future risk, these threats should have been carried forward, having been established on the balance of probabilities, when assessing the reasonable likelihood of future persecution or serious harm. Again, it ultimately would be a matter for the First Respondent to determine whether, in light of the accepted facts, together with the hit and run incident which had also been wrongfully excluded, a reasonable likelihood of future persecution or serious harm existed.

Adverse Credibility Finding that Applicant Feared the K Brothers

51. The First Respondent made an adverse credibility finding with regard to the Applicant's assertion that he feared the K family. It noted that the K brothers had not accosted the Applicant; that the father of the K brothers had not accosted the Applicant prior to the Applicant's departure to Sweden or after his return; that the Applicant's father has continued to reside in Albania; that EK has not made contact with the Applicant's family since his release from prison in 2017; and that the photograph from Facebook of what is asserted to be EK's daughter holding a Kalashnikov rifle, even if accepted as genuine, did not establish a threat against the Applicant as this was a young female child.

52. However, this analysis does not take account of the accepted hit and run incident; the Applicant's speculative view that this incident was caused by the K family, regardless of the evidential value of that view, as discussed already; the accepted face to face contact by the K brothers' father with the Applicant's father where threatening words were spoken; the anonymous phone call to the Applicant's father of a threatening nature; the dangerous nature of the K family, as evidenced by the accepted conviction of EK for firearms, a submission also being made by the Applicant that the asserted photograph of EK's daughter with a rifle established access and an attitude to guns by the K family; the accepted fact that the Applicant was not readily located as he spent time living with his uncle because of his families concerns; the accepted fact that the K brothers remained in prison until after the Applicant left Albania to come to Ireland; and the fact that the Applicant had been absent from Albania in excess of a year when he went to Sweden to claim asylum.

53. It must be remembered that in this analysis the First Respondent was analysing the Applicant's assertion that he was in fear of the K family and whether he was credible in that regard rather than analysing whether the fear was objectively well-founded. As demonstrated, important elements of the claim of the Applicant are omitted from this analysis which is of significance in light of the negative credibility finding arrived at. Had these issues been considered, the Applicant's credibility about fearing the K brothers may

have been accepted. Had this occurred, the benefit of the doubt may have been extended to the Applicant on the basis that his general credibility had been accepted.

54. It is clear from the foregoing analysis that the Court is of the view that the First Respondent failed to properly understand the case that was being made by the Applicant and the nature of the evidence before it with respect to the hit and run incident. It also omitted to consider relevant matters when considering whether the Applicant was in fear of the K family resulting in a negative credibility finding against the Applicant which may have had an effect in terms of the application of the benefit of the doubt being afforded to the Applicant. With respect to its analysis of future risk, it failed to adopt facts accepted to be established on the balance of probabilities into its considerations in relation to whether a reasonable likelihood of persecution existed. Accordingly, the process of the First Respondent's decision making was seriously flawed

55. For these reasons, the Court is not satisfied that the First Respondent considered the Applicant's claim appropriately and, therefore, will grant an order of certiorari of its decision.

56. With respect to the remaining grounds of challenge to the First Respondent's decision, the Court intends to deal with specific issues arising in a summary fashion in light of the findings already made.

Inhuman or Degrading Treatment Having Regard to the Level of Pressure the Applicant was Under in Light of his Medical Circumstances and Taking Account of Country of Origin Information

57. The Applicant complains about the characterisation by the First Respondent of the pressure which the Applicant was under from his neighbours and extended family as amounting to "some comments of "did you do something about it?" being made to him. Reference is made to what he said in his original questionnaire, regarding this issue, and it is submitted that this displays that he was subjected to intense, continuous and unrelenting pressure.

58. It is clear from the First Respondent's decision [paragraph 8.7] that it did not make a material error of fact regarding this issue but rather considered all of the Applicant's evidence before it, together with the submissions made and decided that the pressure was not as constant and intense as suggested by the Applicant and submitted by his legal representatives. This was a decision which was open to the First Respondent. It has not been established that the First Respondent failed to have regard to all of the information before it regarding this issue, in light of the fact that it quotes from the very questionnaire which the Applicant relies upon. Neither is it established that the First Respondent failed to have regard to his mental health issues and diagnosis, having regard to the fact that the medical report is referred to in this analysis. Nor is it established that the First Respondent failed to have regard to country of origin information in this regard, having engaged in an extensive analysis of same. This decision arrived at by the First Respondent was open to it to make, and no error regarding this aspect of the decision is made out.

Photograph of the Corrupt Politician

59. Any complaint which the Applicant has with respect to the First Respondent not having adequately considered the photograph of a politician, who is asserted to be corrupt, and EK is not well made out. The photograph, even if established to be genuine and even if of a better quality, does not establish a connection of significance between the two men and could quite as likely have an innocent explanation.

Country of Origin Information

60. The Applicant has not established that the First Respondent did not consider the report referred to from Operazione Columba. In any event, the significance of this issue has not been established in light of the Court's finding that the First Respondent's determination that the extent of the pressure to which he was subject was not as extensive as asserted by him, was open to it to make.

Delay

61. While it took an inordinate amount of time for the Applicant's claim to be heard and determined by the First Respondent, this arose as a result of the very many applications raised by the Applicant and acceded to by the First Respondent.

62. No specific prejudice has been raised by the Applicant bar an assertion that the delay may have contributed to the factual errors which have been asserted by the Applicant. This has not been established.

Safe Country of Origin

63. While the First Respondent referred to the fact that Albania has now been designated as a safe country of origin, it correctly did not rely on this fact when making its determination.

Error of Law in Assessing Serious Harm

64. While the First Respondent did make an error of law regarding the factors to be considered with respect to whether a reasonable likelihood existed of a risk of serious harm referring to nexus consideration in the test, the First Respondent did not determine this issue on this basis, and an error does not raise in this regard.

Conclusion

65. In light of the fact that the Court is of the view that the process engaged in by the First Respondent in determining the Applicant's claim was flawed for the reasons already stated, the Court will make an Order of Certiorari quashing the First Respondent's decision in the matter.

66. With respect to costs, as already stated, the Statement of Grounds in this matter was almost unwieldly. In relation to many of those grounds, the Applicant was not successful, particularly in relation to the second arm of his claim. Accordingly, in light of this, the Court will make an order for 75% of the Applicant's costs as against the Respondent.