



Hungarian Helsinki Committee

# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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## Case Summary

Country of Decision/Jurisdiction	<b>Ireland</b>
Case Name/Title	R. – v – Refugee Appeals Tribunal and Another.
Court Name (Both in English and in the original language)	High Court of Ireland
Neutral Citation Number	(2011) 1ECH 151
Other Citation Number	High Court Record Number 2008 767 JR
Date Decision Delivered	4/15/2011
Country of Applicant/Claimant	Belarus
Keywords	Credibility, refugee <i>sur place</i>
Head Note (Summary of Summary)	Application for an Order of <i>Certiorari</i> (a quashing order) in relation to decision of the Refugee Appeals Tribunal to refuse appeal against negative asylum decision of lower decision making body.
Case Summary (150-500)	The applicant made an asylum application in the Irish Republic and was refused refugee status at first instance. She then appealed this decision to the first Respondent, (hereinafter “the Tribunal”). The Tribunal refused to allow the appeal primarily on the grounds of credibility. The applicant then sought an Order of <i>Certiorari</i> to quash this decision in the High Court on the grounds that the decision of the Tribunal was based on an error of fact and further that the Tribunal erred in law in failing to consider the applicant’s case by reference to relevant country of origin material that was submitted on her behalf. The issue of the correct approach to demeanour as an indication of credibility, and the materiality of a factual error on the part of the decision-maker, was considered by the Court in the course of its deliberations.
<i>Facts</i>	<p>The applicant came to Ireland in June 2004 on a student visa. She was refused renewal of the visa on its expiration and in May 2006 she made an asylum application based partly on having come to the attention of the authorities in Belarus before she left that country (in that she distributed leaflets in relation to an opposition political party in which her brother was active) and partly on events since her arrival in Ireland. (receipt of empty envelopes in the post from Belarus, which she alleged was evidence the authorities in Belarus were monitoring her activities).</p> <p>The refusal of the Tribunal to allow the appeal was based on its negative credibility assessment, based on the following;</p> <p>That the applicant did not claim asylum in the first safe country;</p> <p>That the applicant omitted a reference to her brother in her asylum interview</p>



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	<p>at first instance;</p> <p>That the applicant expanded on her evidence on appeal, in that she now stated she was strip-searched in addition to her previous evidence of having been arrested, searched and detained by authorities in her country of origin;</p> <p>That the demeanour of the applicant in giving this additional evidence was found by the Tribunal to be <i>"vague, non-specific and lacking in the type of detail one would expect from a person who had been subjected to the treatment she alleges"</i>;</p> <p>That at the appeal stage the applicant furnished an empty envelope from Belarus addressed to her, which she stated was delivered to her empty and claimed this to be evidence of having been tampered with by the authorities in her country of origin. In relation to this portion of her evidence the tribunal stated <i>"Having heard this portion of the evidence and observed her demeanour I did not find it plausible or credible and found the evidence to have an air of unreality to it. I find that this further undermines the applicant's credibility"</i>.</p> <p>In reality, the Tribunal had made a mistake as to what evidence the applicant had given at an earlier stage in the process, and when she recounted this evidence before the Tribunal, the Tribunal, mistakenly thinking this to be new evidence, rejected it on the basis of the applicant's demeanour.</p>
<p><i>Decision &amp; Reasoning</i></p>	<p>In relation to an assessment of demeanour as an indication of credibility the Court held that the Tribunal was <i>"entitled to base a finding as to lack of credibility and plausibility upon the manner in which an asylum seeker gives evidence and on his or her demeanour when answering questions in relation to the details of facts and events which form the basis of the claim. Indeed, in many cases where such facts and events are incapable of any independent corroboration, the personal credibility of the claimant may be crucial. At the same time, however, the decision-maker must be careful not to misplace reliance upon demeanour and risk construing, as a lack of candour, demeanour that may be the result of nervousness, or the stress of the occasion and even of the embarrassment of being an asylum seeker. An apparent hesitation and uncertainty may well be attributable to difficulties of language and comprehension"</i>.</p> <p><i>"In the judgement of the Court, before a decision maker in the asylum process bases a rejection of a claim upon lack of credibility based mainly on the personal appearance of the claimant, the decision-maker ought to be fully confident that the basis of the claim and all the relevant facts and circumstances recounted have been fully and correctly understood and that there is no possibility that the decision-maker and claimant have been at cross-purposes on any material point"</i>.</p> <p>In relation to a factual error the Court stated that <i>"once it is established that there has been an error of fact on the face of a decision of this kind, the judgement as to whether certiorari should issue depends upon the materiality of the mistaken fact and its relationship to other findings in the decision from which it might be severed"</i>.</p>



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### *Outcome*

The Court held for the applicant on the grounds that there had been an error of fact on the part of the Tribunal and that the Tribunal had failed to give proper consideration to country of origin information before it.