

**Asylum and Immigration Tribunal**

HA (WCPI – IMIK – KRG) Iraq CG [2007] UKAIT 00087

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 31 May 2007**

**Determination Promulgated**  
.....

**Before**

**Senior Immigration Judge Eshun  
Senior Immigration Judge Mather  
Mr J H Eames**

**Between**

**HA**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Briddock, counsel, instructed by Alsters Kelley Solicitors  
For the Respondent: Mr M Blundell, Home Office Presenting Officer

*There is no satisfactory evidence that WCPI members in the Kurdish Regional Governorates are at risk from IMIK or anyone else. There is some evidence that the WCPI has a presence both in the KRG and the rest of Iraq.*

*There is no satisfactory evidence that IMIK now enforces its views by violent means in the KRG. It has six seats in the KRG parliament.*

*This determination does not consider issues relating to the WCPI or IMIK in the parts of Iraq that are not in the KRG. This determination supersedes DH (Risk – IMIK – KAA) Iraq CG [2002] UKIAT 05099 but does not consider issues relating to the WCPI or IMIK outside the KRG.*

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Iraq. He was born on 1 July 1976. He is a Kurd and used to live in the area now known as the KRG (the Kurdish Regional Governorates). It was previously known as the KAZ (the Kurdish Autonomous Zone). He is a member of the Workers Communist Party of Iraq (known variously as the WCPI and WCPI) and he expressed fear of both the PUK (Patriotic Union of Kurdistan) and the IMIK (the Islamic Movement of Kurdistan) if he were to be returned to Iraq.

#### Immigration history

2. The appellant claims to have left Iraq by car on 6 November 2001, and to have travelled via Iran to Turkey, arriving in the United Kingdom on 4 December 2001. He says that he claimed asylum the same day. His application was refused on 17 May 2002. An appeal was dismissed on 16 September 2002, apparently without considering the merits. He made a fresh claim for asylum on 15 December 2004 which was refused on 14 April 2005. He again appealed. The appeal was heard by Immigration Judge Kumrai on 20 June 2005. That appeal was dismissed on both Refugee and Human Rights Convention grounds.

#### Basis of the Appellant's claim

3. The appellant claimed to be from the Province of Sulaymaniyah and said that he was a journalist for the Kurdistan New newspaper, which was a PUK publication. He claimed that he wrote about daily life in Kurdish society under the control of the PUK and did not criticise the PUK directly. He did however highlight weaknesses in the PUK's authority. He claimed that one of its leaders (Imat Ahmed) disliked him because he had exposed the inadequacies in its authority, mainly relating to energy and electricity supply. Imat Ahmed was said to be not only a member of the PUK leadership, but also Minister of Industry and Energy for the area.
4. The appellant claimed to have become a member of the WCPI on 12 December 1999 and thereafter began to write articles for the communist newspaper, Bo Peshawe. He continued his employment with the Kurdistan New newspaper. Bo Peshawe was banned on 24 June 2001 and at the same time some members of the Party were attacked and killed. The appellant claimed to have passed information to the communists from PUK newspaper archives.
5. Prior the banning of Bo Peshawe, the appellant claimed to have written articles for it that were critical of both IMIK and the PUK. Although he initially wrote articles using his own name, he later used an alias. He claimed that he was threatened by IMIK members because of critical articles he had written for the Kurdistan New Newspaper. He claimed to have been attacked on 20 July 2001 by people that he believed to be members of the IMIK. He believed that because they had beards and dressed like members of IMIK. We note he said that, notwithstanding that he was taken unconscious to hospital. The police apparently took a statement and carried out some inconclusive investigations. He did not report the attack to any other PUK authority, because he did not know who the people were. The appellant also claims that he received an 'arrest warrant' from IMIK on 9 October 2001. This alleged that he was anti-Islamic because of his writings. Finally, he claimed that, on 29 October 2001, his brother was shot dead by members of IMIK as they were walking together. The appellant believes he was the intended target. He believes it was also carried out by IMIK members, because the men who fired the shots had long beards and

wore Islamic dress. He reported his brother's killing to the police but not any other PUK authorities.

6. The appellant claimed that he ceased working for the Kurdistan New newspaper on 3 November 2001. On that day a friend, F, with whom he had worked in secret for the WCPI, was arrested by PUK security and intelligence services. The appellant believes that F confessed to the PUK that they had passed on information to the Communist Party and that consequently, the next day, the PUK security forces visited the appellant's house looking for him. He claimed they also looked for him at the offices of the newspaper. He was told about the visit by his mother. As a result, he immediately went into hiding, prior to leaving Iraq on 6 November. The appellant said he could not then have sought refuge in the KDP (Kurdistan Democratic Party) controlled area because the KDP and PUK were by then cooperating and he would have been handed back to the PUK authorities. He also maintained that if he returned to the KRG, or to any other part of Iraq, he would be identified and killed by IMIK. He said it was because his writings had offended them, that they had issued what he described as the arrest warrant against him, as well as trying to kill him. He also said that he was wanted by the PUK authorities for having passed on confidential information about them to the Communist Party.

#### The Appeal before the Immigration Judge

7. At the hearing of the appeal the appellant's credibility was not challenged by the respondent. The only issue was the question of risk on return. The Immigration Judge summarised by saying that the appellant's evidence had been consistent in relation to the core of his claim and that he had expressed a current fear of both IMIK and the PUK. The Immigration Judge found that the appellant had established a genuine current fear of return but that, in respect of both IMIK and the PUK, the fears were not well-founded. He dealt with the fear of the two organisations separately, starting with IMIK. He summarised the evidential difficulties by referring to the 'arrest warrant' and the death of the appellant's brother. He said that the appellant's evidence in relation to the incidents was 'speculative'. It was not persuasive because he was not able to identify the men who attacked him on 25 July as members of IMIK, at the time. He said that at the time of the killing of his brother he had not been certain that the perpetrators were members of IMIK despite the long robes and Islamic dress, although he believed them to be so. The Immigration Judge found that it was speculative to say that the IMIK had discovered he was responsible for articles published against their ideology. He found it was highly questionable that the IMIK had any authority or jurisdiction to issue a valid arrest warrant. Mr Briddock before us conceded that the evidence (both then and now) did not establish any power or jurisdiction for IMIK to issue valid and lawful arrest warrants. In considering the 'warrant' the Immigration Judge referred to Tanveer Ahmed [2002] UKIAT 00439. He said he had not looked at the document in isolation, but with all the other evidence in the round to see whether he should place any reliance on it. He decided not to place any reliance on it despite finding that the appellant was credible; he said that it could be that IMIK members threw the document into the appellant's house to frighten him, but it was not a valid and lawful arrest warrant.
8. The Immigration Judge went on to consider IMIK. He described it as an Islamic militant group, whose political affiliation and motivation were unclear. He observed that the June 2000 Netherlands General Official Report on Iraq indicated that

relations between the PUK and IMIK had normalised since entering into negotiations together. He then addressed what he described as the nexus test, to decide whether any persecution would be on account of the appellant's political opinion. He concluded that the incidents on 25 July (the attack by two men with beards and Islamic dress), 9 October 2001 (the 'arrest warrant') and 29 October 2001 (the death of his brother) were not motivated by political opinion held by the appellant, and known to the perpetrators. We note that he did not consider whether a perceived political opinion could have been the reason for the incidents. Strictly, he should have done because that may have been enough to establish a Convention reason. He also said the appellant had failed to establish that there were substantial grounds for believing that there was a real risk to him, from IMIK, in his home area.

9. As to the PUK, the Immigration Judge also found, with reasons, that the appellant did not have a well-founded fear of persecution at the hands of the PUK. As we explain later, we do not need to go into that finding.
10. The Immigration Judge dismissed the appeal on both asylum and human rights grounds.

#### Procedural history since the second appeal

11. The appellant applied for a review. A Senior Immigration Judge ordered reconsideration on 18 July 2005. On 1 December 2005 Senior Immigration Judges Warr and Jarvis reconsidered the determination and concluded that the Immigration Judge had not made any error of law. They directed that the Immigration Judge's decision should stand.
12. The appellant then applied for permission to appeal to the Court of Appeal. Permission was initially refused by one of the Senior Immigration Judges, but was later granted by Kay LJ. The Court of Appeal's judgment is cited as HA (Iraq) v SSHD [2006] EWCA Civ 1373. The grounds of appeal which related to the PUK findings were not proceeded with. The Court dealt only with the appellant's fear of IMIK. On that aspect, the appeal was allowed and the reconsideration remitted to the Tribunal. It is that remitted hearing which we deal with.
13. There were initially four grounds of appeal to the Court of Appeal. The Court said it was mainly concerned with the Immigration Judge's determination. The first ground which was pursued related to the application of Tanveer Ahmed. The Court found there was nothing in that ground because Tanveer Ahmed relates to the approach to documents which are alleged to be forgeries. It was not suggested that the document (the 'arrest warrant') was a forgery. The court said that, whether the document was properly described as an arrest warrant, in the sense that it did not have legal effect as such, was not the point. It was arguably an important corroborative link in the appellant's understanding that IMIK was responsible for targeting him. It was also, arguably, a clear indication that he was targeted for political reasons. The 'arrest warrant, under the heading 'Union Movement of Islamic Kurdistan ("IMIK")', said

'Guilty [HO] has attacked the whole religion of Islam by writing articles and defending his radicalist ideology. This action in the Islamic religion is punishable and the punishment must be death. Therefore, wherever you find him, arrest him and send him to the Council of Jihad.'

14. In his judgment, Carnwath LJ said there was nothing in the document to connect it with the other two incidents, and the appellant admitted that his beliefs about those responsible for those incidents was speculative. But, looked at against the background of the document, he said it was relevant to consider whether the combination of the factors was sufficient to give rise at least to a real risk that it was the IMIK who were responsible for the three incidents. The Court accepted there could have been an issue about whether the document was ever sent to the appellant in the first place, but that was not the approach the Immigration Judge took. He appeared to accept that a member of IMIK may have thrown the document into the appellant's house in an attempt to frighten him. He said there was a gap in the Immigration Judge's reasoning which was not corrected in the reconsideration decision. It was an important matter which should have been taken into account. Not to do so was an error of law which required the court to intervene. In paragraph 11 of his judgment, Carnwath LJ said:

'It is common ground that, having arrived at that point, the matter must be remitted to the IAT for reconsideration. Of course, establishing a link with IMIK is not enough necessarily to get the claimant home. There may still be unanswered questions about the precise status of IMIK within the KAZ, and also about the relevance of what happened in 2001 to events and circumstances as they now are. But on those limited grounds I would allow the appeal and direct that the matter be remitted to the AIT.'

15. Gage LJ agreed and, although he made some brief observations in his judgment, they did not add to the issues discussed by Carnwath LJ.
16. May LJ also agreed the appeal should be allowed. He also said there was no error of law arising from the way in which the Immigration Judge referred to Tanveer Ahmed. He also said that the document, thrown at the appellant on 9 October 2001, was part of the evidential material available to support the second ground of appeal. It went to whether there was a real risk that the appellant's accepted fear was well-founded, and for a Convention reason. He said that, if it was found in the appellant's favour that the perpetrators were IMIK, there would then be a question, which the Immigration Judge had not addressed, as to whether IMIK were agents of state persecution. He observed that it was not open to the Immigration Judge to find that the appellant had not established a real risk that those who had thrown the document were members of IMIK when the document itself said that it emanated from them. The fact the document had been thrown at the appellant was not challenged. He observed that the Immigration Judge accepted the document might well have been thrown by IMIK members, and said that could be relevant in deciding who were the perpetrators of the two other incidents.

#### Scope of reconsideration

17. The first part of the hearing dealt with the extent of the issues which were before us. Both parties agreed there was no need for us to decide whether there had been an error of law by the Immigration Judge. The Court of Appeal clearly found an error of law prior to remitting appeal for reconsideration.
18. The parties were not agreed on whether the reconsideration could look at all the issues or only those where the Court of Appeal had expressly found an error. Mr

Blundell argued that issues relating to the PUK were not before us. Mr Briddock argued that everything was. We started by looking at AH (Scope of s.103A reconsideration) Sudan [2006] UKAIT 00038. The position is no different because it was the Court of Appeal that identified the error of law, rather than the Tribunal at a first stage hearing. The head note to AH (Sudan) says that the reconsideration is of the appeal as a whole and is not limited to the grounds for review, or the grounds upon which reconsideration was ordered. It is however limited to the grounds of appeal to the Tribunal from the original decision by the respondent. AH (Sudan) says that directions cannot limit the issues before the Tribunal on a reconsideration, but the way in which those issues are dealt with can be limited by directions.

19. The Tribunal said:

'24. There could, we suspect, be no clearer indications that what is before the Tribunal on reconsideration is not an appeal against the earlier Tribunal decision but the appeal that was made by the claimant to the Tribunal in the first place. ....

25. Is there, then, any scope for restricting, or power to restrict, the reconsideration by excluding any of the grounds of appeal that were previously before the Tribunal? Again, it would not be surprising to find that there is no such power. A Tribunal substituting a decision on the (original) appeal in its reconsideration might well be expected to have to bear in mind all the grounds of appeal, because otherwise the new decision would run the risk of being worse than the old.

26. ... Decisions under Rules 31 and 32 [of the] Asylum and Immigration Tribunal (Procedure) Rules 2005 and directions under Rule 45 are matters of good housekeeping. If (despite some material error of law) an issue or matter has been properly and satisfactorily dealt with in the first decision, there is no reason why further time should be spent on it in the reconsideration. Although the Tribunal reconsidering the appeal has all the grounds of appeal before it, it also has – indeed it has just been considering – the previous decision, and it must be at liberty to adopt those parts which are considered as sound. The principle perhaps goes further than that. Because the process is a reconsideration, we would incline to the view that in general the Tribunal should always adopt those parts of a previous decision which are not shown to be unsound.'

20. The Tribunal's decision in AH (Sudan) was considered by the Court of Appeal in DK (Serbia) and Others [2006] EWCA Civ 1747. At paragraph 22 of the judgment, Latham LJ said:

'22. As far as what has been called the second stage of a reconsideration is concerned, the fact that it is, as I have said, conceptually a reconsideration by the same body which made the original decision, carries with it a number of consequences. The most important is that anybody asked to reconsider a decision on the grounds of an identified error of law will approach his reconsideration on the basis that any factual findings and conclusions or judgments arising from those findings which are unaffected by the error of law need to be revisited. It is not a rehearing: Parliament chose not to use that concept, presumably for good reasons. ...

23. It follows that if there is to be any challenge to the factual findings, or the judgments or conclusions reached on the facts which are unaffected by the errors of law that are by now identified, that will only be other than in the most exceptional cases on the basis of new evidence or new material as to which the usual principles as to the reception of such evidence will apply, as envisaged in Rule 32(2) of the rules. It is to be noted that this rule imposes the obligation on the parties to identify the new material well before the reconsideration hearing ...'
21. It was clear that the findings concerning the PUK were entirely unaffected by the error of law which was identified by the court. That error of law related solely to the treatment of the evidence concerning fear of IMIK. It did not touch in any way upon the separate issue of fear of the PUK. We were therefore satisfied that not only need we not revisit the PUK issue, it would have been wrong of us to do so in the absence of any fresh evidence about that issue.
22. So far as fear of the IMIK is concerned, we do need to reconsider that, and we do so on the basis of the position as at the date of the hearing before us.

#### Evidence – the appellant

23. The appellant did not give evidence and we recall that he was found to have been a credible witness. Mr Briddock said there were sufficient findings of fact about the appellant in the Immigration Judge's decision. We should mention the difficulties with interpreting at our hearing. The Tribunal had arranged an interpreter but, at the short adjournment, the interpreter complained of toothache and said he could not carry on. Before the short adjournment Mr Briddock said that the appellant would like a replacement interpreter so that he could continue to follow the proceedings. The Tribunal sought a replacement and found one who said that he could arrive by 3 pm. In the event it was 3.30 pm. We were told by Mr Briddock after the adjournment that the appellant was content for the appeal to proceed for the period in the absence of an interpreter.

#### Evidence – Dr Fatah

24. 27. The appellant called Dr Rebwar Fatah. His report, dated 22 May 2007 was served late by the appellant's representatives. Although Mr Blundell initially wrote to say that he may need an adjournment in order to deal with it, on the day he was content to proceed. He produced a short supplementary bundle. In his report, Dr Fatah said that he is a British citizen. He said that he has obtained a BSc., an MSc., and a PhD (from the University of London), and University College, London in physics, solid state physics and optical transmissions for sensing applications respectively. He listed the companies for which he has worked. In addition to his scientific activity, he has worked extensively for the media during the last twenty years. He works as a Middle East specialist: writing, broadcasting and as a journalist. He claimed no political affiliation and no involvement with any political organisations. He described his services as purely professional and in the realm of education, media, culture and travel. He has held senior positions in a number of media outlets including being the managing director of KurdishMedia.com (from 1998 until now). It is an internet provider of daily information on Middle East current affairs and culture. He listed his writings. He also listed a number of Tribunal decisions where he has provided reports that were accepted (presumably omitting any where he was not). He observed that some of his evidence has been referred to in the respondent's

Country of Origin Information reports. He last visited the KRG in November 2005. He is a Kurd. We were only concerned with those parts of the report dealing with risk to WCPI members in the KRG. At paragraph 222 Dr Fatah said this:

‘222. Most members of WCPI, as Mr Abdulrahman, are Kurds and Kurds are condemned and persecuted by the Arabs and Islamic world for partnering with the US/Britain led coalition to remove a Sunni Arab government in Iraq, the government of Saddam Hussein. Kurds regarded as infidels and puppets of imperialism (sic).

223. The frankness and outspokenness with which the WCPI addressed such pressing issues added to its reputation as a party claims [sic] to be committed to truth and the greater health of Kurdish and Iraqi society in the face of internal corruption and the perceived political, social and human rights abuses committed by the three main parties controlling Kurdistan Autonomous Region. This placed the WCPI in the position of an opposition the ruling Kurdish and Iraqi administration and ideologically at odds with the Islamic organisations, such as IMIK ... and all other Islamic organisations.

224. WCPI members have experienced direct persecution from the PUK, KDP and Islamic organisations, in particular IMIK. Owing to this persecution many of the WCPI members have fled abroad, and very few have gone underground in the KRG and in Iraq. Many of the WCPI members are also currently to be found in London where the organisation has held some meetings in greater safety than can be considered possible in Iraq or in KRG areas. The members of the WCPI has [sic] pressurised the Iraqi and the Kurdish administration from their exiles. They have embarrassed the administration; this in turn translated into persecution of their members back in Iraq and in Kurdistan.

225. The WCPI is a small organisation and once the PUK claimed the WCPI has only fifteen members. For such a small organisation, the number of casualties which is given in this report is very high. What is give [sic] here is not a definitive list at all.’

25. That conclusion is based on earlier parts of the report. In section 2.5 ‘WCPI in the KRG Areas’ a number of examples are given. It is apparent that this report has not entirely been written for the appellant's benefit but is a development of earlier reports on similar issues. We do not say that in any way critically as it would be unrealistic to expect an expert to start from the beginning each time he is asked to report on a particular topic. However, that the report is built on an earlier one is demonstrated from paragraph 24 where it is said: ‘Thus the WPI (Worker Communist Party of Iran) has issued a press release announcing the WPI's Congress is to be held during 18-19 September 2004’. The fact that this section, not a quotation, written by Dr Fatah is in the future tense shows that there were earlier versions of this report. That also accounts for the fact that many of the examples given in section 2.5 are quite old. Some examples predate the KRG and refer to the separate KDP and PUK areas of what was then the KAZ.

26. We are concerned particularly with events since mid-2004 when the Tribunal, in case AM (IWCP – Conditions in Mosul) Iraq CG [2004] UKIAT 00263, concluded that there was no sufficient evidence of violence targeted at members of the WCPI. At



paragraph 31 of Dr Fatah's report there is reference to the WCPI, in the UK making claims (on 25 September 2006) about the party's activities being banned and the assassination of two members. However, the assassinations were in 1998 and the alleged ban was in 2000. At paragraph 36 there is reference to a communication from the WCPI in Kurdistan referring to an incident on 12 April 2006, when an active member was arrested and imprisoned in Sulaymaniyah for distributing leaflets. It is said that the following day a member of the political bureau of the WCPI was arrested in Sulaymaniyah. Both of these incidents were in the build up to the Anfal memorial day.

27. At paragraph 38 there is reference to WCPI members being arrested for distribution of leaflets in the four months up to May 2006. There is no mention of what happened to them or what the leaflets were about. It is said in paragraph 39 that on 21 March 2006, at 9 pm, a WCPI member was arrested leaving an Internet café and detained overnight. The 'WP Iraq' website refers to him being tortured physically and psychologically during his overnight detention. Paragraph 40, sourced from the same website, gave details of a person in charge of distributing WCPI publications being shot by an unidentified gunman but surviving. There is reference to the person responsible for the WCPI Arbil office being arrested in December 2005, twice, by Kurdish security. It does not say what happened to him and it should be noted that this tends to indicate that the WCPI have (or had) offices in the KRG. This information is said to come from a WCPI communiqué about attacks on party members which was published on 1 January 2006. Curiously the three incidents referred to in that communiqué all postdate January 2006 and it is possible that the footnotes are wrong and this was meant to be January 2007. The other two incidents are the kidnapping of an activist on 21 March 2006 when the victim was held overnight and ill-treated, and a shooting on 23 March 2006 of a WCPI activist responsible for communications in Arbil (paragraph 43 of the report). On 24 November 2005 a person was arrested for distributing the party periodical, investigated and released after three hours (paragraph 44 of the report). That is sourced to Jamawar, a Kurdish weekly. In paragraph 45 it is said that on 25 September 2005 Kurdish security arrested a member of WCPI who was collecting signatures in an attempt to improve public services. He was accused of having no licence to operate and it is said that he was verbally abused and physically mistreated in detention. On 23 June 2005 another member of WCPI was arrested by security in Qala Diza distributing leaflets, but it is not said that anything adverse happened to him (also sourced from the WCPI). In May 2005, according to the WP Iraq website, a high ranking member of WCPI was arrested and released after a week. It is that detention which Amnesty International report on but which makes no mention of the reason for the arrest, nor that he was a member of the WCPI. (Paragraph 47 of the report).

28. In brief evidence-in-chief, Dr Fatah was asked about the small bundle of documents produced by the respondent. The first document was a list of committee members and representatives of the Kurdistan Referendum Movement ('KRM'), an organisation which described itself as 'Working for self-determination for Kurdistan'. The UK representative was said to be Dr Rabwah Fatah, with an e-mail address. Dr Fatah, agreeing that was his name and his correct e-mail address, was adamant that he was not a member of the organisation, nor even affiliated to it. He had become aware that

his name appeared on the document and said he had asked to have it removed. He had not authorised his name being put there. He does not know anything about the KRM and believes it is the work of an individual, who is trying to promote himself.

29. He was then taken to an article, published on 24 April 2007, by the KRM. Dr Fatah agreed that this was written by him. He said he had not sent it to the KRM and had not authorised them to distribute it. This was equally true of articles dated 13 April 2006 and 15 January 2004. Cross-examined about the articles, he said he had written over two hundred articles which he published on his own website, KurdishMedia.com, and as a columnist. He said there are more than one hundred thousand links to his name on the internet, over which he has no control.
30. Dr Fatah told us that, in 2003, Kurds gathered two-and-a-half million signatures on a petition in support of a referendum to be held in the Kurdish area, before the constitution of the KRG was written. He had been asked to take the petition to the United Nations in Geneva. That, he said, was the only action he had taken in relation to anything which could be described as a referendum movement. He was asked because a personality, who was well known, was wanted to deliver to the document. His communications to the KRM webmaster, asking for his name to be removed, have not produced any reply. He first became aware of his name on the KRM website six to seven months ago when somebody noticed it and told him. There is also a reference to KRM in Wikipedia which he has unsuccessfully tried to remove. Some of the other people listed by KRM as representatives are prominent people of whom he is aware. He said that his e-mail address, and mobile telephone number, are correctly given at the end of the article of the 24 April 2007 and were at the end of the article when he originally wrote it. Those details appear on his website. He puts his mobile telephone and e-mail details at the end of his articles because he works with the media. They need to be able to make contact and talk to him as an Iraqi Kurd.
31. Mr Blundell turned to Dr Fatah's article, dated 24 April 2007. It starts:

'I am lucky. For doing what I do, my brother did not pass his forty-second birthday. I did.'

Dr Fatah explained that his brother was a freelance journalist. He was arrested in 1989, by Saddam's security forces. It was not known then what happened to him. After the uprising, papers were found which showed he had been executed in 1989. Mr Blundell, noting that the article was about attempts to silence KurdishMedia.com, asked who the enemies of the website were. Dr Fatah said it was Iran and Syria. They do not want information to reach their people. He said there were also individuals, such as corrupt Kurdish and Iraqi people, who do not want a free media in the Middle East. He said they were not so much enemies of his, but of free media.

32. Dr Fatah was taken by Mr Blundell to SM and Others (Kurds – protection – relocation) Iraq CG [2005] UKIAT 00111, and in particular paragraph 250. There the Tribunal considered Dr Fatah's evidence to them. They said:

'250. On the whole we consider that Dr Fatah's evidence can be taken as being reliable. We note the extent to which his reports are sourced and that clearly assists. We do, however, find ourselves in agreement with Mr Kovats that at

times in Dr Fatah's evidence his commitment to the Iraqi Kurds gave the impression of affecting his judgment. This is in particular found in his comments at paragraphs 214 and 215 of his first report. These comments are made in the context of a section headed "The prospect of an Iraqi election for Kurds" and no paragraphs in that section are sourced. In paragraphs 214 to 215 Dr Fatah surmises that the parliament were mostly Shia and Shia concepts are not compatible with democracy and voting and they simply watch the lips of the Ayatollahs to give fatwas and those fatwas will become decrees. He speculates that one of these fatwas could be genocide of infidel Kurds. He goes on to state that the Iraqi parliament through a democratic process can deprive all the rights the Kurds gained and that Kurds have no international protection. He states that the Kurds are back to square one; look for an Arab solution to the Kurdish issue. He goes on to state the following "and we all know, throughout the painful history, what this means, genocide".

251. We do not consider that this paragraph demonstrates objectivity. It may well reflect Dr Fatah's private concerns about what may happen to Kurds in Iraq, but it is not sourced evidence and as such must be taken as detracting from the overall view that we could otherwise come to that he is an objective source of information on the situation in Iraq. ...'

33. Having reminded him of that passage, Mr Blundell took Dr Fatah to passages in the article he had written, dated 15 January 2004 and which was published by the KRM. Mr Blundell quoted the following passages:

'American game in the Middle East: "Heads Kurds lose; tails regional powers win."

and

'America has been keen to meet the demands of her partners in the region but this does not seem to be extended to the Kurds and the view that Kurds can be used and then forgotten seems to linger on.'

'Every US or British politician and official deprives Kurds from their historic homeland by terming Kurdistan "Northern Iraq", despite the fact that almost half of it has not been part of Iraq since at least 1991'

and

'And still the US have even more plans to destroy Kurdistan as a political entity'

and

'The US terminated the "Kurdish currency" known as the Swiss dinar, a fundamental pillar of the Kurdistan political entity. Now the same currency is used all over Iraq. Then the US proposed the "political process" which would transform Iraq into a governorates federation, similar to the US federal system. This filthy plan sought to erase the Kurds and Kurdistan from the historical map.'

and

'Was this yet another chapter in the divide and rule policy that the US and other colonial powers, such as Britain, have carried out in Kurdistan?'

and

'In the dawn of the 20<sup>th</sup> century, British Empire moulded Kurdistan such that eight decades of ethnic cleansing and genocide would follow. However, in the dawn on the 21<sup>st</sup> century, Britain, with no empire, returns to Kurdistan as an insignificant ally of the new superpower. Some religious Kurds believe that the British loss of their empire was a punishment by God for the injustice they inflicted on the Kurds. To every Kurd's surprise, Britain does not return to rectify a historical mistake, but to instead build on it.'

34. Dr Fatah was asked to comment on his objectivity in the light of those passages, and the comments in SM. He said that the use of the word 'genocide' came from Human Rights Watch terminology and referred to the chemical attack on the Kurds. He said the Kurds had been subjected to genocide and he did not think that the observations in SM were fair to him in that respect. He had been analysing the history of Iraq and thinks that he was correct. He observed that Iraq is not now in good shape and it could have been better. He described the situation as he understood it. Referring to the expression 'this filthy plan', Mr Blundell again questioned his objectivity, and asked whether he was fit to give evidence as an expert. Dr Fatah said he has opinions, but they do not affect his professional work. He reminded Mr Blundell that he is a freelance writer. As such his opinions can go one way or the other, but his report does not reflect his personal opinions.

35. He was taken to paragraphs 69, of his expert report where he said that:

'Talibani, the PUK leader and current President of Iraq, is a close ally of Iran and has conducted contract killing for Iran before on a number of known occasions'.

It was put to him that this observation was entirely unsourced. Dr Fatah said that it was a reference to the killing of Communists in 1987. He said that seven members of the WCPI were killed in 2001, and a number of other Communists in the 1980s. He acknowledged that he should have put in a source, but said what he was talking about was public knowledge. He agreed that Talibani is a Kurd and head of state. Dr Fatah said he is aware of opinions on all sides and the fact he said that shows he is objective. Even though Talibani is the first Kurdish head of Iraq, he is still critical of him.

36. Mr Blundell turned to paragraph 10 of the report where Dr Fatah said that, in preparation for the report, he had conducted interviews with three high ranking members of the WCPI (Aso Kamal, said to be a member of the WCPI politburo; Dashti Jamal, said to be a senior member of the WCPI and leader of the Federation of Workers Council and Union in Iraq and the Union of the Unemployed in Iraq (UUI); and Nuri Bashir, said to be a member of the politburo, responsible for the WCPI outside Iraq). He interviewed Aso Kamal a few months ago, and Jalal and Bashir in London on 16 May 2007. Asked how he knew them, he said that the WCPI send out a raft of publications and he just asked if he could meet them. They have an office in Kings Cross. He thought it would be more helpful if he had seen high profile people. He acknowledged that the three are politically biased but said they still have

knowledge which could assist. Had he not been honest about his researches, he would not have given the names. He felt we should know how he had gone about producing his report. He did not know how Jalal and Bashir come to be in London. He says he did not tell them why he was interviewing them, merely that he was doing research for an organisation. He said he works for a number of organisations such as the Belgian government, the Home Office, and lawyers in Sweden, the Netherlands, Switzerland and Austria.

37. He was asked why, as he did not know the status of those three in the United Kingdom, and as large numbers are here claiming asylum, the Tribunal should consider that their evidence should be relied upon. Mr Blundell said they had vested interests. Dr Fatah said his report was not just based on the three interviews, it is forty-seven pages long, with one-hundred-and-thirty-five citations. Mr Blundell had just picked out three of the people that he had spoken to. He hoped that his report would be given more credit than would be the case if he had only spoken to the three people. He said that if you take the KDP and PUK views, it is also necessary to get the views of the other side.
38. Dr Fatah was taken to AM (WCPI – conditions in Mosul) Iraq, an appeal in which Dr Fatah did not give evidence. The extract relied upon by Mr Blundell is:

‘31. The problem with this approach by Mr Jorro is that if he were correct and WCPI were in reality to be so disliked by other parties that its members at any level were at real risk in the post-Saddam era, there should be by now some clear evidence of it that goes beyond the jockeying for position by all the political partners within the new democratic process. There is not. There is considerable violence being undertaken by those opposed to the democratic process, which is, as shown in GH, targeted at the coalition forces, westerners, emanations of the Iraqi state, and very recently at Christian churches. There is however no evidence of violence targeted at members of the WCPI. We are in reality being asked to make assumptions about what might happen in the future, but that would be speculation and is not the proper function of the Adjudicator or of the Tribunal.’

39. The case was concerned with risk to WCPI members. Mr Blundell, in a long question, explained to Dr Fatah that in view of the lack of any information at the time of the promulgation of that decision in mid-2004, this Tribunal needed to look at subsequent material to see if WCPI members were at risk. He referred to page 8 of his report where, at paragraphs 36-47, Dr Fatah dealt with up-to-date material which would support the idea of risk to the WCPI members. However, Mr Blundell said that in relation to paragraphs 36 and 37, 38 and 39, the cited source in each case was a WCPI communiqué. He said that was equally true of the sources for paragraphs 40 to 46. In paragraph 47 the source is Amnesty International but he noted, the Amnesty International source related to a person called Rebwar Arif who was said to be a prominent activist with the WCPI (a member of its politburo and in charge of asylum seekers and refugee affairs for the party). Mr Blundell observed that, at page B31 of the appellant's bundle (the cited Amnesty International report) there is no mention of Rebwah Arif being connected with WCPI. Mr Blundell, apologising for the length of the question, observed that when Dr Fatah's report looks for an objective basis to show risk to WCPI members, the only evidence cited was from WCPI itself.

Dr Fatah was asked to comment. He said that he could have supported his assertions with other sources. Asked why he did not, he said he only wanted to use one source if he could. He said that he knew that Rebwar Arif was the founder of WCPI and asked rhetorically whether it was necessary for him to go through and reference everything.

40. Dr Fatah was asked why, when he acknowledged that the evidence from the three witnesses from WCPI could only carry low weight because they were politically biased, only low weight should not be given to the WCPI documents used as his sources. Dr Fatah said that he knew some of 'these things' himself and that some sources were in Kurdish and were more difficult for him to refer to (he did not say why they should be). He gave as an example paragraph 29 of his report. That referred to a Norwegian and Swedish delegation, which had visited the KRG in April 2003, and stated that since the conflict with the PUK in 2000 the WCPI had not had an office in Sulaymaniyah . Dr Fatah said he knew that himself. He said it was well known. It was put to him again that, over the last four years, the only source showing that WCPI members may be at risk is the WCPI itself. Dr Fatah said they are not a legal organisation and have nearly been eliminated both in the KRG, and Iraq itself. WCPI had asked the KRG authorities for a licence, but it was refused. Now they operate through different organisations. He said their offices in Kirkuk and Baghdad had been attacked and the members disappeared. The party does not exist officially in Iraq at all. (Dr Fatah does not appear to include the KRG when he makes reference to Iraq.)
41. He was asked about the current status of the group known as IMIK. He said that they have been described as the 'mother of all fundamentalist Islamists'. He described how Mullah Krekar started Ansar-i-Islam, and which had grown from Jund-e-Islam, which in turn grew from splintered parts of IMIK. That group has amalgamated with others. He said it is not known how Ansar-i-Islam has now become so influential. Some think that it has links with Al Qaeda. He accepted that IMIK has become part of the Kurdish coalition in the last government and is a partner with the KDP and the PUK, not only in the KRG but also in Iraq itself. He was asked whether any part of his report suggests that there is an objective basis for asserting that the IMIK have targeted the WCPI in the last four years. Dr Fatah said it was difficult because WCPI does not now exist as an organisation, only as individuals and subgroups. He said they do not come to the attention of IMIK and other Islamist organisations, they come more to the attention of PUK and the KDP. That is because the WCPI does not challenge IMIK any more, largely because the IMIK does not exist in the way it did in the days of the Halabja incident.
42. Dr Fatah was taken to an article which had appeared on the Workers Liberty website. The article had been badly printed from the internet on 22 May 2007 and was missing the right hand section of the page. It is no longer available. The article was submitted by the appellant. From it, it appears that one Nadia Mahmood, said to be a member of the WCPI, was in Sulaymaniyah when she spoke to one Martin Thomas. She told him that the party was still able to run a weekly literature stall on a street in Baghdad and has offices in Baghdad, close to the Tigris. There is also a reference, in that article, to the many Kurds living in Sadr city. Mr Blundell said that the article suggested that the WCPI does still exist in Iraq and is visible. Asked to comment, Dr Fatah said that the organisation is a Workers Union. He said the WCPI used to have

a base in Baghdad but it has closed. Despite what we noted he said (in paragraph 41 above) he said that it had re-established itself as a different organisation, the name of which he had forgotten. He said Baghdad is in chaos and WCPI cannot claim that they have an office there, or anywhere else in Iraq, now. He did not give any evidential basis for his assertion contradicting the appellant's own evidence to the contrary.

43. Dr Fatah was asked if he was aware of any evidence, in the last three years, that does not come from the WCPI, suggesting that WCPI are targeted by IMIK. Dr Fatah said that the IMIK are now part of the KRG administration. They have Members of Parliament in that administration and can now do things through political channels. Prior to that, he said, it seemed that IMIK had more power on its own but they are still able, for example, to run a substantial demonstration against the Danish cartoons. He said that when someone recently published a book of poetry, with a woman on the cover, IMIK organised a demonstration against that, in Arbil. He said that IMIK still flex their muscles, and push their interpretation of Islam and, if they wish, they can now use official channels to do so.
44. Dr Fatah was asked about whether the appellant could, if at risk in the KRG, relocate to other parts of Iraq in order to avoid the IMIK. He said his conclusion is at paragraph 193 of his report. There he said:

‘It is not realistic to expect Kurds to relocate to Arab parts of Iraq as they would not receive sufficient protection because Kurds are regarded as pro-American by Arabs’.

It was put to him that that sentence is not attributed or sourced. It was also put to him that, in an article which he wrote on 13 April 2006, he had referred to the one-and-a-half million Kurds living in Baghdad as an important ‘string to the bow of the Kurdish influence in Iraq’. Mr Blundell referred Dr Fatah to the Workers Liberty reference to the Kurds in Sadr city, and asked whether there are still mainly Kurdish streets in Baghdad. Dr Fatah said that one needs to look separately at the Kurds in Baghdad, because they are most fairly Feyli (Shia) Kurds. There is evidence that in the elections they mostly voted for Shia candidates, and only twenty-five thousand voted for the British or Kurdish list. He said that some sources say that they have been there for hundreds of years and do not speak Kurdish. A Kurd from the KRG would stick out in Baghdad. He said it would not be realistic for the appellant to go to Baghdad as there are extensive examples of robbery and kidnapping. He said that only the previous day there had been reports of seventy thousand Kurds being displaced from Mosul into the KRG. He added that, in Kirkuk, the administration makes life for Kurds difficult.

45. In re-examination Dr Fatah was reminded that he had said he has personal opinions which he keeps out of his reports. Asked what his personal view was about the WCPI, he said he believed that they were as dangerous as the Islamic fundamentalists because they take a fundamentalist view. He has no sympathy for their beliefs. He said that they tend to undermine everything. When he was referred again to SM he said that, although he was criticised, he believed the decision also gave him a lot of credit. He had been subjected to a considerable personal attack by the respondent in that case and feels he ‘got away lightly’. He had answered all the

questions as best he could. Asked to comment on the observation that, on the whole he was reliable but not wholly objective, Dr Fatah said he had learned a great deal from his experience in SM. He said it had been a useful experience and he had learned how to approach things. He said now he relies on opinion less, and evidence more. He argued that he had lived in the region which is now the KRG for twenty-four years and that experience was very useful. He wished the court had been more flexible in its approach to him. He complained that in many cases a journalist can go to visit an area, stay in a five star hotel, and yet come away and give evidence which is accepted, whereas his evidence would be rejected. He also complained that there had been instances when he had said something, for example, to the BBC which was reported and then accepted, but if he said it himself it was questioned.

46. He said that the petition which he handed over in Geneva was not organised by an organisation called the KRM. It was organised by an ad hoc independent group of ordinary people. They had neither a collective name, nor a central command and control. Asked to clarify the situation about the IMIK and Mullah Krekau, and who he is, Dr Fatah said he was a Shura member of IMIK and went to extremes. He is an Afghan Arab Muslim who left the IMIK 2001. After he did so, it became like a sect. He said Mullah Aziz was the founder and spiritual leader. He is a member of Jund-al-Islam. Jund-al-Islam was strongly against the PUK. It had two villages on the Iranian border under its control. One village was accused of supporting it and having beheaded twenty-seven PUK members. The organisation evolved to become Ansar-e-Islam which means supporters of Islam. He said it was one of the main fundamentalist Islamic groups which later became Ansar al-Sunna. He said that it may have amalgamated with other groups and some suggest that it gets help from Al Qaeda. It sometimes goes under the banner of Al Qaeda in Mesopotamia. Although Ansar al-Sunna had its origins in Kurdistan, it is now everywhere, although its leader is safely in exile in Finland.

#### The Secretary of State's submissions

47. Mr Blundell started by saying that he was no longer suggesting that Dr Fatah's objectivity was undermined by his apparent representation of KRM. He accepted Dr Fatah's explanation that his name was there without his authority. But, he said we should still attach limited weight to Dr Fatah's evidence generally. He reminded us of the note of caution expressed in GH (Former KAZ – country conditions – effect) Iraq CG [2004] UKIAT 00248, on the subject of expert evidence. Dr Fatah had not been involved in that case. The Tribunal said, at paragraph 4, referring to expert evidence:

'... the weight to be accorded to such evidence depends upon demonstrable impartiality and objectivity, in addition to the requisite expertise in the subject. If the witness is partial, so that he becomes an advocate for the person commissioning his report, or shows a lack of objectivity in his approach to the body of evidence on which he draws to form his opinions, then the weight to be given to his opinion as an expert witness will be substantially diminished if not altogether eroded. Nevertheless, such testimony may remain of value on a factual basis arising from the witnesses' expert knowledge even where the weight to be given to expressed opinion is so reduced or eroded.'

48. He reminded us that the Tribunal had previously heard from Dr Fatah in AM where, at paragraph 31, the Tribunal had said that they would have expected some clear evidence that members of the WCPI were at real risk, if that were the case. He also



referred to the observations in SM and Others (paragraphs 250 and 251) where the Tribunal found that although Dr Fatah's evidence was reliable on one level, he did not demonstrate objectivity on another. Mr Blundell argued that that still seemed to be the situation as he had demonstrated by reference to the supplementary bundle and the documents that he had referred to. He argued that Dr Fatah's articles showed an overriding commitment to the Kurdish cause as is demonstrated by the language he used. He said the writings were not those of a man who should be giving evidence to the Tribunal as an objective and independent expert. Even the heading on the document written on 15 January 2004: '*British Empire carved Kurdistan, the American superpower tries to dissolve it*' is an indication of, and should necessarily lead to, greater concerns than the Tribunal had in GH. The reference, in the body of the text, to the United States '*filthy plan ... to erase the Kurds and Kurdistan from the historical map*' is an illustration of polemic and of his trenchant criticism of the United States and the United Kingdom and their foreign policies, and of the transitional administration in Iraq as a whole. Although Dr Fatah said that he separates the articles he writes and distributes by e-mail, from his professional life and independence, Mr Blundell argued that he vents his spleen through his articles and it would be impossible to separate those views when they are so defined. He said that Dr Fatah was not as objective as he should be, and we should give very little weight to his report.

49. Mr Blundell said that Dr Fatah was evasive when asked to point to objective material to substantiate the risk to the WCPI from IMIK. He argued that both groups have splintered but two things are apparent. First, the WCPI does still exist, or did in June 2006 as is illustrated by the appellant's own evidence at page B38 of the bundle. He asked us to find that there is an organisation, even if it is affiliated to others, which is distinct and in Iraq. He said that was the first fixed point for us to consider.
50. He said there is also still an organisation called IMIK in Iraq and that is the second fixed point. He said that, according to Dr Fatah, IMIK is part of the administration in the KRG. Mr Blundell accepted that was the case. Dr Fatah said that, if there was persecuting to be done, IMIK could use official channels. But, since AM, there has been no objective evidence at all to substantiate the assertions that WCPI members are at risk from IMIK. He emphasised that he said that with no caveat.
51. He referred again to the Tribunal in AM having said that they would have expected clear evidence of risk to members of WCPI. Whilst there may now be some evidence in Dr Fatah's report, it all postdates AM. It was to be found from paragraph 35 of his report and was largely premised on information said to come from WCPI itself. He accepted that, in the footnotes giving the sources, there were two exceptions. One was from Jamawar, Kurdish Weekly. It mentions the KDP having arrested a WCPI member, who was released three hours later. That, argued Mr Blundell, did not demonstrate persecution. The other is a quotation from the Amnesty International report, a copy of which is in the appellant's bundle. The report makes no reference to the person whose arrest is mentioned by the WCPI being a member of it. He argued that whether he was, a member does not matter because there is no suggestion that he was arrested because he was a member of WCPI. Mr Blundell argued that there is a complete lack of acceptable evidence of risk, although he acknowledged that there is plenty of evidence in Dr Fatah's report that WCPI is a group that has been disliked by all sides. He mentioned paragraph 51, which referred to trouble emanating

from the PUK in the past. A document called Kurdish Life, found in the New York-based Centre for Research of the Kurdish Library in summer 2000, reported WCPI members being shot. That incident was also mentioned in 1999 Amnesty International report. There was also mention of the group in April 2000 in a UNHCR report (referred to by Dr Fatah at paragraphs 70 and 71 of his report). Mr Blundell said there has been nothing similar to those statements in the last three or four years.

52. He referred to Dr Fatah being asked why he saw fit to speak to three WCPI members when he was researching his report. He reminded us that Dr Fatah said it would be helpful, even he said we should give little weight to their opinions as they were politically biased. Mr Blundell said it is not clear, if that is the line which Dr Fatah takes, why he accepted what WCPI said in the communiqués referred to in his footnotes, uncritically. Mr Blundell said Dr Fatah's research methodology was lacklustre. In sum, he said, the report amounts to little more than saying that the WCPI are at risk because they say they are. Mr Blundell relied particularly on the appellant's document at page B38 of the appellant's bundle which shows that the WCPI have the ability to run a literature stall in Baghdad, which in turn shows they are not targeted.
53. Mr Blundell accepted that if we were to find that there is risk to WCPI members, from IMIK or its successor, within the KRG, then that would be the case throughout the KRG. However, he said, outside the KRG the situation is different. He referred to the US State Department Report, published on 6 March 2007, referring to events in 2006. There it is said that the Constitution of Iraq provides the right of free movement in all parts of the country, and the right to travel abroad and return freely. It says 'However there were some limitations in practice'. We asked Mr Blundell whether that was not something of an understatement, coming from that source. His response was that whatever limitations there are, they are not sufficient to prevent internal relocation to Baghdad. He reminded us of SM and Others, the case where Dr Fatah had given evidence, in which the Tribunal said (in 2005) (in paragraph 279):

'We also consider that relocation to the south for a Kurd can in general be effected without this being unduly harsh and without giving rise to a real risk in all but the most exceptional high profile cases of their relocation being brought to the attention of one of the two political parties i.e. the KDP or the PUK, of whom they had a fear.'

There is no question of fear of the PUK in this case.

54. Mr Blundell finally looked at the reach of the influence of the Islamists in the KRG and in the rest of Iraq. ECRE (page B129 of the appellant's bundle), reporting in April 2007, on Northern Iraq (i.e. the KRG) said:

'Despite the fact that the three northern governorates that are controlled by the Kurdish Regional Government are safer compared to the rest of Iraq, there are certain groups that remain at risk of persecution, such as those who risk being suspected of belonging to militant Islamist groups, women who risk honour related violence and female genital mutilation and minorities.'

There was, said Mr Blundell, no mention of the WCPI in that list.

### Appellant's submissions

55. Mr Briddock asked us to accept Dr Fatah as an expert on Iraqi Kurdistan. He reminded us that he had set out his expertise in eight paragraphs at the beginning of the report. He has reported and given evidence in a number of cases; and assisted, for example, the Belgian government. We should accept there are large areas where he can properly be accepted as an expert. He reminded us of the positive things which were said about Dr Fatah in SM, and reminded us that Mr Blundell had concentrated on the negative aspects of what was said in that case. We should bear in mind what Dr Fatah said about a tendency to accept opinions of reporters who stay in five star hotels, but to reject the evidence of Dr Fatah who was brought up in Kurdistan. He said there were two matters we should bear in mind. First, Dr Fatah clearly has strong views as to what should happen in Iraq, and about US and UK policy, but that does not mean his opinion as an expert should be disregarded. Second, he had told us that he did not like the WCPI, which he regards as fundamentalist and dangerous. Neither of those things means that he would write his report unobjectively.
56. He also said that an expert is a witness whose professional opinion is admissible. He was there to give his opinions and we should accept them unless there is a reason not to. He reminded us that the experts referred to in GH did not include Dr Fatah, and that he is certainly not an advocate for the WCPI. He suggested that it was a massive generalisation to suggest that because the appellant is Kurdish, and Dr Fatah is Kurdish, that they must share the same causes and aspirations. He said that was far too simplistic. He argued that Dr Fatah's evidence had not been evasive, it was comprehensive. There were occasions when he did not answer the questions, but Mr Briddock invited us to look at our notes of the hearing and observe that some of the questions simply could not be answered directly. The cross-examination had been designed to discredit him as an expert and, although many of the questions were pertinent, if Dr Fatah had not been so well versed in the situation his answers would not have been so credible. When the Tribunal in SM found him to be generally reliable, his publishing activities were not hidden. They made that finding notwithstanding them.
57. Addressing the suggestion that there is little or no objective evidence about members of the WCPI, he reminded us that it is an illegal and small organisation. It is therefore difficult to find objective evidence. The smaller the organisation, the less evidence there will be. The question we have to answer is, are members of the group perceived to be in opposition to the Islamists and therefore at risk? He said there are many groups who are extremely hostile to elements that they perceive as hostile to Islam. The events of the Danish cartoons illustrates that. Nobody would have believed that a cartoonist in Denmark would be at risk simply for a cartoon. One needs to keep a broad mind. The appellant's beliefs are in communism, a secular society, and against the veil; all contrary to the beliefs of the Islamists. Mr Blundell had said that there is no truly objective evidence of persecution of WCPI members. Mr Briddock accepted all the references were from the WCPI itself but, he argued, that does not mean they are not true. They have been published over a period. Both the Tribunal, and the respondent, accept that the WCPI exists. He argued that it would be extraordinary if the WCPI had set out to deceive the United Kingdom authorities by issuing these press releases over a period of time.

58. On the accepted facts, Mr Briddock argued, the appellant has been persecuted in the past. That was shown by the three incidents. To say now that there is no evidence of continuing persecution of WCPI members is wrong. Dr Fatah said that he knows that it has happened. He gave reasons for not citing sources other than the WCPI, including the fact that some documents were in Kurdish. He said that the sources given on pages D8 and 9, and referred to in the footnotes, relate to dates in 2005/2006. He argued that the IMIK is still in the KRG and refers to its metamorphosis. He said that if we were to accept that Dr Fatah has the expertise, and is reliable, we should put greater weight on his report and accept that it is difficult to give examples. Mr Briddock was not suggesting that if the appellant were to return he would be sought at roadblocks, but rather in his home area would be identified as an activist with [not Islamic] fundamentalist views. As a result the risk which he fears is well-founded, bearing in mind what has happened to him in the past. Mr Briddock reminded us that if the appellant has to relocate the respondent has accepted that he could not do so within the KRG. As to the rest of Iraq, he argued that if a region is in chaos, a person cannot be protected from people who are looking for power. He said that, although Dr Fatah's evidence refers to the one-and-a-half million Kurds who are assimilated in Baghdad, he also said they would not be identifiable as such because the second and later generations would have lost their Kurdish accents. On the subject of relocation generally, he referred us to his skeleton argument. Much of the material he referred to dealt with the situation in Iraq, outside the KRG. Because we find later that there is no real risk to the appellant, as a member of the WCPI, within the KRG, we do not need to deal with the question of relocation to the rest of Iraq and have not therefore dealt with the submissions on that aspect. We understand that the Tribunal will be considering the current general situation in Iraq outside the KRG in a future Country Guidance case. We do not therefore propose to deal with that issue here. The appellant will be returned direct to the KRG and not to Baghdad.
59. At the end of the submissions the parties agreed that, Convention reasons apart, the question of a breach of Article 3, the entitlement to humanitarian protection and recognition as a refugee, would stand or fall together. Mr Blundell accepted that if the appellant is at real risk of persecution within the KRG, that would be because of his political opinion.
60. We asked both parties to confirm that all the documents they relied on had been expressly referred to either in submissions or, in the appellant's case, Mr Briddock's skeleton argument. We did not wish it to be suggested that there was material within the copious bundles which had not been referred to but which could have furthered the cause of one side or the other. As a result of that, Mr Briddock referred to an article dated 2 February 2005 (page B31) headed 'Plot by the Islamic Republic of Iran to liquidate the leadership of Workers Communist Party of Iraq in the city of Basra has been detected'. He mentioned an article by David Bacon (on page B22); and an article dated 18 January 2007 from the 'Organisation of Australia – Workers Communist Party of Iraq' which was largely a criticism of the Australian authorities for protecting the editor and staff of a newspaper called the Ferat Arabic Daily which had threatened Hussein Khoshnow.

61. Mr Blundell referred to the current COIS report saying that there had been little new about IMIK since 2001. On page 210 it said:

'Founded in 1987. Its founder and leader was Sheikh Uthman Abd al-Aziz.'

On page 212 there is reference to the WCPI. That brief reference is to the party having been founded in 1993 by Mansoor Hekmat, and having held its first congress in July 2004. The COIS reports that there is a note in 'Political Parties of the World 2005' that the WCPI is based in Kurdistan and:-

'Although the party considers Kurdish autonomy is a regression into non-progressive nationalism, it demands a referendum on the issue of Kurdish autonomy so that "the people of Kurdistan control their own destiny". ... In 2003 it launched ferocious verbal assaults on and arranged large demonstrations against the US "annihilation war" against Iraq.'

62. The extract describes the WCPI as an illegal party, in both the PUK and KDP controlled areas. It was said to be opposed to the Saddam regime, as well the PUK and KDP administrations. Interestingly, that extract makes reference to Dr Fatah who had claimed in a report dated 28 November 2005 that members of the WCPI were at risk from persecution in the PUK and KDP controlled areas. It also refers to him as having said that, as most members of the WCPI are Kurds, there was a strong possibility that they were not generally safe in the rest of Iraq. We say 'interestingly' because there was no mention of threats from IMIK or other Islamists. The extract goes on, still using Dr Fatah as a source, to say that the:

'WCPI were very critical of honour killings as well as the Quaran. They also publicly condemned Islamic beliefs, replacing them with autistic and western ideas, including freedom of gender and equality. This angered many Islamists.'

There is no mention of serious risk as a result of that. It said that the WCPI publish a newsletter called Iraq Weekly and that its leader is Rebwar Ahmad. We were referred to paragraph 3.17 of the Operational Guidance Note issued by the respondent on 12 February 2007, which refers to general fear of Islamic militants but is not of assistance in this particular case.

63. Paragraph 6.18 of the COIR deals with the political system in the Kurdish Regional Government areas. It said that the Kurdistan Islamic Group (IMIK) came second with 4.9% of the vote and has six seats in the Kurdistan National Assembly.

### Conclusions

64. We base this determination on the accepted evidence of the appellant that, in July 2001, he was attacked by two men with long beards wearing Islamic dress; that on 9 October 2001 a document, referred to by the Immigration Judge as an arrest warrant purporting to come from IMIK, was thrown into his house; and that on 29 October 2001 the appellant's brother was killed by shots fired from a passing vehicle in which were men with long beards and Islamic dress. For the purposes of this determination we are prepared to accept that those involved in all these incidents were members of the IMIK. We accept that, although IMIK never had any authority to issue an arrest warrant as it would be understood in this country, the document to which we have earlier referred contained death threats and was intended to at least intimidate the

appellant. In view of the subsequent shooting of the appellant's brother the document was apparently not an idle threat.

65. The task of this Tribunal is to consider whether there is a real risk to the appellant were he to return to the Kurdish Regional Governorate now. The burden of proof is upon the appellant. It is six years since he was last in Iraq, and much has changed. Paragraph 339K of the Immigration Rules HC395 provides:

339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person'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.

66. The first issue is how to deal with Dr Fatah's evidence. We accept that, in general terms, an expert who is also an active participant (for example as a human rights activist) can sometimes be both capable and better placed to give an accurate analysis than others. But, that assumes that such a person is able to either demonstrate detachment and objectivity, or make transparent what his basic assumptions or value judgments are. (For example, some would argue that the US State Department reports have a foreign policy agenda, but are still considered to be empirically based.) We have concluded that in general we agree with the approach of the Tribunal in SM. Dr Fatah was brought up in the Kurdish area of Iraq. He takes a considerable interest in events in Iraq. He has been in the United Kingdom since 1982 and is now a British citizen. His formal academic qualifications are science-based and have no bearing on his expertise to report on Iraq. In addition to his scientific activity, he is known as a commentator on Kurdish Iraqi affairs and is called upon by the media to give them assistance. He has his own website dealing with Kurdish issues and he writes articles which are published there and elsewhere on the internet. We accept that he has no connection with the Kurdish Referendum Movement because Mr Blundell accepted he did not. We cannot help but feel that there is more to his name appearing on the movement's website than we have been told, but that is not an issue for this occasion. However, the articles which were published by the Kurdish Referendum Movement under his name are all acknowledged by Dr Fatah to have been written by him. He says there are a very large number of references to him on the internet including Wikipedia and he has no control over them. We were concerned about the views and attitude which Dr Fatah has expressed in some of those articles. They were described by Mr Blundell in submissions as Dr Fatah venting his spleen. He referred to them as polemic. They are. The references we quoted earlier, including those about the United States, and United Kingdom's policies, the reference to a 'filthy plan' and the general tenor of the articles are those of a political campaigner and not a calm and objective observer of events.

67. Dr Fatah argued that he can separate his political views from his professional views and that, when he comes to write a report, he is objective. He said that, although he interviewed three senior members of WCPI, not much weight should be given to their views because they were politically biased and not independent or objective. It therefore seemed curious that he did not apply the same test to the WCPI documents. They are the sources supporting most of his opinion evidence about risk

to WCPI members since the Tribunal's findings in GH. There, the Tribunal said there was little or no objective evidence about WCPI members being at risk. When cross-examined about the quality of his sources about the WCPI over the last two or three years, Dr Fatah said that there were other sources. He said he could have quoted them but did not. That is not good enough. If he wished to persuade us that his evidence is sourced or corroborated, elsewhere, then those sources need to be identified. Similarly it is not enough for Dr Fatah to say that he also knows things to be correct. He should say how or why he knows that.

68. Dr Fatah said that the WCPI is a small group and therefore there is little evidence about it. Mr Briddock emphasised that in his submissions. However, it is clear from the little background evidence there is, that the WCPI does have a presence, at least in Baghdad, where it has a literature stall. Thus it is clear that the lack of background evidence about problems for WCPI members does not arise solely from the fact that the organisation is very small and almost non-existent.
69. Dr Fatah said he disliked the WCPI and what it stands for, and regards it as a dangerously fundamentalist organisation. Mr Briddock argued, that being the case, Dr Fatah would not lose his objectivity and effectively campaign for a WCPI member in his report. Whilst that may be the case, it is not a particularly persuasive argument.
70. We accept, as did the Tribunal in SM, that Dr Fatah has useful information to give about Iraq, and in particular the KRG. He was last there in 2005. However, in SM it was recognised that in some respects, he is not an objective expert. The Tribunal in GH cautioned against experts who become advocates in the cause of the person who commissioned the report, or who show a lack of objectivity in the approach to the body of evidence from which opinions are drawn.
71. Insofar as WCPI is concerned, we start from the Tribunal's view in AM that if there had been a risk to WCPI members in 2004, because they were so disliked by other parties in the post-Saddam era, there would be some clear evidence of that. We then observe that the only evidence adduced of risk arising since that date, comes from WCPI sources. We agree with Dr Fatah that the WCPI members he interviewed are people whose evidence should be given very little weight, because they are from the WCPI itself. Exactly the same applies to the WCPI sources quoted by Dr Fatah. They are almost certainly advocates in their own cause. We look for independent evidence to support what the WCPI said in their communiqués, and there is none. Indeed, the little evidence there is, is to the contrary in the sense that there is background evidence, provided by the appellant, of WCPI operating freely in Baghdad. The situation is therefore effectively still the same as it was when AM was decided. There is no satisfactory objective evidence of risk to WCPI members either from militant Islamists or anyone else. We are not satisfied on the lower standard of proof that there is a reasonable likelihood that WCPI members are at real risk either from militant Islamists or others within the KRG. There is insufficient satisfactory evidence to support the proposition, notwithstanding that Dr Fatah professes to dislike WCPI. His WCPI sources are not reliable as even he, almost, admitted.
72. The sources that have been referred to are almost entirely WCPI based. For the appellant, it was suggested that the WCPI was unlikely to have set about distributing a series of wrong or misleading communiqués and website entries. We do not say

that what the WCPI has said is deliberately misleading or false, but we do make the observation that the WCPI is a political party and a campaigning organisation bent on furthering its own cause. The concept of spin, that is to say, putting the best possible gloss on evidence, is now well known and the WCPI evidence has to be looked at in that light. Some of the incidents referred to were relatively insignificant and we are led to question why they were put into the public domain, if not for campaigning purposes. It is particularly interesting to note that in the one case where Amnesty International were used as a source, there was no mention of the 'victim' being a member of WCPI or, even if he was, that his detention was because of that membership or activities in support of it.

73. Taken at face value, the sources indicate a rather greater level of WCPI activity than Dr Fatah would have us believe. He said that one of the reasons there is so little information about WCPI is that it is illegal and almost non-existent. The sources say that there WCPI has an office in Arbil. They make reference to a considerable amount of leafleting in Sulaymaniyah and to a number of members and their positions within the party hierarchy. We are not persuaded that Dr Fatah's description of the organisation as almost non-existent fits comfortably with the sources which he quotes. They tend to indicate that the WCPI does have a presence in the KRG.
74. We should also look at the IMIK. Whilst some years ago the IMIK was renowned for enforcing its views by violent means, we have not been referred to any recent evidence that it continues to do so. We accept that the document thrown into the appellant's house contained a serious threat of violence and we also accept that, in 2001, it was reasonable to assume that the threat might be carried out. However a considerable time has passed and IMIK has clearly changed. It is difficult to know what has happened to it but we were shown little current background evidence about it. Such evidence as there is does not suggest that it is active in enforcing its views in the violent way it did in the past. As Dr Fatah said, it can now enforce its views legitimately, at least to some extent, because it is in government. Whilst other Islamic movements may have grown from splinters of IMIK, there is no satisfactory evidence about their activities and certainly nothing to suggest that they target members of the WCPI. IMIK now have six seats in the KRG Parliament. Whilst it is generally thought that militant Islamists in the main body of Iraq, outside the KRG, are responsible for at least some of the violence, there is no evidence of a similar degree of violence within the KRG.
75. In summary, there is little or no satisfactory evidence that the IMIK are conducting themselves in a way that would cause a reasonable likelihood of real risk to persons with whom they disagree, within the KRG. They are in government and although it has been said that they have splintered, there is no satisfactory evidence that other Islamic groups have replaced them in such a way as to cause a real risk to those with whom they disagree, and in particular WCPI members.
76. There is no satisfactory evidence of risk to members of the WCPI. Although there is reference in Dr Fatah's report to such difficulties, there is no sourced background evidence to support the assertions made other than evidence from the WCPI itself which cannot be regarded as objective. The two sources, quoted by Dr Fatah within that section of his report, which are not WCPI sources, do not support what he says. It may appear that in this determination we have referred to little in the way of



background evidence. That is not an oversight. It is because, other than the material which we have mentioned, there is nothing to which our attention has been drawn which deals with risk to WCPI members from Islamists, now.

77. It therefore follows there is no satisfactory evidence that members of the WCPI are at real risk from Islamists, or at all, in the KRG. This determination supersedes DH (Risk – IMIK-KAA) Iraq CG [2002] UKIAT 05099 and makes fresh findings about IMIK. DH should no longer be followed and is no longer country guidance. No other country guidance cases are affected as none dealt with the issues considered by this Tribunal. SM and Others should be read in the light of this decision insofar as Dr Fatah's evidence is concerned.
78. The Immigration Judge found that the appellant, as a member of WCPI was not at risk from the PUK. That was not successfully challenged in the Court of Appeal. We have not, for that reason, dealt with risk from the PUK.
79. Because there is no real risk of serious harm to the appellant in the KRG, it is not necessary for us to deal with internal relocation, whether in or out of the KRG.
80. As to the appellant personally, we acknowledge that he was the subject of persecution in the past in the KRG. That was in 2001, six years ago. In the context of the recent history of Iraq that is a long time. Of course, we acknowledge that evidence of past persecution can be indicative of a real risk of future persecution. However, Iraq has changed considerably and that applies as much to the Kurdish Regional Governorates as it does to the rest of Iraq. For the reasons we have given there is no satisfactory evidence that the risks to which the appellant was exposed in 2001 are continuing, or have existed for some time. The fact that the appellant was persecuted in the past does not help him.
81. The Court of Appeal found that the Immigration Judge had made a material error of law in his assessment of the risk to the appellant from IMIK. It therefore fell upon us to reconsider that aspect of the appeal. We have given the reasons why we have limited our reconsideration to that issue. Having reconsidered the appeal the following decision is substituted:

The appeal is dismissed on refugee and human rights grounds.

The appellant is not entitled to humanitarian protection.

Signed  
Senior Immigration Judge Mather

Date

## SCHEDULE OF DOCUMENTS CONSIDERED

### Case Law

SM and Others (Kurds – protection – relocation) Iraq CG [2005] UKIAT 00111  
AM (WCPI – conditions in Mosul) Iraq CG [2004] UKIAT 00263  
GH (Former KAZ – country conditions – effect) Iraq CG [2004] UKIAT 00248  
AH (Scope of s.103A reconsideration) Sudan [2006] UKAIT 00038  
DK (Serbia) and Others [2006] EWCA Civ 1747  
HA (Iraq) [2006] EWCA Civ 1373

### Evidence

Workers Communist Party of Iraq, Article 'A plot by the Islamic Republic of Iran etc.' 2 February 2005

Amnesty International (Middle East and North Africa: Iraq) Report 2006  
Workers Liberty article 'Revival in Iraqi Kurdistan' ; 24 June 2006

Workers Communist Party of Iraq: Organisation of Australia. Article on the death of the editor of Ferat Arabic Daily; 18 January 2007

Human Rights Watch Country Summary of Iraq; January 2007

US State Department Report Iraq; 6 March 2007

European Council on Refugees and Exiles (ECRE) 'Guidelines on the treatment of Iraqi Asylum Seekers and Refugees in Europe'; April 2007

Country of Origin Information Service Report – Iraq; 30 April 2007

Expert report Dr R. Fatah; 25 May 2007

Chatham House Middle East Programme Briefing Paper 'Accepting the realities in Iraq'; May 2007

Kurdish Referendum Movement Committee Membership List and Constitution

KRM articles (written by Dr Fatah) –

The Case for a Kurdish State: Kurds Aspiration as a Kurdish State; 6.5.03

'British Empire carved Kurdistan, the American Superpower tries to dissolve it'; 15.1.04

'The First Session of the Iraq Transitional Council breaches the transitional law of administration' ; 9.9.04

'New Kurdish Strategy Needed' 13.4.06

'Attacks on KurdishMedia.com prove the power of words'; 24.4.07