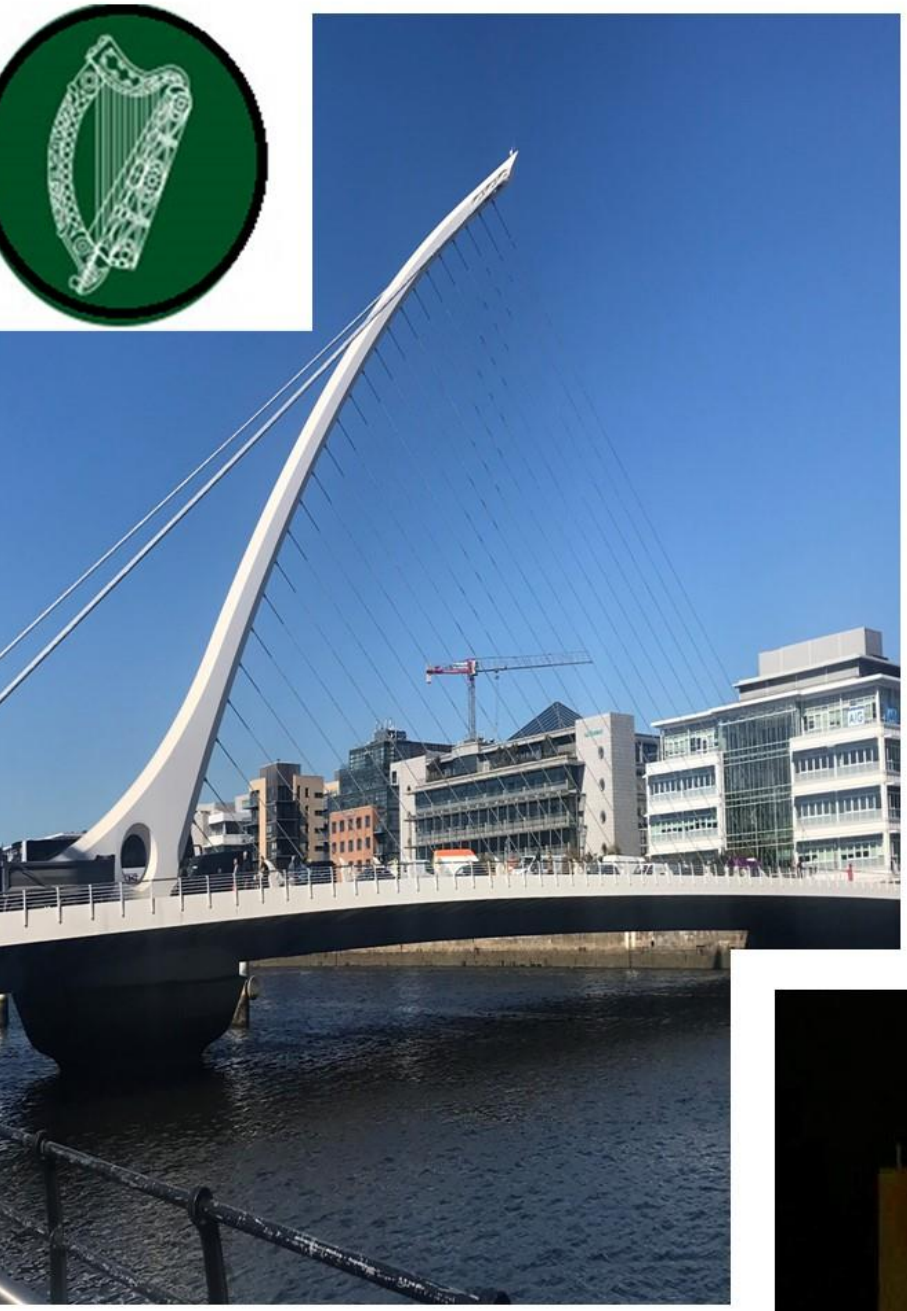

International Protection Appeals Tribunal

Annual Report 2020

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Chairperson's Letter to the Minister for Justice

Helen McEntee TD
Minister for Justice
Department of Justice
51 St. Stephens Green
Dublin 2

31st March 2020

Dear Minister,

I am pleased to present to you the Annual Report of the International Protection Appeals Tribunal for the year 2020.

We had looked forward to building on the Tribunal's successful increase of efficiencies, both with regard to the volume of appeals processed and the decrease of processing times. However, due to the Covid-19 pandemic, the year turned out to be a challenging one for all of society, affecting our customers and staff and members of the Tribunal alike.

With the support of the Department of Justice, for which we are most grateful, the Tribunal, as an essential service delivering quasi-judicial decisions in accordance with fairness and natural justice, was able to configure our operations through innovative measures including the conversion of hearing rooms for the conduct of on-site hearings, the use of electronic signatures for Tribunal decisions and the introduction of audio-video hearings from the last quarter of the year onwards. Moreover, I am most grateful to the Tribunal Registrar, Pat Murray, and his team in the Tribunal administration who have shown the strongest commitment to ensuring that we were able to deliver on the mission of the Tribunal throughout the year to the largest extent possible.

While the year ahead will continue to be impacted by the Covid-19 pandemic, we look forward to the ongoing work regarding the implementation of the recommendations from the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, and to completing our own work on defining and implementing the Tribunal's new Strategy Statement for the years 2021-2023, which will be designed to complement the Department's strategy for the same period. Our focus will be on ensuring access to the Tribunal as an effective remedy with a particular focus on digital transformation as a key driver of change and contributing to a sustainable and agile system for international protection.

Yours sincerely,

Hilkka Becker
Chairperson

Introduction by the Registrar

2020 represents the International Protection Appeals Tribunal's fourth year of operations and it has indeed been an eventful year. The Tribunal started the year with enthusiasm and commitment to build upon the progress made in 2019. The Tribunal, like all organisations nationally and worldwide, was severely impacted by the COVID-19 global pandemic. From early March, the Tribunal was affected by restrictive measures which resulted in the postponement of scheduled on-site hearings the number of which continued and escalated throughout the year.

The Tribunal's senior management team (SMT) formulated COVID-19 contingency plans which were monitored and reviewed throughout the year. The SMT, in partnership with the Department of Justice Health and Safety Manager (H&S Manger), worked closely to adapt the Tribunal's workplace environment and introduce procedures and practices to comply fully with the evolving COVID-19 related public health protection measures identified as necessary by the HSE.

Over the year, following regular risk assessments undertaken by the H&S Manager, steps were taken which enabled us to maintain the delivery of our essential services by balancing remote working, limiting attendance and putting in place control measures adhering to the Return to Work Safely Protocol published by the Government in May 2020. These measures included;

- Suspension of on-site hearings for significant periods during the year,
- Fitting of Perspex screens into Hearing Rooms to provide protective barriers between all parties attending hearings so as to facilitate hearings when restrictions allowed,
- Reduction of numbers attending the building to facilitate 2 metre social distancing,
- Development of a nascent system to facilitate audio video hearings, with the first AV hearings having been held successfully towards the end of the year.

The dedication and commitment of the staff and Members of the Tribunal throughout the year was remarkable and my sincere thanks to them for their efforts. I also wish to acknowledge the excellent working relationship with the Chairperson and Deputy Chairpersons and the administrative team, which enabled us to deliver the essential services of the Tribunal to the greatest extent possible.

Patrick Murray
Registrar

Executive Summary for 2020

The Tribunal started the year with 1,558 appeals on hand. The number of appeals under the International Protection Act 2015 and European Union (Dublin System) Regulations 2018 submitted to the Tribunal reached a total of 1,255 in 2020, compared to a total of 2,043 such appeals reaching the Tribunal in 2019. The Tribunal ended the year with 1,655 appeals pending before it. Additionally, the Tribunal received 7 appeals under the European Communities (Reception Conditions) Regulations 2018 during the course of the year, amounting to a total of 1,262 appeals reaching the Tribunal in 2020.

The number of appeals scheduled for hearing in 2020 stood at 1,418, a marked decrease of from the 2,633 hearings scheduled in 2019, which was entirely due to the Covid-19 pandemic and necessary related public health measures. The Tribunal is confident that once the restrictions are lifted and with the increased use of A/V hearings, it will be possible to resume the upward trend of hearings scheduled over the period from 2017 (616) to 2019 (2,633), which had shown the significant impact of efficiency measures taken by the Tribunal.

These measures also previously impacted positively on the Tribunal's productivity with regard to the completion of appeals. In that regard, the Tribunal's overall output regarding decisions and otherwise completed decisions had increased by *221%* in the period from 2017 (680) to 2019 (2,180). This trend was halted during 2020 due to the pandemic and related restrictions with the Tribunal completing a total of 1,169 appeals, a 46% reduction compared to the previous year.

The Tribunal has continued to monitor and review its work processes, particularly in light of the ongoing Covid-19 pandemic and resulting limitations in relation to on-site access to the Tribunal's premises. Moreover, it is hoped that the ongoing consideration of the recommendations made by the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process in its report published in October 2020[1], in so far as they are relevant to the Tribunal, will assist the Tribunal in achieving further efficiency gains going forward.

[1] Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, 21st October 2020.

Summary – Tribunal Caseload 2020

2020	
Appeals Received	1262
Cases Scheduled	1418
Decisions Issued	1087
Total Appeals Completed	1169
Live Appeals on Hand at Year End	1655

Summary – Types of Appeals received in 2020

Appeal Type	**Appeals Received**
Substantive IP Appeal	690
Substantive IP Appeal Asylum only	57
Substantive IP Appeal SP only	3
SP Appeal Legacy	2
Accelerated IP Appeal	387
Dublin III	54
Inadmissible Appeal	15
Subsequent Appeal	47
Reception Conditions Appeal	7
Grand Total	**1262**

1. Introduction to the Work of the Tribunal

[1.1] Establishment

The International Protection Appeals Tribunal (hereinafter referred to as 'the Tribunal') was established on the 31st of December 2016, in accordance with s.61 of the International Protection Act 2015, to determine appeals and perform such other functions as may be conferred on it by or under the International Protection Act 2015 and the Dublin System Regulations. Pursuant to s.61(3)(b), the Tribunal is independent in the performance of its functions.

[1.2] Mandate

The Tribunal is a statutorily independent body and exercises a quasi-judicial function under the International Protection Act 2015. The Tribunal has been recognised by the Court of Justice of the European Union (CJEU) as a 'court or tribunal' for the purpose of Article 267 of the Treaty on the Functioning of the European Union (TFEU).

The Tribunal decides appeals of persons in respect of whom an International Protection Officer has recommended that they should not be given a refugee declaration and should be given a subsidiary protection declaration, and of persons in respect of whom an International Protection Officer has recommended that they should be given neither a refugee declaration nor a subsidiary protection declaration. The Tribunal also determines appeals under the European Union (Dublin System) Regulations 2018, as well as appeals against recommendations that an application be deemed inadmissible and appeals against recommendations that the making of a subsequent application not be permitted.

With the commencement of the European Communities (Reception Conditions) Regulations 2018 on the 30th of June 2018, the Tribunal's remit was extended to also deal with appeals against decisions by the Minister for Justice to refuse to grant or to renew a labour market access as well as against a decision to withdraw such access. Furthermore, the Tribunal also has jurisdiction to decide appeals against decisions taken by the Minister for Children, Equality, Disability, Integration and Youth Affairs in relation to the provision, withdrawal or reduction of material reception conditions such as housing, food and associated benefits in kind. Those functions were transferred from the Minister for Justice to the Minister for Children, Equality, Disability, Integration and Youth Affairs under the Disability, Equality, Human Rights, Integration and Reception (Transfer of Departmental Administration and Ministerial

Functions) Order 2020, which transferred certain function from the Minister for Justice to the Minister for Children, Equality, Disability, Integration and Youth Affairs. Moreover, the Tribunal has jurisdiction to determine appeals against decisions taken by the Minister for Employment Affairs and Social Protection regarding the daily expenses allowance, and clothing provided by way of financial allowance under the Social Welfare Consolidation Act 2005.

[1.3] Mission Statement

The Mission of the Tribunal in accordance with the International Protection Act 2015 and other relevant national, European and international law is:

(i) To determine appeals from persons in respect of whom an International Protection Officer has recommended that they should not be given a refugee declaration and should be given a subsidiary protection declaration, and of persons in respect of whom an International Protection Officer has recommended that they should be given neither a refugee declaration nor a subsidiary protection declaration;

(ii) To determine appeals against an International Protection Officer's recommendation to deem an application for international protection inadmissible pursuant to s.21(2) of the International Protection Act 2015 as well as appeals against an International Protection Officer's recommendation that a subsequent application for international protection not be allowed pursuant to s.22(5) of the International Protection Act 2015; and

(iii) To determine appeals under the Dublin procedure, which determines the EU Member State responsible for the determination of an international protection application;

(iv) To determine appeals under the Reception Conditions Regulations 2018, which determine the provision of material reception conditions and daily expenses allowances to protection applicants, as well as their access to the labour market in specific circumstances;

And in so doing, to provide a high quality service through the implementation of policies and procedures which are fair and open, treating all applicants and stakeholders with courtesy and sensitivity.

The Tribunal strives to determine all appeals:

- in accordance with the law;
- in accordance with fairness and natural justice;
- with respect for the dignity of applicants;
- efficiently;
- with the highest standard of professional competence;
- in the spirit of openness and transparency in how the appeals process is managed.

[1.4] Strategy Statement

In 2017, the Tribunal launched its first Strategy Statement 2017-2020. This Strategic Plan has guided the Tribunal during those years in drafting its annual Business Plans. The annual Business Plan details how each unit within the Tribunal works, in the year ahead, towards achieving the goals and objectives set out in the Strategy Statement.

The Strategy Statement identified the following five high level goals as the key goals that the Tribunal would focus on in the period from 2017 to 2020:

High Level Goal 1:
To administer, consider and decide appeals to the highest professional standards.

High Level Goal 2:
To manage the transition to the new legislative basis and structures of the Tribunal following commencement of the International Protection Act 2015.

High Level Goal 3:
To achieve and maintain quality standards through the provision of training and professional development supports to Tribunal Members.

High Level Goal 4:
To efficiently and actively manage cases in the Superior Courts to which the Tribunal is a party and to provide instructions and/or observations where appropriate.

High Level Goal 5
To provide quality service to the highest professional standards with a particular focus on achieving value for money in the deployment of the Tribunal's physical and human resources.

The full Strategy Statement is available on the Tribunal website www.protectionappeals.ie.

In the last quarter of 2020, the Tribunal commenced stakeholder consultations in line with its obligations under the *Code of Practice for the Governance of State Bodies* to have a formal process in place for setting strategy. A new Statement of Strategy will be adopted for the three year period 2021 to 2023.

[1.5] Membership of the Tribunal

The legislation provides, in s. 62(1) of the International Protection Act 2015, for the Tribunal to consist of the following Members: a Chairperson, not more than two Deputy Chairpersons, and such number of ordinary Members appointed in a whole-time or part-time capacity, as the Minister for Justice, with the consent of the Minister for Public Expenditure and Reform, considers necessary for the expeditious performance of the functions of the Tribunal. The Chairperson is tasked with ensuring that the functions of the Tribunal are performed efficiently and that the business assigned to each Member is disposed of as expeditiously as may be consistent with fairness and natural justice.

During the course of the year, 44 Tribunal Members were re-appointed for a second 3-year term. On the 31st of December 2020, the Tribunal had a Chairperson, two Deputy Chairpersons, three whole-time Tribunal Members, just over 50 part-time Members.

[1.6] Registrar and Staff of the Tribunal

Pursuant to s.66(1) of the International Protection Act 2015, the Minister shall appoint a person to be the Registrar of the Tribunal. The Registrar, in consultation with the Chairperson, is tasked to manage and control the staff and administration of the Tribunal, and to perform such other functions as may be conferred on him or her by the Chairperson. The Registrar of the Tribunal was, immediately before the date on which s.71(8) of the Act came into operation, the Principal Officer of the Tribunal's predecessor, the Refugee Appeals Tribunal, and was thereby deemed to have been appointed Registrar with effect from 31st December 2016.

The Registrar also has responsibility for assigning the appeals to be determined to Members of the Tribunal, having regard to the need to ensure the efficient management of the work of, and the expeditions performance of its functions by, the Tribunal, consistent with fairness and natural justice, and any Guidelines issued by the Chairperson.

Administrative staff are civil servants and currently assigned to the Tribunal from the Department of Justice In accordance with s.61(4) of the International Protection Act 2015, the Minister may appoint such and so many persons to be members of the staff of the Tribunal as he or she considers necessary to assist the Tribunal in the performance of its functions and such members of the staff of the Tribunal shall receive such remuneration and be subject to such other terms and conditions of service as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine. The agreed administrative staffing complement for the Tribunal, as contained in the Oversight Agreement with the Department of Justice, is 41. On 31st December 2020 the number of administrative staff serving in the Tribunal was 38, including a number of staff members on a shorter working year.

[1.7] Applications for International Protection

Applications for international protection in Ireland were steadily declining since the peak of over 11,000 applications for refugee status in 2002. However, as a result of the migration crisis in 2015, applications for international protection rose from 1,448 in 2014 to 3,276 in 2015 and 3,673 in 2018, remaining significantly higher than in 2014. 2019 saw this trend continue, with a further increase to 4,781 applications for international protection made to the International Protection Office in the Department of Justice by the end of the year.[2] In 2020 these figures decreased by 67%

[2] Department of Justice, International Protection Office, Monthly Statistical Report – December 2019.

to 1,566[3] due to the Covid-19 pandemic which saw applications for international protection lodged in EU+ countries decrease by an average of 31 % compared to 2019 due to the pandemic and related emergency measures, such as movement restrictions.[4]

Due to the transition process necessitated by the reform of the international protection system and the introduction of the single-procedure in the International Protection Act 2015, which commenced on the 31st of December 2016, more than 1,800 applications against a recommendation from the Refugee Applications Commissioner that refugee status be refused, which were pending before the Tribunal at the time of the commencement of the new legislation, were transferred to the International Protection Office (hereinafter referred to as the 'IPO'), for the consideration of the applicants' possible entitlement to subsidiary protection and the consideration of the granting of permission to remain. As a result, the Tribunal only had 454 appeals on hand at the start of 2017, ending that year with a caseload of 653 pending appeals. In contrast to that, the Tribunal received a total of 2,080 appeals in 2018, the majority of which fell to be decided under s.41 of the International Protection Act 2015. These numbers remained stable for 2019, with 2,064 appeals submitted to the Tribunal, however the Covid-19 pandemic led to decrease in these numbers and during 2020 the Tribunal received a total of 1,262 appeals, a decrease of 39% over 2019.

Having concluded the year 2020 with 1,655 appeals on hand, it is likely that the caseload of the Tribunal will rise over the coming period as its ability to hear and process appeals effectively and to bring them to conclusion has been significantly impacted by Covid-19 control measures. It is therefore imperative that the Tribunal is equipped, both with regard to staffing numbers and the availability of Tribunal Members who are trained and experienced in the efficient delivery of high quality determinations of international protection appeals and that every possible measure is taken to ensure the Tribunal has the necessary technological resources to 'catch up' as soon as public health measures are relaxed and, hopefully, lifted in the latter half of 2021.

[1.8] Decision Template

The Tribunal continues to develop its decision templates for use by Members. These templates were first introduced by the then Refugee Appeals Tribunal in 2014, and have been amended and updated by the current Tribunal to reflect legislative

[3] Department of Justice, International Protection Office, Monthly Statistical Report – December 2020.
[4] European Asylum Support Office (EASO), Asylum Trends 2020 preliminary overview, 18th February 2021.

developments, including extended jurisdiction of the Tribunal, and case law developments. The templates for international protection appeal decisions were originally developed by the Tribunal in conjunction with the office of the Dublin office of the United Nations High Commissioner for Refugees (UNHCR).

The function of the templates is to provide decision makers with a logical and legally robust framework within which to make their decisions. The templates are not overly prescriptive and set out the sequence of steps to be taken in a decision. In its judgment in *KMA (Algeria)* [2015] IEHC 472, the High Court commented that the structure provided by the templates, especially the use of numbered paragraphs was *"particularly helpful."*

[1.9] Quality Audit System

The Tribunal implements a quality audit system in respect of the decisions of its Members. The Tribunal's Quality Audit provides quarterly analyses of Tribunal decisions. It is intended in the first place for the Chairperson of the Tribunal, to enable her, in cooperation with the Tribunal Registrar and the Deputy Chairpersons, to take steps to improve continually the quality and efficiency of Tribunal decision-making, in particular in respect of Members' training needs, and Members' resources to assist in their work.

Each quarterly quality audit is based on reviews of 30 randomly selected decisions on international protection from the period or subject under review. For each review a selection of decisions each is reviewed using a review form designed to ascertain if all aspects of the decision are in line with the law and best practice, in the light of the Tribunal's decision-making templates and guidance.

In 2020 the UNCHR's Dublin office kindly agreed to provide assistance by way of contributing its expertise to the Tribunal's audit reviews. The UNHCR, as a key national and international external stakeholder in respect of international protection, has started assisting the Tribunal in carrying out reviews of its decisions from January 2021 in respect of decisions made by the Tribunal in 2020.

The Tribunal also continually learns from the guidance provided by the Irish Superior Courts in the context of judicial review of its decisions. The guidance from the Superior Courts is folded into the work of the Tribunal in effect in the same way as the lessons from the audit.

[1.10] Tribunal Training

One of the functions of the Tribunal as outlined in its Strategy Statement is to achieve and maintain quality standards through the provision of training and professional development supports to Tribunal Members which includes:

1. Providing appropriate training and mentoring to Members of the Tribunal to equip them with the knowledge and skill to deliver high quality, fair, consistent and legally robust Decisions.

2. Ensuring and maintaining high quality and consistency of Tribunal decisions.

It is important that in assisting Tribunal Members to carry out their tasks that training is provided in areas which have been identified as raising systemic issues. In that regard, the main underlying basis for identifying the training needs of the Tribunal is the Quality Audit. Further information on the training provided to Tribunal Members during the year 2020 is provided at 5.2 below.

[1.11] Chairpersons Guidelines

Pursuant to s.63(2) of the International Protection Act 2015 the Chairperson may issue to the Members of the Tribunal guidelines on the practical application and operation of the provisions, or any particular provision of Part 10 of the International Protection Act 2015, and on developments in the law relating to international protection.

Moreover, pursuant to s.63(3) of the International Protection Act 2015, the Chairperson may, if he or she considers it appropriate to do so in the interest of the fair and efficient performance of the functions of the Tribunal, issue guidelines to the Registrar for the purpose of the performance of his or her functions of assigning or re-assigning appeals under s.67(2) or (3) of the International Protection Act 2015.

The following Chairperson's Guidelines were in place at the end of the year 2020:

- Chairperson's Guideline No. 2020/1 Code of Conduct and Rules on Conflict of Interest
- Chairperson's Guideline No. 1/2019 on Taking Evidence from Appellants and Other Witnesses
- Chairperson's Guideline No. 2018/1: Compelling Grounds;

- Chairperson's Guideline No. 2018/2: Adjournments and Postponements of Appeal Hearings;
- Guideline No. 2017/1: UNHCR Eligibility Guidelines
- Guideline No. 2017/2: Access to Previous Decisions;
- Guideline No. 2017/3: Effect of Order of Certiorari;
- Guideline No. 2017/4: Guidance Note on Country of Origin Information (COI);
- Guideline No. 2017/5: Appeals from Child Applicants;
- Guideline No. 2017/6: Medico-Legal Reports;
- Chairperson's Guidelines on Assigning and Re-assigning Appeals by the Registrar.

All Guidelines are available on the website of the Tribunal at: www.protectionappeals.ie.

[1.12] Transitional Provisions

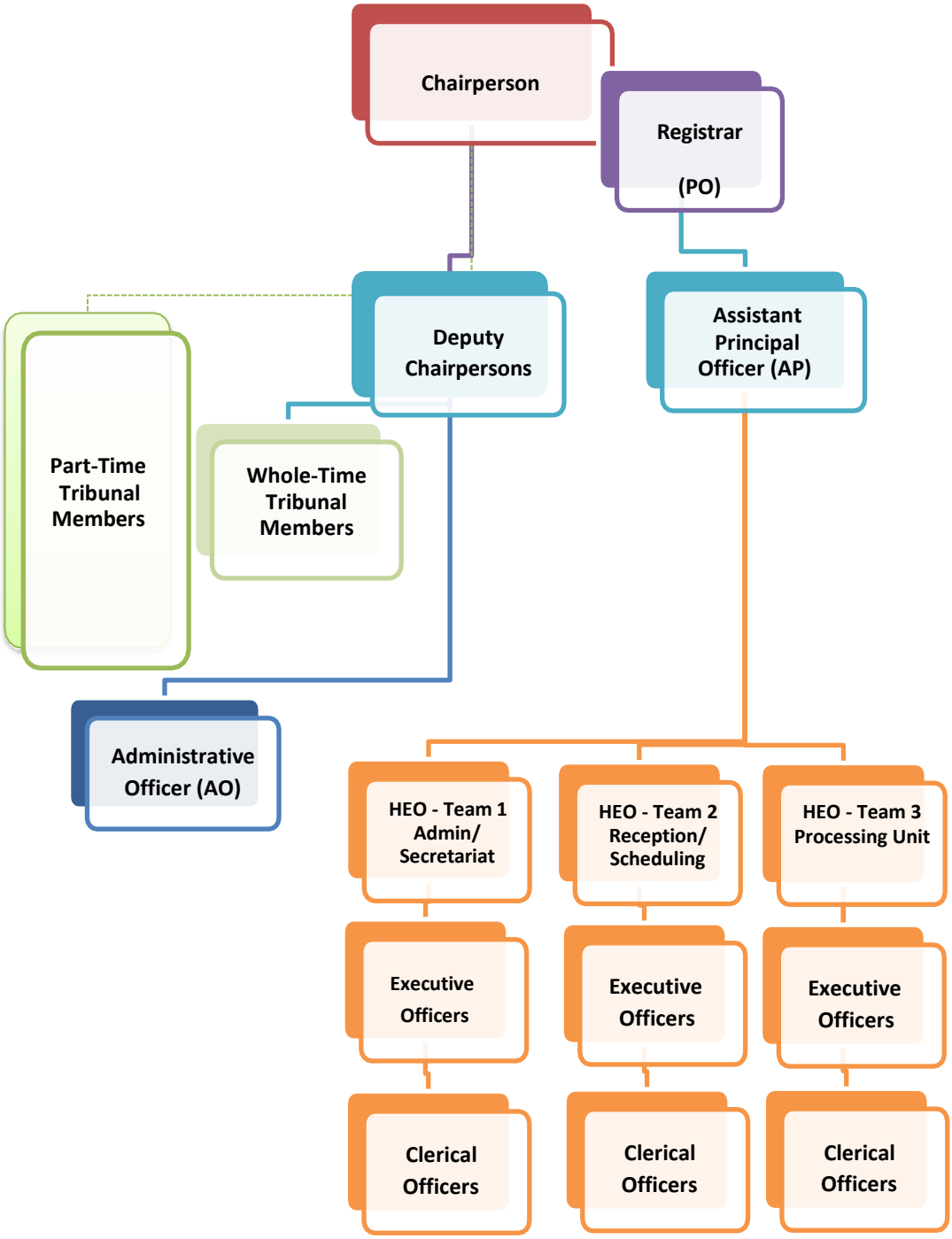
Where appeals were pending before the Refugee Appeals Tribunal on commencement of the International Protection Act 2015, the following provisions applied:

- Where a person has appealed a recommendation to refuse them refugee status and that appeal had not been determined, they were deemed to have made an application for international protection under the International Protection Act 2015, with certain modifications s.70(2). This means that their case was transferred from the Tribunal to the Department for the consideration by an International Protection Officer, of their entitlement to subsidiary protection.
- Pending subsidiary protection and Dublin III appeals were retained and decided by the International Protection Appeals Tribunal.

While the majority of appeals now before the Tribunal no longer fall to be decided in application of the transitional provisions, there continue to be a number of those types of appeals which will continue to occupy the Tribunal in 2021 and beyond.

2. *Tribunal Operations and Support*

[2.1] The organisational structure of the Tribunal is set out below:



Appeal Procedures are detailed in **Appendix 1**.

[2.2] Appeals Registration and Assigning

Pursuant to s.67(2) of the International Protection Act 2015, appeals are assigned to Tribunal Members by the Registrar in accordance with the Chairperson's Guideline on Assigning and re-assigning appeals by the Registrar available on the Tribunal's website.

Appeals registration and assigning of appeals involves:

- Receiving, checking, recording and processing all Notices of Appeal and correspondence, including correspondence from the IPO, the United Nations High Commissioner for Refugees (hereinafter referred to as the 'UNHCR'), legal representatives and applicants;
- Arranging receipt of documents from the IPO following receipt of a Notice of Appeal is received;
- Preparation of copy appeal case files for Tribunal Members;
- Formal assigning of cases to Members by the Registrar.

Scheduling and Reception

Scheduling involves arranging the attendance of Tribunal Members, Presenting Officers, the applicant, legal representatives and, where appropriate, interpreters, witnesses and HSE/Tusla staff at hearings.

Reception duties include the servicing of oral hearings and the processing of correspondence and submissions received on the day of the hearing.

Appeals Processing

This involves:

- Processing of correspondence and queries from applicants, legal representatives and Members,
- Preparing and issuing decisions to the applicant, the legal representative (if any) and notifying the IPO, the Minister for Justice and the UNHCR in accordance with s.46(6) to (8) of the International Protection Act 2015,
- Recording, tracking and redacting of decisions, and

- Redacting Members' Decisions and uploading to the ROMDA webpage (ROMDA Refugee Office Members' Decisions Archive is a web based database of previous Tribunal Decisions and maintaining the webpage.

[2.3] Administration and Secretariat

The Secretariat is responsible for:

- Co-ordinating activity between the Tribunal, the IPO and other constituent parts of the asylum system, including the Legal Services Unit of the Department of Justice (hereinafter referred to as the 'LSSU') and the Chief State Solicitor's Office (hereinafter referred to as the 'CSSO'),
- Liaising with the Office of the Representative of the UNHCR and other governmental, inter-governmental and non-governmental bodies, and
- Providing information on Tribunal matters and responding to correspondence.

The Secretariat co-ordinates the day-to-day back-up services for the Members which include ongoing Members' training and collating training/educational resource materials. Training initiatives undertaken in 2020 by the Tribunal are outlined in Chapter 3.

[2.4] Registrar and Staff of the Tribunal

Pursuant to s.66(1) of the International Protection Act 2015, the Minister shall appoint a person to be Registrar of the Tribunal. Mr Pat Murray was deemed to have been appointed by the Minister for Justice as Registrar of the Tribunal on the day of its establishment on the 31st of December 2016. Administrative staff are appointed to the Tribunal by the Minister for Justice as he or she considers necessary to assist the Tribunal in the performance of its functions. Members of staff of the Tribunal shall be civil servants within the meaning of the Civil Service Regulation Acts 1956 to 2005.

The table below shows the level of staffing agreed in the 2020 Oversight Agreement between the Tribunal and the Department of Justice, including the Chairperson, Deputy Chairpersons and whole-time Members, as well as the actual level of staffing as per 31st December 2020. The Tribunal works closely with the HR Business Partner assigned to it by the Department to address staff vacancies as they arise. There were a significant number of staff changes throughout the year. Additionally, a number of Tribunal staff avail of atypical working arrangements.

IPAT STAFF LEVELS 31/12/2020	Persons	FTE	Agreed Oversight levels
Chairperson (PO)	1	1	1
Deputy Chairperson (APO)	2	2	2
W/t Tribunal Member (APO)	3	3	3
SUB TOTAL	**6**	**6**	**6**
Principal Officer (Registrar)	1	1	1
Assistant Principal Officer	1	1	1
HEO/Administrative Officers	4	3.8	4
Executive Officers	7	6.6	8
Clerical Officers	25	24	27
SUB TOTAL	**38**	**36.4**	**41**
TOTAL	**44**	**42.4**	**47**

As a result of the Covid-19 control measures, the Tribunal was unable to operate a full service, as was the case with the International Protection Office (IPO) and other public service bodies, resulting in a significant caseload build up leading into the coming year 2021. In order to address the increasing caseload, a higher level of support staff and greater use of technology, such as audio video hearings may be required. The implementation of the recommendations by the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process published in October 2020[5], in so far as they relate to the Tribunal and its work, would be timely and most welcome.

In that regard, the ongoing provision of support to the Tribunal by the Department of Justice is greatly appreciated. The Chairperson and the Registrar particularly acknowledge the efforts made by the Governance, HR, Facilities and IM&T Units in the Department of Justice.

[2.4.2] Staff Training

The Tribunal has provided or facilitated a wide range of training courses for staff. Training courses availed of by administrative staff included:

[5] Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, 21st October 2020.

- Microsoft Word (Intermediate)
- Microsoft Excel (Intermediate and Advanced)
- Communication Skills
- Building Resilience
- Customer Service Skills
- Assertiveness Skills
- Suicide Awareness
- Training in Human Trafficking Prevention
- Data Protection
- Managing Self
- Planning and Organising
- Improving the Learning and Development Communication
- Microsoft Outlook
- Leading dispersed teams
- Excel introduction course
- eDocs presentation and training

[2.4.3] Accommodation

The Tribunal is located at 6/7 Hanover St. East, Dublin 2, where it currently occupies the first floor. In addition to the workspace for administrative staff, part-time and whole-time Members, there are seven hearing rooms and a number of consultation rooms for appellants and their legal representatives on the ground floor of the building.

As part of its contingency planning due to the Covid-19 pandemic, and as a result of the control measures implemented, the Tribunal introduced staggered staff work patterns balancing on-site and remote working from March 2020. For long periods of the year, on-site hearings were suspended and access to Tribunal premises for Tribunal Members and staff limited to essential tasks. The Tribunal continued to deliver its essential service throughout the periods of restrictions.

The physical environment of the Tribunal's hearing rooms was significantly altered to facilitate on-site hearings based on the risk assessment undertaken by the Department of Justice Health and Safety Manager. Changes included the reduction in capacity of hearing rooms to meet social distancing controls and Perspex screens were

installed. On-site hearings were not facilitated for significant periods of 2020 and did not take place under Level 5 restrictions.

The Tribunal developed a nascent system to facilitate audio video (A/V) hearings and the first such hearings were held successfully towards the end of the year.

The Tribunal also fitted out a number of rooms on its premises to facilitate A/V and hybrid hearings which can be utilised as necessary. Tribunal Members successfully conducted hearings through a combination of the use of on-site facilities and from their own premises with the assistance of the Tribunal reception team.

[2.4.4] Finance

The Tribunal is funded by monies voted by the Dáil through the Vote for the Office of the Minister for Justice. Costs incurred by the Tribunal, including staff salaries, fees payable to members of the Tribunal, legal costs and all accommodation/utilities and other running and maintenance costs, are approved by and funded directly from the Department. The Tribunal shares the Hanover Street premises with a number of other offices / agencies, including Department of Justice offices. Some of the costs attributed to the Tribunal below are costs associated with the premises as a whole, including running costs, pay and costs for service officers , postage etc.

Category	Expenditure in 2020
IT Costs	€192,522
Legal Costs	€45,982
Members Fees	€527,641
Membership of Professional Bodies	€3,550
Office and Premises Expenses	€126,820
Office Machinery and Other office Supplies	€91,617
Postal and Communications Services	€74,761
Publications	€542
Salaries and Wages	€2,184,695
Training	€2,548
Translation/Interpretation	€53,158
Travel and Subsistence/Incidental Expenses	€286
Total Expenditure	**€3,304,122**

[2.4.5] Judicial Review

Following advices received from the Attorney General in 2016, it was decided that the Tribunal as an independent statutory body carrying out quasi-judicial functions, should attract the same legal principles as those applying to a District Court judge and that once the Tribunal has made a decision, it is *functus officio* and has no part in defending or supporting it in subsequent judicial review proceedings. The justification for a decision of the Tribunal is set out in the decision itself. Once a Member of the Tribunal has fulfilled the function of delivering a reasoned decision, he or she has no further function and it could be seen to impugn the independence of the Tribunal to seek to stand over its decisions should they be challenged subsequently. These principles apply in the public interest to maintain confidence in the judicial and equivalent systems.

The only circumstances in which these principles may not apply is where *mala fides* on the part of a Member of the Tribunal is alleged or systemic procedural challenges are made against the operations of the Tribunal. In all other cases, the Minister for Justice makes the decision to grant or refuse international protection, determine an application to be inadmissible, consent to the making of a subsequent application, make a transfer order under the Dublin System Regulations or a decision under the Reception Conditions Regulations and therefore is the *legitimus contradictor*.

However, as a Respondent in judicial review challenges brought against any of its decisions, the Tribunal liaises with the LSSU, the CSSO and the Attorney General's Office in relation to the provision of relevant information and observations. The

Tribunal's Judicial Review Unit is now situated within its administration / secretariat. It records and monitors progress of all judicial reviews, considers all legal documents received and co-ordinates responses with the Chairperson.

The Tribunal closely follows the developments in the Superior Courts in respect of judicial reviews of its decisions. Whether the Court upholds or quashes a decision of the Tribunal, the Tribunal seeks to implement in its guidance to and training of its Members the jurisprudence of the Superior Courts. The particular ways in which the Tribunal does this include:

- Clear summaries of the key insights from the jurisprudence, presented systematically in Quarterly Reviews for the benefit of Tribunal Members.
- Implementation in Chairperson's Guidelines pursuant to s. 63(2) in respect of developments of the law of international protection.
- Revision and updating of the guidance and training materials used for the professional development of Tribunal Members.
- Revision and updating of the decision-making templates used by Tribunal Members.
- Determining and shaping the training provided to Members internally.
- Determining the external training relevant to Members.
- Hosting workshops, discussion groups and 'lunch and learn' sessions on matters arising from the case law.
- Updates on particular net issues from case law and opinions of counsel.
- Revision and updating of the quality audit materials used for analysing members decisions with a view to identifying matters for continued improvement.

A comprehensive summary of the judgments handed down by the Superior Courts in 2020 regarding the Tribunal's decisions is at **Appendix 2**.

During 2020 the Tribunal consolidated and ordered all information available to it in respect of litigation against the Tribunal since came into being on the 31st of December 2016. This knowledge management project has enabled the Tribunal to set out clearly relevant statistics in respect of litigation against its decision. That information is summarised at Appendix 3**,** first in respect of the Tribunal's decisions generally, including specifically with regard to 2020 decisions, and then in respect of the particular types of decision made by the Tribunal. The information is based on the most up to date information available to the Tribunal.

[2.4.6] Legal Costs

The defence of judicial reviews against decisions of the Tribunal was handled by the Department of Justice's Legal Support Services Unit (LSSU), the Chief State Solicitor's Office (CSSO) and the Office of the Attorney General. The Department of Justice is liable to pay the costs of applicants who successfully challenge decisions of the Tribunal in the Superior Courts.

The legal costs incurred by the Tribunal, including by its predecessor, the Refugee Appeals Tribunal, since 2008 are set out in the following table:

Year	Expenditure
2008	€3,428,130.00
2009	€4,523,622.00
2010	€4,363,114.00
2011	€3,168,952.00
2012	€1,427,510.00
2013	€1,625,971.00
2014	€2,688,787.00
2015	€1,833,385.00
2016	€2,696,339.00
2017	€1,580,537.00
2018	€855,132.74
2019	€268,247.38
2020	€42,412.23

In 2020, the total legal costs paid arising out of successful and settled judicial reviews regarding *legacy decisions of the Tribunal* made pursuant to the previous legislation amounted to €42,412.23. In cases where a judicial review is successfully defended, an order will normally be obtained that the unsuccessful applicant pay their legal costs. The above figures do not include the legal costs of the State. It also should be noted that these figures reflect the year in which the costs were paid and not necessarily the year in which the case was finalised.

3. Membership of the Tribunal

[3] Introduction

[3.1] The Tribunal shall consist of the following Members:

(a) A Chairperson, who shall be appointed in a whole-time capacity;

(b) Not more than 2 Deputy Chairpersons, who shall be appointed in a whole-time capacity; and

(c) Such number of other Members, appointed either in a whole-time or part-time capacity, as the Minister, with the consent of the Minister for Public Expenditure and Reform, considers necessary for the expeditious performance of the functions of the Tribunal.

Ms Hilkka Becker, Solicitor, who had previously been Deputy Chairperson since 31st December 2016 and had been in the position of interim Chairperson of the Tribunal pursuant to s.62(8) of the International Protection Act 2015 since the 22nd of April 2017, was appointed Chairperson of the Tribunal in January 2018 following a competition under s.47 of the Public Service Management (Recruitment and Appointments) Act 2004 for the position of Chairperson of the Tribunal which was held in the autumn of 2017 and concluded in December 2017.

Following a competition under s.47 of the Public Service Management (Recruitment and Appointments) Act 2004, Ms Cindy Carroll BL was appointed to the position of Deputy Chairperson on the 5th of March 2018. The other Deputy Chairperson, Mr John Stanley BL, has been with the Tribunal since February 2017. Both the Chairperson and the Deputy Chairpersons were appointed by the Minister for Justice on a whole-time basis for a term of 5 years.

In September and October 2018, Ms Agnes McKenzie BL; Mr John Buckley BL and Ms Shauna Ann Gillan BL were appointed as whole-time Tribunal Members for a term of 3 years, following open competition. The part-time Members of the Tribunal are appointed by the Minister for Justice for a term of 3 years on a contract for services. A Member must have been a practising barrister or solicitor for at least five years to qualify for appointment.

[3.2] List of Members

In addition to the Chairperson and two Deputy Chairpersons, the Tribunal had a total of three whole-time Members and 60 part-time Members during the year.

Whole-Time / Part-Time Members of the Tribunal	
1. Agnes McKenzie, B.L. (W/T)	2. Leonora Doyle, Solicitor
3. Ann Marie Courell, B.L.	4. Majella Twomey, B.L.
5. Bernadette McGonigle, Solicitor	6. Margaret Browne, B.L.
7. Brian Cusack, B.L.	8. Marie-Claire Maney, Solicitor
9. Brid O'Flaherty, B.L.	10. Mark Byrne, B.L.
11. Christopher Hughes, B.L.	12. Mark William Murphy, B.L.
13. Ciara McKenna-Keane, B.L	14. Mary Forde, Solicitor
15. Ciaran White, B.L.	16. Michael Kinsley, B.L.
17. Clare O'Driscoll, B.L.	18. Michael McGrath, S.C.
19. Colin Lynch, Solicitor	20. Michael Ramsey, B.L.
21. Conor Feeney, B.L.	22. Michelle O'Gorman, B.L.
23. Conor Keogh, B.L.	24. Moira Shipsey, Solicitor
25. Cormac Ó Dúlacháin, S.C.	26. Morgan Shelly, B.L.
27. Denis Halton, B.L.	28. Niall O'Hanlon
29. Elizabeth Davey, B.L.	30. Nicholas Russell, Solicitor
31. Elizabeth Mitrow, Solicitor	32. Nuala Dockry, B.L.
33. Elizabeth O'Brien, B.L.	34. Oluwafemi Daniyan, B.L.
35. Emma Toal, B.L.	36. Patricia O'Connor, Solicitor
37. Eoin Byrne, B.L.	38. Patricia O'Sullivan Lacy, B.L.
39. Evelyn Leyden, Solicitor	40. Paul Brennan, Solicitor
41. Finbar O'Connor, Solicitor	42. Paul Kerrigan, Solicitor
43. Fiona McMorrow, B.L.	44. Peter Shanley, B.L.
45. Folasade Kuti-Olaniyan, Solicitor	46. Rosemary Kingston O'Connell, Solicitor
47. Ger O'Donovan, B.L.	48. Sharon Dillon-Lyons, B.L.
49. Jeanne Boyle, Solicitor	50. Shaun Smyth, B.L.
51. Joanne Williams, B.L.	52. Shauna Ann Gillan, B.L. (W/T)
53. John Buckley, B.L. (W/T)	54. Simon Brady, B.L.
55. John Noonan, B.L.	56. Stephen Boggs, B.L.
57. Kevin Lenahan, B.L.	58. Stephen Collins, B.L.
59. Kim Walley, Solicitor	60. Steven Dixon, B.L.
61. Lalita Pillay, B.L.	62. Una McGurk, S.C.
	63. Zeldine O'Brien, B.L.

A number of part-time Tribunal Members resigned during the year 2020 or were not re-appointed following completion of their 3-year term of office; and with that the number of part-time Tribunal Members was reduced to just over 50 at the end of 2020.

[3.3] Statutory Meetings

S.63(7) of the International Protection Act 2015 requires the Chairperson to convene a meeting of the Members of the Tribunal at least once a year to review the work of the Tribunal. The Tribunals' statutory meeting for the year 2020 took place on 4th December 2020 by way of an online meeting.

[3.4] Members' Fees

The scale of fees which determines the amount payable for each type of appeal is shown below:

Type	2020
Single Procedure Oral Hearing	**€**
Principal Applicant	730
+ Spouse or Partner case similar	1095
+ Spouse or Partner case different (Full fee €730)	1460
Single Procedure – Papers only Appeal	
Principal Applicant	490
+ Spouse or Partner case similar	735
+ Spouse or Partner case different (Full fee €490)	980
Inadmissibility or Subsequent Appeal	
Principal Applicant	365
+ Spouse or Partner case similar	546
+ Spouse or Partner case different (Full fee €365)	730
Withdrawn/Postponed	
Withdrawn Prior to Hearing	245
Withdrawn Post Hearing	490
Postponement – Day of Hearing	245
Accelerated Appeal (on papers)	
Determination	248
+ Spouse or Partner case similar	372
+ Spouse or Partner case different (Full fee €248)	496
Dublin Regulation	
Oral Hearing	315
Oral Hearing – Spouse or Partner case similar	473

Oral Hearing – Spouse or Partner case different (Full fee €315)	630
On Papers	166
On Papers – Husband & Wife similar cases	249
On Papers– Husband & Wife different cases	332
No Show / Withdrawal	137

[3.5] Members' Fees Paid and Decisions Completed in 2020

Member's fees paid and number of decisions completed for 2020 is set out in the following tables:

[3.5.1] Decisions completed by Members of the Tribunal

Member of Tribunal	No of Decisions for 2020
1. Agnes McKenzie, B.L	57
2. Brian Cusack, B.L.	12
3. Brid O'Flaherty, B.L.	35
4. Christopher Hughes, B.L.	54
5. Ciara McKenna-Keane, B.L	12
6. Ciaran White, B.L.	16
7. Cindy Carroll, B.L.	6
8. Clare O'Driscoll, B.L.	39
9. Colin Lynch, Solicitor	7
10. Conor Feeney, B.L.	7
11. Conor Keogh, B.L.	1
12. Cormac Ó Dúlacháin, S.C.	11
13. Denis Halton, B.L.	3
14. Elizabeth Mitrow, Solicitor	11
15. Elizabeth O'Brien, B.L.	7
16. Emma Toal, B.L.	25
17. Eoin Byrne, B.L.	29
18. Evelyn Leyden, Solicitor	4
19. Finbar O'Connor, Solicitor	12
20. Fiona McMorrow, B.L.	2
21. Folasade Kuti-Olaniyan, Solicitor	16
22. Ger O'Donovan, B.L.	1

23. Hilkka Becker	4
24. Joanne Williams, B.L.	16
25. John Buckley, B.L. (W/T)	39
26. John Noonan, B.L.	31
27. John Stanley, B.L.	8
28. Kevin Lenahan, B.L.	44
29. Lalita Morgan-Pillay, B.L.	2
30. Leonora Doyle, Solicitor	55
31. Majella Twomey, B.L.	29
32. Margaret Browne, B.L.	20
33. Marie-Claire Maney, Solicitor	2
34. Mark Byrne, B.L.	62
35. Mark William Murphy, B.L.	10
36. Mary Forde, Solicitor	17
37. Michael Kinsley, B.L.	18
38. Michael McGrath, S.C.	15
39. Michael Ramsey, B.L.	4
40. Michelle O'Gorman, B.L.	1
41. Moira Shipsey, Solicitor	7
42. Morgan Shelly, B.L.	4
43. Nicholas Russell, Solicitor	42
44. Nuala Dockry, B.L.	2
45. Oluwafemi Daniyan, B.L.	6
46. Patricia O'Connor, Solicitor	16
47. Patricia O'Sullivan Lacy, B.L.	15
48. Paul Brennan, Solicitor	1
49. Paul Kerrigan, Solicitor	25
50. Rosemary Kingston O'Connell, Solicitor	2
51. Sharon Dillon-Lyons, B.L.	18
52. Shaun Smyth, B.L.	24
53. Shauna Ann Gillan, B.L.	72
54. Simon Brady, B.L.	10
55. Stephen Boggs, B.L.	21
56. Steven Dixon, B.L.	44
57. Una McGurk, S.C.	19
58. Zeldine O'Brien, B.L.	15
Grand Total	**1087**

[3.5.2] Fees Paid to Part-Time Members of the Tribunal

Member of Tribunal	Fees for 2020
1. Brian Cusack, B.L.	€6,709
2. Brid O'Flaherty, B.L.	€17,358
3. Christopher Hughes, B.L.	€27,135
4. Ciara McKenna-Keane, B.L	€8,642
5. Ciaran White, B.L.	€8,032
6. Clare O'Driscoll, B.L.	€22,608
7. Colin Lynch, Solicitor	€7,060
8. Conor Feeney, B.L.	€4,752
9. Conor Keogh, B.L.	€1,097
10. Cormac Ó Dúlacháin, S.C.	€5,811
11. Denis Halton, B.L.	€315
12. Elizabeth Mitrow, Solicitor	€11,812
13. Elizabeth O'Brien, B.L.	€4,385
14. Emma Toal, B.L.	€11,635
15. Eoin Byrne, B.L.	€20,722
16. Evelyn Leyden, Solicitor	€3,777
17. Finbar O'Connor, Solicitor	€9,735
18. Fiona McMorrow, B.L.	€1,827
19. Folasade Kuti-Olaniyan, Solicitor	€7,912
20. Joanne Williams, B.L.	€13,280
21. John Noonan, B.L.	€20,660
22. Kevin Lenahan, B.L.	€24,902
23. Kim Walley, Solicitor	€730
24. Lalita Pillay, B.L.	€1,705
25. Leonora Doyle, Solicitor	€27,430
26. Majella Twomey, B.L.	€11,512
27. Margaret Browne, B.L.	€13,789
28. Marie-Claire Maney, Solicitor	€2,195
29. Mark Byrne, B.L.	€35,080
30. Mark William Murphy, B.L.	€7,182
31. Mary Forde, Solicitor	€10,778
32. Michael Kinsley, B.L.	€9,830

33. Michael McGrath, S.C.	€8,514
34. Michael Ramsey, B.L.	€3,750
35. Michelle O'Gorman, B.L.	€975
36. Moira Shipsey, Solicitor	€7,687
37. Morgan Shelly, B.L.	€2,190
38. Nicholas Russell, Solicitor	€21,915
39. Oluwafemi Daniyan, B.L.	€735
40. Patricia O'Connor, Solicitor	€8,640
41. Patricia O'Sullivan Lacy, B.L.	€13,157
42. Paul Kerrigan, Solicitor	€13,657
43. Rosemary Kingston O'Connell, Solicitor	€2,195
44. Sharon Dillon-Lyons, B.L.	€6,450
45. Shaun Smyth, B.L.	€14,242
46. Simon Brady, B.L.	€6,815
47. Stephen Boggs, B.L.	€15,877
48. Steven Dixon, B.L.	€26,738
49. Una McGurk, S.C.	€10,225
50. Zeldine O'Brien, B.L.	€3,482
Grand Total	**€527,641**

***

4. Summary of the Work of the Tribunal for 2020

[4.1] Overview

The Tribunal started the year with 1,558 appeals on hand. The number of appeals under the International Protection Act 2015 and European Union (Dublin System) Regulations 2018 submitted to the Tribunal reached a total of 1,255 in 2020, compared to a total of 2,043 such appeals reaching the Tribunal in 2019. The Tribunal ended the year with 1,655 appeals pending before it. Additionally, the Tribunal received 7 appeals under the European Communities (Reception Conditions) Regulations 2018 during the course of the year, amounting to a total of 1,262 appeals reaching the Tribunal in 2020.

The number of appeals scheduled for hearing in 2020 stood at 1,418, a marked decrease of from the 2,633 hearings scheduled in 2019, which was entirely due to the Covid-19 pandemic and necessary related public health measures.

Summary – Tribunal Caseload 2020

2020	
Appeals Received	1262
Cases Scheduled	1418
Decisions Issued	1087
Total Appeals Completed	1169
Live Appeals on Hand at Year End	1655

Summary – Types of Appeals received in 2020

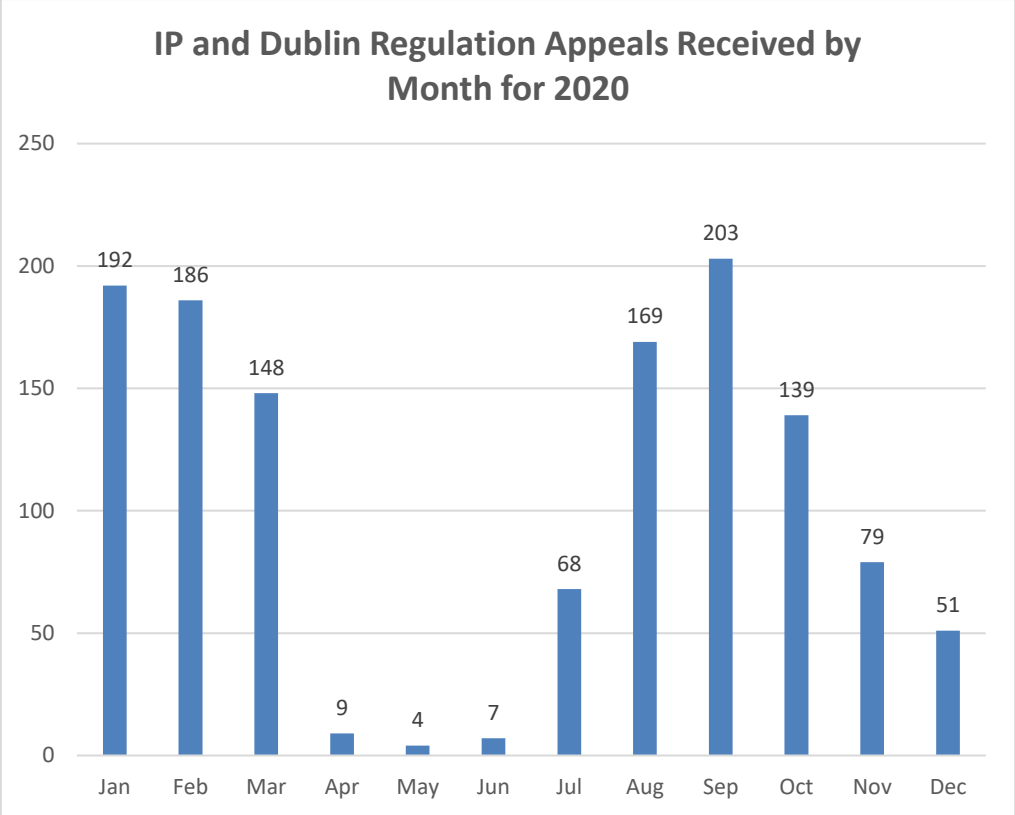
Appeal Type	Appeals Received
Substantive IP Appeal	690
Substantive IP Appeal Asylum only	57
Substantive IP Appeal SP only	3
SP Appeal Legacy	2
Accelerated IP Appeal	387
Dublin III	54
Inadmissible Appeal	15
Subsequent Appeal	47
Reception Conditions Appeal	7
Grand Total	**1262**

[4.2] Appeals Received

Tables 4.2.1. to 4.2.9. below set out the total number of appeals received by the Tribunal in 2020:

[4.2.1] International Protection Act and Dublin Regulation Appeals Received in 2020

Month	Appeal Received
Jan	192
Feb	186
Mar	148
Apr	9
May	4
Jun	7
Jul	68
Aug	169
Sep	203
Oct	139
Nov	79
Dec	51
Grand Total	**1255**



[4.2.2] Substantive International Protection Appeals Received

Month	Appeals Received
Jan	165
Feb	161
Mar	138
Apr	9
May	1
Jun	6
Jul	59
Aug	139
Sep	159
Oct	120
Nov	76
Dec	44
Grand Total	**1077**

[4.2.3] Substantive International Protection Appeals Received *(SP Only)*

Month	Appeals Received
Jan	0
Feb	1
Mar	1
Apr	0
May	0
Jun	0
Jul	0
Aug	0
Sep	0
Oct	0
Nov	1
Dec	0
Grand Total	**3**

[4.2.4] Substantive IP Appeal Received *(Refugee Status Only)*

Month	Appeals Received
Jan	15
Feb	10
Mar	2
Apr	0
May	0
Jun	0
Jul	5
Aug	0
Sep	17
Oct	5
Nov	1
Dec	2
Grand Total	**57**

[4.2.5] Legacy Subsidiary Protection Appeals Received (s.70(8))

Month	Appeals Received
Jan	0
Feb	0
Mar	0
Apr	0
May	0
Jun	0
Jul	0
Aug	0
Sep	2
Oct	0
Nov	0
Dec	0
Grand Total	**2**

[4.2.6] Dublin III Regulation Appeals Received

Month	Appeals Received
Jan	7
Feb	10
Mar	0
Apr	0
May	0
Jun	0
Jul	2
Aug	10
Sep	16
Oct	8
Nov	0
Dec	1
Grand Total	**54**

[4.2.7] Inadmissibility Appeals Received (s.21)

Month	Appeals Received
Jan	1
Feb	0
Mar	3
Apr	0
May	3
Jun	0
Jul	1
Aug	7
Sep	0
Oct	0
Nov	0
Dec	0
Grand Total	**15**

[4.2.8] Subsequent Appeals Received (s.22)

Month	Appeals Received
Jan	4
Feb	4
Mar	4
Apr	0
May	0
Jun	1
Jul	1
Aug	13
Sep	9
Oct	6
Nov	1
Dec	4
Grand Total	**47**

[4.2.9] Reception Conditions Appeals Received

Month	Appeals Received
Jan	3
Feb	1
Mar	1
Apr	0
May	0
Jun	0
Jul	0
Aug	0
Sep	0
Oct	0
Nov	2
Dec	0
Grand Total	**7**

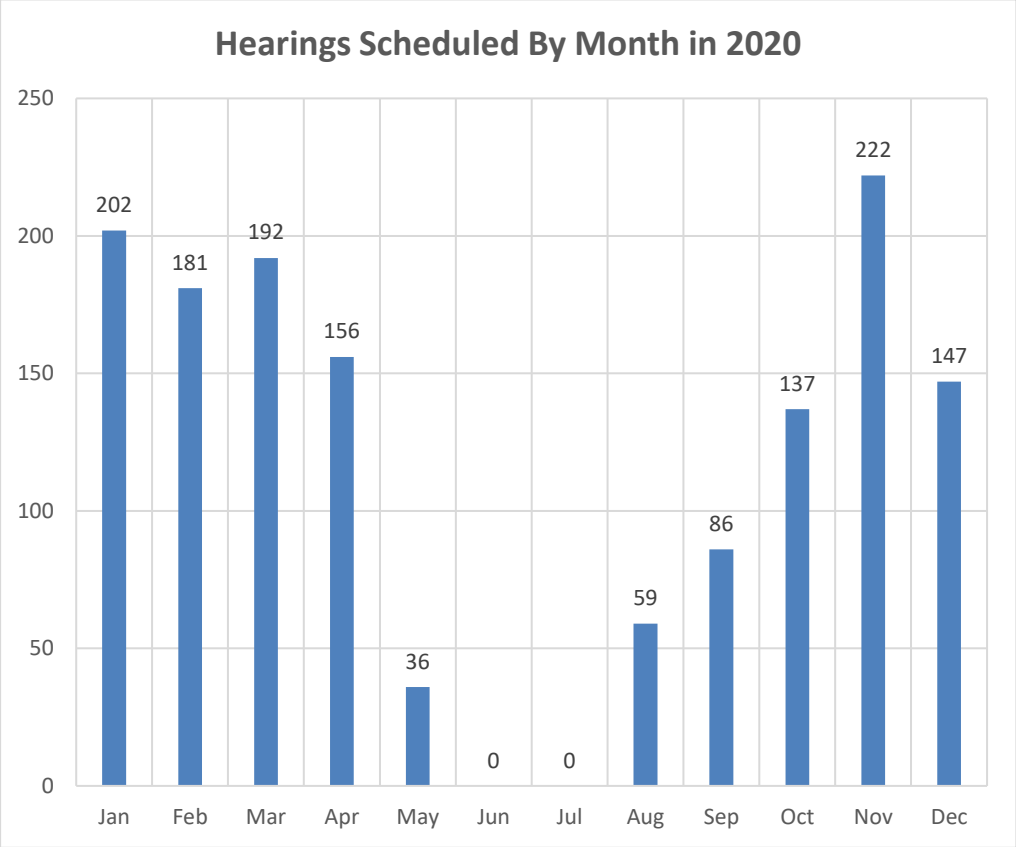
[4.3] Number of Appeals Scheduled for Hearing

The total number of appeals scheduled for hearing in 2020 was 1,418. However, it must be noted that the Tribunal had to postpone hearing that were scheduled or re-scheduled on a rolling basis due to restrictions resulting from Covid-19 control measures. The comparable figure for hearings scheduled in 2019 was 2,633.

Even in normal circumstances, when considering the Tribunal's scheduling rate, it must be borne in mind that, depending on a number of preliminary matters, including receipt of the relevant documentation pursuant to s.44(1) of the International Protection Act 2015, it takes a minimum of six weeks from the time an appeal is received to the time it is scheduled for hearing. This is also because the Tribunal is required to provide 20 working days' notice of a hearing date and time unless the parties have agreed to a shorter notice period. The restrictions resulting from the Covid-19 pandemic lead of course to further difficulties regarding the holding of hearings.

[4.3.1] Number of Hearings Scheduled in 2020

Month	No of Hearings Scheduled
Jan	202
Feb	181
Mar	192
Apr	156
May	36
Jun	0
Jul	0
Aug	59
Sep	86
Oct	137
Nov	222
Dec	147
Grand Total	**1418**



[4.4.] 'No Shows' and Withdrawals/Deemed Withdrawals

2020	No of Appeals
No Shows	22
Appeals Withdrawn/Deemed Withdrawn	82

No Shows

Where an applicant fails, without reasonable cause, to attend an oral hearing at the date and time fixed for the hearing and fails, within 3 working days from the date of the scheduled hearing, to furnish the Tribunal with an explanation for not attending the hearing, which the Tribunal considers reasonable in the circumstances, the appeal will be deemed withdrawn pursuant to s.45(2) of the International Protection Act 2015.

In 2020, the number of 'no shows' was 22. It must be noted the impact of scheduled and rescheduled hearings due to postponements resulting from Covid-19 related control measures makes comparisons with previous reporting years difficult.

Withdrawals/Deemed Withdrawals

In 2020, the number of appeals withdrawn or deemed withdrawn was 82. For comparative purposes the Tribunal is measuring this figure against the total appeal caseload for 2020, which was 2,820 (1,558 on hand 1st January 2020 + 1,262 new appeals received in 2020). When this is applied, the total number of appeals withdrawals or deemed withdrawals represents *2.9%* of the total appeal caseload for 2020.

Applying the same approach to 2019, the total appeal caseload was 3,608 (1,544 on hand 1st January 2019 + 2,064 new appeals received in 2019). When this is applied, the total number of appeals withdrawals or deemed withdrawals represented *6.5%* of the total appeal caseload for 2019.

Generally, an applicant may withdraw his or her appeal at any stage of the process for a variety of reasons. In the event of a withdrawal, the original recommendation of the International Protection Officer stands and the Minister for Justice will proceed to making a decision under s.47 of the International Protection Act 2015.

Additionally, where in the opinion of the Tribunal an applicant has failed, or is failing, in his or her duty to co-operate, or the Minister notifies the Tribunal that he or she is of the opinion that the applicant is in breach of paragraph (a), (c) or (d) of s.16(3) of the International Protection Act 2015, and the applicant has not – within 10 working days – confirmed in writing that he or she wishes to continue with his or her appeal, the Tribunal shall deem the appeal to have been withdrawn.

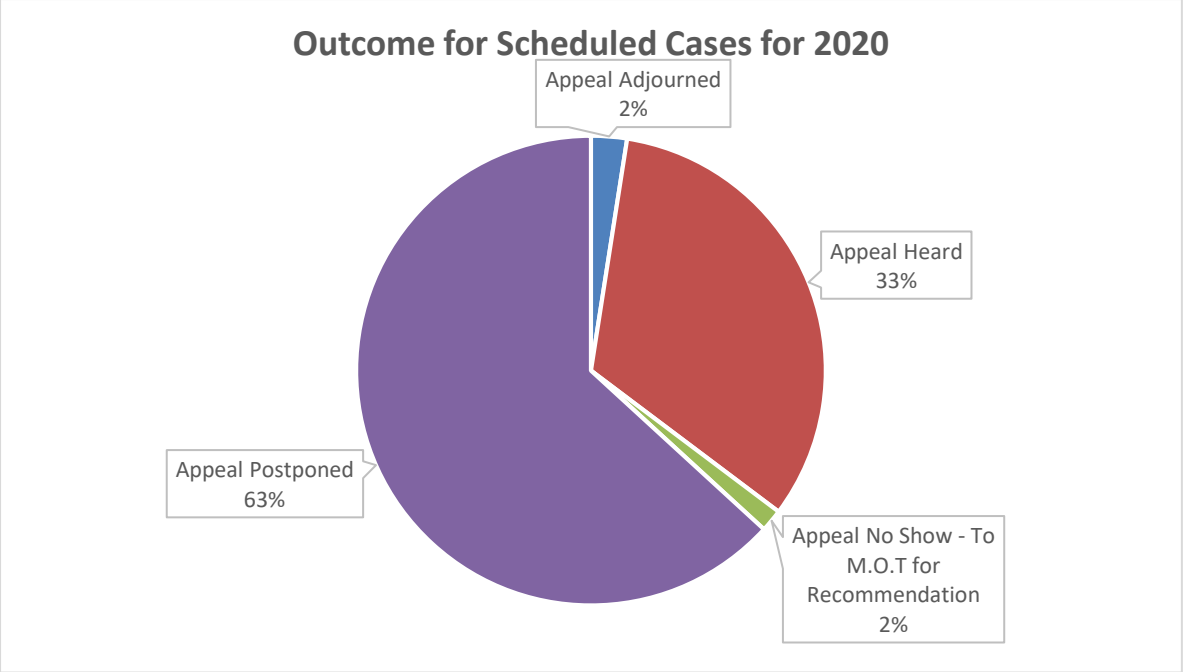
[4.5] Postponements and Adjournments

A postponement occurs where it is necessary for a variety of reasons and may be prompted by either party or by the Tribunal itself. The parties to the hearing are informed as soon as possible in advance of the hearing date of any postponement. However, on occasion, hearings have to be postponed on the day of the hearing, for example where no interpreter or no suitable interpreter has been made available to facilitate appropriate communication at the hearing between appellants and their legal representatives, the Tribunal and the representative of the Minister at the hearing.

Adjournments can occur in situations where a hearing has started but cannot be completed for a variety of reasons. In such a situation, the hearing will resume at a later date. The adjournment of hearings is regulated in regulation 9 of the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017, which provides that the Tribunal may adjourn a hearing to a specified date where it is satisfied that it is in the interests of justice to do so.

[4.5.1] Number of Postponements and Adjournments

2020	No of Appeals
Adjournments	35
Postponements	896
Grand Total	**931**



[4.6] Total number of decisions issued in 2020

The number of decisions issued by the Tribunal in 2020 totalled 1087

[4.6.1] Total number of decisions issued

Month	Decisions Issued
Jan	167
Feb	176
Mar	104
May	24
Jun	163
Jul	158
Aug	42
Sep	54
Oct	68
Nov	79
Dec	52
Grand Total	**1087**

[4.6.2] Total number of substantive 'Single Procedure' International Protection Decisions issued

Month	Decisions Issued
Jan	128
Feb	147
Mar	94
May	22
Jun	142
Jul	135
Aug	29
Sep	44
Oct	58
Nov	65
Dec	39
Grand Total	**903**

[4.6.3] Total number of 'Refugee Status only' decisions issued under the transitional provisions of the International Protection Act 2015 (s.70(7))

Month	Decisions Issued
Feb	1
Mar	2
May	1
Jun	3
Jul	1
Aug	4
Sep	3
Grand Total	**15**

[4.6.4] Total number of 'SP only' decisions issued under the transitional provisions of the International Protection Act 2015 (s.70(5))

Month	Decisions Issued
Feb	3
Jul	1
Grand Total	**5**

[4.6.5] Total number of 'SP only' decisions issued under the transitional provisions of the International Protection Act 2015 (s.70(8))

Month	Decisions Issued
Jan	3
Feb	3
Mar	1
Jun	1
Jul	3
Aug	1
Sep	1
Oct	1
Dec	1
Grand Total	**15**

[4.6.6] Total number of Dublin III Regulation decisions issued

Month	Decisions Issued
Jan	29
Feb	21
Mar	3
May	1
Jun	11
Jul	12
Aug	4
Sep	4
Oct	4
Nov	9
Dec	4
Grand Total	**102**

[4.6.7] Inadmissibility Appeals (s.21) decisions issued

Month	Decisions Issued
Jan	3
Jun	3
Jul	2
Aug	2
Sep	2
Oct	3
Nov	2
Dec	2
Grand Total	**19**

[4.6.8] Appeals against refusal to permit subsequent application (s.22) decisions issued

Month	Decisions Issued
Jan	3
Mar	3
Jun	3
Jul	4
Aug	2
Oct	1
Nov	3
Dec	5
Grand Total	**24**

[4.6.9] Reception Conditions Appeals decisions issued

Month	Decisions Issued
Jan	1
Feb	1
Mar	1
Apr	0
May	0
Jun	0
Jul	0
Aug	0
Sep	0
Oct	0
Nov	0
Dec	1
Grand Total	**4**

[4.7] Appeals on Hand at 31st December 2020

A total of 1685 appeals were on hand on the 31st of December 2020.

Summary of pending appeals at 31st December 2020

Row Labels	Appeals
Substantive IP Appeal	1083
Accelerated IP Appeal	366
Dublin III	65
Substantive IP Appeal Asylum only	55
Subsequent Appeal	40
Inadmissible Appeal	24
SP Appeal	13
Substantive IP Appeal SP only	9
Reception Condition Appeals	3
Grand Total	**1658**

[4.8] Length of Appeal Process

Under the lead of the Tribunal Registrar, the efficiency of the Tribunal's administration continued to increase up until mid-March 2020, and the Tribunal made further significant progress in reducing appeal processing times. These improvements were greatly supported by the Department of Justice through the timely assignment of staff to the Tribunal, and they could not have been achieved without the professional input from our committed and highly qualified Tribunal Members.

- Overall, the impact of the Covid-19 pandemic has severely affected the Tribunal's operations and has prevented it from achieving its objective of increasing output and shortening processing times.

- However, overall processing times did reduce throughout 2020, which was based on lower numbers of decisions issuing: The median processing time for the year 2020, for appeals was 31 weeks, and the average processing time for was 28 weeks for the total of 1,087 decisions issuing.

- The average length of time taken by the Tribunal to process and complete substantive international protection appeals in 2019 was approximately 170 working days (or approximately 34 weeks) for the 1,944 decisions that issued in that year.

The Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, published in October 2020,[6] recommended that shorter processing times for international protection applications must be set with binding deadlines for different stages in the process. The Group recommended a 6-month processing time for the appeals stage of the process; and the Tribunal is committed to setting this as a priority target for 2021 and beyond.

[6] Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, 21st October 2020.

Average and Median Processing Time in Weeks for Decisions in 2020 from Appeal Accepted Date to Appeal Decision Date		
Appeal Type	**Average**	**Median**
Accelerated IP Appeal	31	35
Dublin III	38	42
Inadmissible Appeal	22	19
Subsequent Appeal	19	19
Substantive IP Appeal	27	34
Substantive IP Appeal - Asylum only	26	26
Total	**28**	**31**

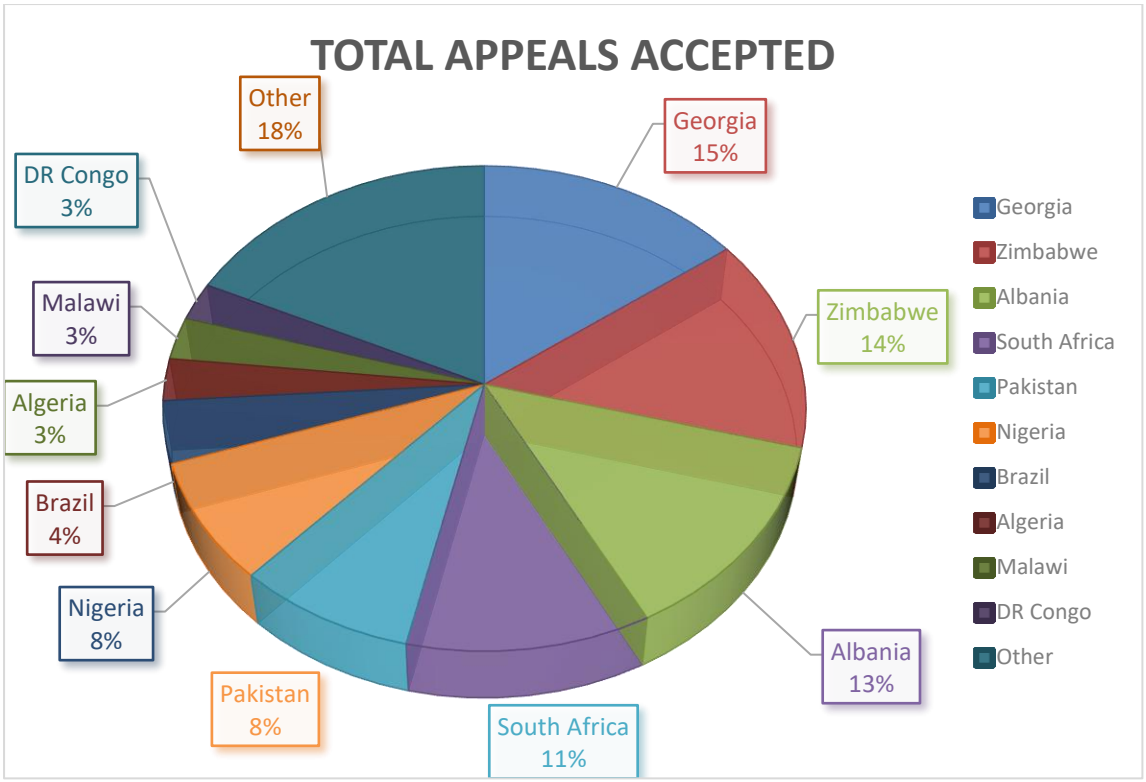
Average and Median Processing Time in Weeks for Appeals Lodged in 2020 and with Decisions in 2020 only from Appeal Accepted Date to Appeal Decision Date		
Appeal Type	**Average**	**Median**
Accelerated IP Appeal	31	35
Dublin III	38	42
Inadmissible Appeal	22	19
Subsequent Appeal	20	20
Substantive IP Appeal	33	36
Substantive IP Appeal - Asylum only	26	26
Total	**30**	**31**

[4.9] Country of Origin of Applicants 2020

The highest proportion of substantive appeals received by the Tribunal in 2020 were from Zimbabwean and Pakistani nationals, followed by Nigerian nationals.

[4.9.1] Substantive International Protection Appeals accepted in 2020 by country of origin.

Nationality	Total Appeals Accepted	Total %
Georgia	169	15%
Zimbabwe	163	14%
Albania	150	13%
South Africa	128	11%
Pakistan	94	8%
Nigeria	91	8%
Brazil	47	4%
Algeria	32	3%
Malawi	32	3%
DR Congo	29	3%
Other	204	18%
Grand Total	**1139**	**100%**



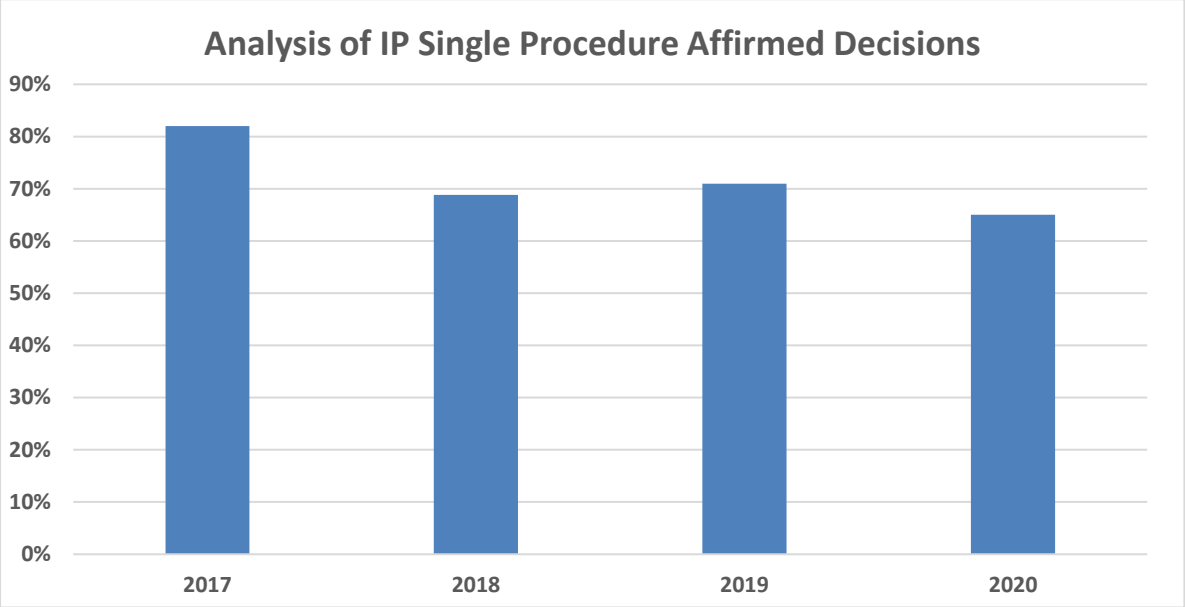
[4.10] Outcome of Appeals

Tables 4.10.1 to 4.10.8. below show the number of recommendations made at first instance which were affirmed / set aside on appeal by the Tribunal in 2020. These figures do not include withdrawals or abandoned cases.

[4.10.1] International Protection Single-Procedure Appeals 2020

International Protection Appeals 2020			
Granted/Set Aside – Asylum	**Granted/Set Aside - Subsidiary Protection (SP)**	**Total Affirmed**	**Total Decisions**
240	18	482	740
32%	3%	65%	100%

[4.10.2] Analysis of single procedures International Protection recommendations affirmed in 2020



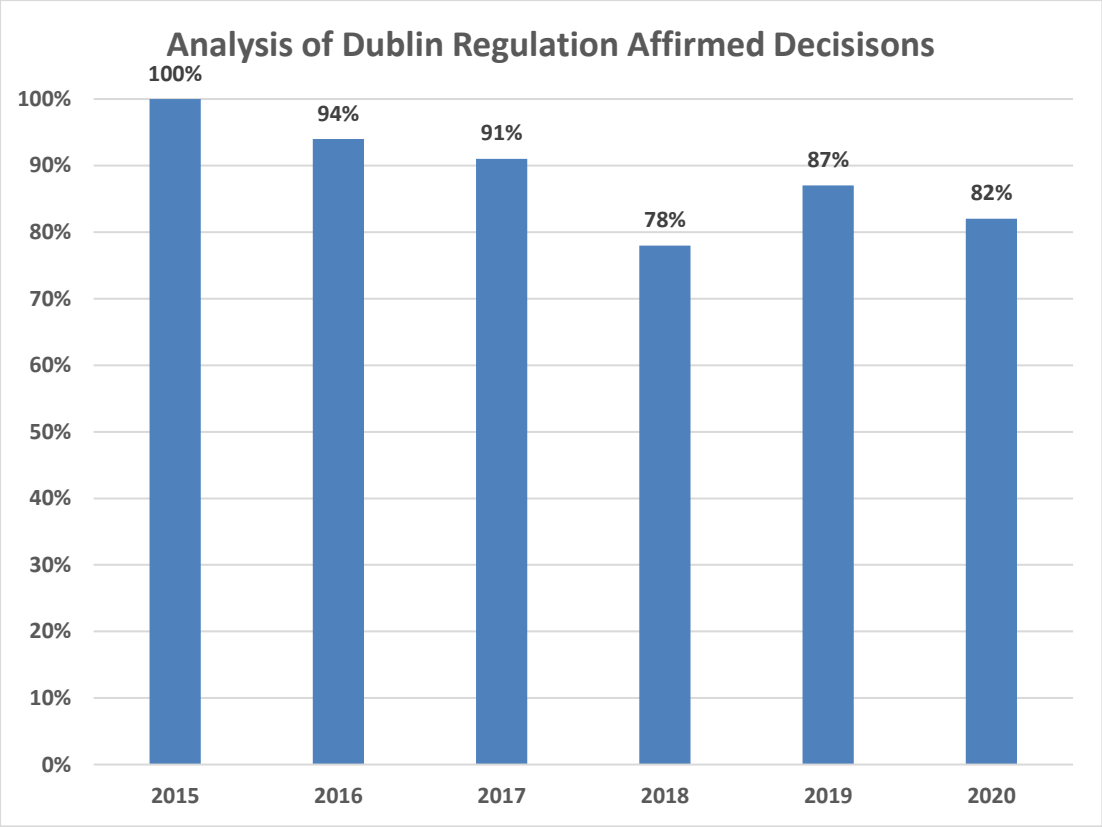
[4.10.3] Summary of International Protection Appeals accepted in 2020 by country of nationality – affirmed and set aside from 1st January 2020 to 31st December 2020

Nationality	Grand Total	Granted/Set Aside	Refused/Affirmed	Set Aside % of Total Decisions	Affirmed % of Total Decisions
Pakistan	129	34	95	26%	74%
Albania	118	34	84	29%	71%
Georgia	113	11	102	10%	90%
Zimbabwe	109	55	54	50%	50%
South Africa	74	15	59	20%	80%
Nigeria	64	24	40	38%	63%
DR Congo	48	25	23	52%	48%
Bangladesh	37	13	24	35%	65%
Algeria	33	1	32	3%	97%
Malawi	30	11	19	37%	63%
Other	168	61	107	36%	64%
Grand Total	**923**	**284**	**639**	**31%**	**69%**

[4.10.4] Dublin Regulation Decisions affirmed and set aside in 2020

Appeal Type	Affirmed		Set Aside		Total	
	No of Decisions	%	No of Decisions	%	No of Decisions	%
Dublin III	84	82%	18	18%	102	100%

[4.10.5] Analysis of Dublin Regulation Decisions 2015 to 2020



[4.10.6] Summary of Dublin III Appeals, by country of nationality, affirmed and set aside from 1st January 2020 to 31st December 2020

Nationality	Decisions			
	Affirmed	Set Aside	Grand Total	Set Aside %
Albania	21	3	24	13%
Afghanistan	8	3	11	27%
Nigeria	15	1	16	6%
Somalia	12	2	14	14%
Iraq	4	1	5	20%
Algeria	3	2	5	40%
Pakistan	2	3	5	60%
Georgia	2	2	4	50%
Morocco	3	0	3	0%
South Africa	3	0	3	0%
Sudan	2	0	2	0%
Chad	0	1	1	100%
Egypt	1	0	1	0%
Kenya	1	0	1	0%
Lebanon	1	0	1	0%
Lesotho	1	0	1	0%
Mauritania	1	0	1	0%
Mauritius	1	0	1	0%
Ukraine	1	0	1	0%
Venezuela	1	0	1	0%
Zimbabwe	1	0	1	0%
Grand Total	**84**	**18**	**102**	**18%**

[4.10.7] Inadmissibility decisions affirmed (s.21)

Appeal Type	Refused/Affirmed	% Refused/Affirmed
Inadmissible Appeal	17	89%

[4.10.8] Subsequent application decisions affirmed (s.22)

Appeal Type	Refused/Affirmed	% Refused/Affirmed
Subsequent Appeal	15	63%

[4.11] Reception Conditions Appeals

In 2020, 7 appeals were received pursuant to Regulation 21 of the European Communities (Reception Conditions) Regulations 2018. However, only 5 appeals were accepted – the other 2 appeals were incomplete in that documents were missing and, despite correspondence from the Tribunal seeking such documents, they were not furnished.

Of the appeals which were accepted:

- 4 decisions affirmed the decision of the Review Officer made under Regulation 20:

  I. 2 were affirmed on the basis that the first instance decisions on the international protection applications were made within 9 months, and
  II. the other 2 decisions were affirmed on the basis that the delays in question were attributable to the appellants themselves;

- 1 decision was "stayed" pending the ruling of the Court of Justice of the European Union in the first preliminary reference made by the International Protection Appeals Tribunal pursuant to Article 267 of the Treaty on the Functioning of the European Union.

On 3rd September 2020, Advocate General de la Tour delivered his opinion in the preliminary reference made by the Tribunal on 16 May 2019 (C-385/19, linked with the preliminary reference made by the High Court in C-322/19).[7]

[7] See: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62019CC0322&qid=1615466911675&from=EN

The Advocate General proposed that the first question referred by the Tribunal be answered as follows:

> *Article 15(1) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection must be interpreted as precluding legislation of a Member State under which an applicant for international protection may be refused access to the labour market on the ground that the competent national authority has adopted a decision to transfer him or her, pursuant to Article 26 of Regulation No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.*
>
> *The adoption of such a decision cannot have the effect of depriving a third-country national or a stateless person who has lodged an application for international protection in the host Member State of the status of applicant or the rights associated therewith.'*

He proposed that the second question referred by the Tribunal be answered as follows:

> *Article 15(1) of Directive 2013/33 must be interpreted as meaning that a Member State may attribute to an applicant for international protection the delay in adopting a decision at first instance only in so far as the applicant has failed to fulfil his or her cooperation obligations under Article 13 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection*

The full judgment in Joined Cases C-322/19 and C-385/19, *K.S., M.H.K. v The International Protection Appeals Tribunal, The Minister for Justice and Equality, Ireland, The Attorney General* (C-322/19), and *R.A.T., D.S. v Minister for Justice and Equality* (C-385/19), was delivered on 14th January 2021.[8]

[8] https://curia.europa.eu/juris/document/document.jsf;jsessionid=2CEE0DD133BEFFCEC55ADF5E51192DD4?text=&docid=236427&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=438107

5. Strategic Engagement, Training and Knowledge Management

[5.1] Strategic engagement with other organisations

It is a specific objective of the Tribunal to develop and maintain good working relations with other stakeholders working in the international protection area as well as with other organisations whose work is relevant to the Tribunal. The Tribunal has continued this policy in 2020. Meetings were held and the Tribunal engaged, mainly online, with each of the following organisations, among others, during the year.

- Department of Justice
- International Protection Office
- Office of the Chief State Solicitor
- Office of the Attorney General
- Law Society of Ireland
- Bar Council of Ireland
- Legal Aid Board
- Office of the United Nations High Commissioner for Refugees (UNHCR)
- EASO, European Asylum Support Office
- EJTN, European Judicial Training Network
- IARMJ, International Association of Refugee and Migration Law Judges
- EMN, European Migration Network
- SPIRASI, Spiritan Asylum Services Initiative
- ACESA, Association of Chief Executives of State Agencies

Moreover, in the last quarter of 2020, the Tribunal commenced stakeholder consultations in line with its obligations under the *Code of Practice for the Governance of State Bodies* to have a formal process in place for setting strategy. The new Statement of Strategy will be adopted for the three year period 2021 to 2023.

UNHCR facilitated visit of Turkish delegation

On 10th and 11th March 2020, a delegation of Turkish Judges, lawyers and departmental officials arrived in Dublin as part of a visit arranged by UNHCR. The

Tribunal hosted part of their visit over two days, including a tour of the Tribunal premises, the hearing rooms and the Registry area, explaining the processes and procedures which operate within the Tribunal. On both afternoons, Tribunal Members, with the consent of appellants, facilitated the visitors by allowing them to observe hearings. On 11th March, the Tribunal Chairperson and Deputy Chairpersons presented the work of the Tribunal and provided an overview of the Irish international protection process and engaged in discussions with the delegation. Hilkka addressed the delegation on the legal framework and jurisdiction of the Tribunal and gave an overview of the Tribunal and its jurisdictions.

[5.2] Training for Members and Statutory Meeting

Training half day on 17th July 2020

As the first of two annual compulsory trainings for Tribunal Members, training was delivered on the following topics:

- File and Hearing Preparation;
- 'The Online Hearing Room', a practical presentation which paved the way for further training on Audio-Video hearings which would take place later in the year;
- A short video of a remote hearing, produced by the Tribunal itself, was shown and discussed.

Training on A/V hearings

During late October and early November, Members attended two part training in relation to Audio-Video Hearings.

- The first part was organised with the UK Judiciary who facilitated Members in observing their virtual hearings. As an added bonus, the UK Judges invited Members to an online Q&A session where the UK Judges described their experiences of virtual hearings and Members could ask questions.
- The second part of the training was delivered by the Tribunal itself. Members were shown how the system would work, and were furnished with the Tribunal protocol and technical guidance documents.

Training Day 4th December

The Tribunal held its second annual compulsory training day on 4th December 2020, via Zoom. The theme of the day was evidence and credibility based assessment. The following training was delivered:

1. Assessing credibility;
2. Lessons learned from litigation against the Tribunal and from the Quality Audit;
3. Bias.

Annual Statutory Meeting

The Tribunal's annual statutory meeting was held immediately followed the training day on 4th December 2020.

External Training Events

One result of the current pandemic is that the Tribunal had opportunities to attend events which would otherwise not be possible. Training events included:

- Judge as Communicator (UK Judicial Training College);
- Online meeting of the EASO Judicial Trainers Pool;
- Managing a Court, During a Pandemic. (US Judiciary);
- SOGI and Religion based claims (UNHCR Switzerland);
- Second Annual Conference of the Immigration, Asylum and Citizenship Bar Association (IACBA)

Resilience

As part of judge-craft training for Members and also in light of the stress of the pandemic, materials on resilience were regularly provided to Tribunal Members and staff of the Tribunal with suggestions on how to manage stress and foster good mental and physical health.

Lunch & Learn

Regular Lunch & Learn sessions for Tribunal Members and staff are an important part of life at the Tribunal, and these resumed in May 2020 via Zoom, with the following issues being addressed throughout the year:

- Findings from the Quality Audit;
- Plausibility, demeanour and the applicability of section 28(7) of the International Protection Act 2015;
- Country of origin information.

During one of the Lunch and Learn sessions, Members and staff used this opportunity to raise funds for Pieta House, with a total of €290 being raised by the Tribunal.

[5.3] International Association of Refugee and Migration Judges (IARMJ)

IARMJ plays a central role in the preparation of materials for the European Asylum Support Office (EASO) Professional Development Series for members of courts and tribunals.

Chairperson Hilkka Becker and Deputy Chairperson John Stanley are on the Editorial Board for the IARMJ, while part-time Member Mark Byrne is on the reserve panel for the Editorial Board.

The Tribunal Chairperson is also the Rapporteur of the IARMJ Working Party on Membership of a Particular Social Group, Deputy Chairperson Cindy Carroll is a member of the IARMJ Working Party on Judicial Resilience, while Whole-Time Member Shauna Gillan is a member of the IARMJ Working Group on Human Rights.

[5.4] European Asylum Support Office (EASO)

The Tribunal actively engages with the EASO, which is based in Malta, participating in and delivering judicial training through professional development workshops. A number of Members were selected to attend judicial training at EASO in Malta throughout the year 2020, which predominantly took place online.

A total of eight Tribunal Members are now part of the pool of Judicial Trainers of EASO. Moreover, the Chairperson of the Tribunal is the National Contact Point for the EASO Network of Courts and Tribunals and participates on a regular basis in the annual coordination and planning meeting and other activities of the Network.

[5.5] Tribunal Users Group

The Tribunal Users Group was established in 2014 to meet and discuss proposals around practice and procedure put forward by the Tribunal and to provide an opportunity for legal representatives to give feedback to the Tribunal on issues of

concern. The Group consists of two nominees each from the Law Society of Ireland and the Bar Council of Ireland, the Chairperson of the Tribunal and its two Deputy Chairpersons as well as the Tribunal Registrar. There were no meetings of the group in 2020. However, the external stakeholder representatives were consulted in the context of the Tribunal's strategy development for the period 2021 which commence in the last quarter of 2020.

[5.6] Innovation in Service Delivery

Two major innovative projects were developed and implemented by the Tribunal in 2020:

(1) Electronic Signatures

The first project was the Electronic Signature Project. A Project Team was set up and there was considerable liaison with the Department of Justice's IM&T section. Since January 2021, Members are able to sign their decisions electronically and upload them into the system, thus obviating the need for Members to travel to the Tribunal premises to sign decisions.

(2) Audio-Video Hearings

During the summer of 2020, a Working Group was set up to establish protocols and procedures for conducting Tribunal hearings via an online platform. Feedback on the introduction of audio-video (A/V) hearings had been sought from legal practitioners, and addressing the issues and concerns raised in that feedback formed the basis of the Tribunal protocol and technical guides. Members received training and the first A/V hearing was held on 3rd November 2020. Following the coming into operation of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Section 31) (International protection Appeals Tribunal) (Designation) Order 2020 (S.I.715/2020), the Tribunal is now able to make greater use of A/V hearings, where necessary due to Covid-19 restrictions or otherwise, in order to ensure that the business of the Tribunal is carried out as efficiently as may be consistent with fairness and natural justice, and in so far as a hearing using A/V technology is not contrary to fairness and natural justice in any particular case (as required by the Act).

[5.7] Publications

Internal:

On 24th February 2020, the Tribunal published **Chairperson's Guideline No. 2020/1: 'Code of Conduct and Rules on Conflicts of Interest'**.

The Tribunal updated its **Administrative Practice Note** on 31st July 2020, to provide further clarity for Tribunal users during the Covid-19 pandemic.

And a note on the CJEU judgment regarding the applicability of inadmissibility criteria to persons granted subsidiary protection in another EU Member State in Case C-616/19, *M.S., M.W., G.S. v Minister for Justice and Equality*, was published on the Tribunal's website on 10th December 2020. This note can be found here.

External:

Moreover, individual Tribunal Members authored and contributed to publications in the area of international protection law.

- Part-time Member Christopher Hughes had a book published in January 2020. *The International Protection Act 2015* by Christopher Hughes and Stephen Hughes is available through Clarus Press and as well as in many bookshops and online sites.

- Deputy Chairperson Cindy Carroll had an article about the Tribunal published in the UK Tribunals Journal, Edition 1, 2020 at pages 19-24. The article, entitled *"The International Protection Appeals Tribunal: A close cousin of the Judiciary?"* can be accessed here.

- Deputy Chairperson John Stanley was the lead expert in the development of the Judicial analysis on *'Vulnerability in the context of applications for international protection*', EASO Professional Development Series for members of courts and tribunals (Produced by IARMJ-Europe under contract to EASO) (2021). This publication can be accessed here.

- Chairperson, Hilkka Becker was a co-author and editor of *'Exclusion: Articles 12 and 17 Qualification Directive (2011/95/EU) – A judicial analysis'* (2nd Edition), produced by the International Association of Refugee and Migration Judges European Chapter (IARMJ-Europe) under contract to the European Asylum Support Office (EASO) (2020). This publication can be accessed here.

[5.8] Internships

Interns in the International Protection Appeals Tribunal

From January 2020 until July 2020, the Tribunal facilitated an intern placement through a programme operated by the Department of Justice. The intern, who is a graduate of Dublin City University, carried out a number of research projects for the Tribunal, onsite until March 2020 and then working remotely during lockdown.

The Tribunal facilitated 2 summer interns, one from University College Dublin and one from University College Cork. Both interns worked remotely, carrying out research for the Tribunal in relation to audio-video hearings, by looking at case-law from other jurisdictions.

The Tribunal has benefitted from having interns on board as part of its research team.

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6. Tribunal Customer Commitments

[6.1] Customer Service

Covid-19 control measures significantly impacted on the operations of the Tribunal throughout the year. This resulted in the closure of the offices to customers, the suspension of on-site appeal hearings for significant periods of the year in line with government guidance and plans, including the *Resilience and Recovery 2020-2021: Plan for Living with COVID-19* first published in September 2020.

Generally, in normal circumstances, the office is open 5 days a week, including lunchtime, and is open to personal callers between the hours of 8.45am and 5.30pm Monday to Friday. A telephone enquiry service (tel. 01-4748400) is provided daily from 9.15am - 5.30pm (5.15pm on Fridays). The Tribunal is committed to providing a high standard of customer service as set out in our customer service charter. Covid-19 control measures meant that, in observing public health guidance, the Tribunal introduced staggered staff work patterns with more reliance on electronic communications. Throughout the year, the Tribunal communicated regular updates through direct communication with customers, on its website and through social media channels.

The Tribunal's Administrative Practice Note, first published in April 2019, was updated in July 2020, to provide further clarity for Tribunal users during the Covid-19 pandemic. The Administrative Practice Note is designed to assist appellants and their legal representatives in the practices and procedures of the Tribunal in a clear, user-friendly way.

[6.2] Data Protection

In line with the Data Protection Act 1988, the Tribunal is registered with the Data Protection Commissioner as a data controller. The Tribunal is fully compliant with the General Data Protection Regulation (EU 2016/679) and corresponding national legislation since its implementation on the 25th of May 2018.

[6.3] Health and Safety

The Health and Safety Statement for the Tribunal is included in the Department of Justice's Health and Safety Statement which also covers its immigration and international protection areas.

As previously stated in this report, the Covid-19 pandemic impacted significantly on the Tribunal not least in relation to health and safety requirements. Contingency plans were drawn up by Tribunal's senior management team on how best the Tribunal can conduct its business in light of the Covid-19 pandemic and government plans under a number of scenarios.

The Tribunal is satisfied that its contingency plans can be adjusted to the level of any easing or indeed the further tightening of restrictions. Advice and guidance was received from the Department of Justice Health and Safety Manager in October 2020 that on-site hearings on the Tribunal's premises would continue during Level 4 restrictions but would cease at Level 5. The Tribunal continuously engaged with the Department to meet the requirements of the *Return to Work Safely Protocol* and general advices from Government. The Department of Justice Health and Safety Manager engaged with the Tribunal, providing occupational risk assessments, health and safety reviews and recommendations throughout the year, assisting the Tribunal in dealing with Covid-19 restrictions and enabling it to continue its operations throughout the year.

[6.4] Ethics in Public Office Act, 1995

The Chairperson and Registrar of the Tribunal are subject to the requirements of the 1995 Act. All relevant staff holding prescribed positions are made aware of their obligations under the Ethics in Public Office Acts 1995 to 2001 and have complied with the requirements.

[6.5] Freedom of Information Act, 2014

The Tribunal is covered by the provisions of the Freedom of Information Act, 2014. Further details are available on the Tribunal's website. FOI requests can be submitted to FOIRequests@refappeal.ie.

[6.6] Child Safeguarding

The International Protection Appeals Tribunal is committed to maintaining the highest standards of child safeguarding, in line with all relevant legislation including the Children First Act 2015 and informed by best practice including Children First: National Guidance for the Protection and Welfare of Children (2017 edition) as published by the Department of Children and Youth Affairs. Further details are available on the Tribunal's website.

[6.7] Public Sector Equality and Human Rights Duty

Section 42 of the Irish Human Rights and Equality Commission Act 2014 establishes a positive duty on public bodies to have regard to the need to eliminate discrimination, promote equality and protect the human rights of staff and persons to whom services are provided. In particular, the Tribunal has had regard to its obligations under s.42 of the Act to:

- assess and identify human rights and equality issues relevant to its functions; and
- identify the policies and practices that are in place/ will be put in place to address these issues.

This will form part of the Tribunal's preparations of its Strategy Statement 2021 – 2023.

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Appendix 1

Appeals Process: Procedures

1. Introduction

The Tribunal deals with five types of appeals:

(1) substantive international protection appeals (including accelerated substantive international protection appeals);
(2) appeals against recommendations to deem an application for international protection inadmissible;
(3) appeals against recommendations that a subsequent application for international protection not be allowed;
(4) 'Dublin III transfer' appeals; and
(5) appeals against decisions relating to reception conditions of applicants for international protection.

The Tribunal's jurisdiction for appeal types (1), (2) and (3) is provided by the International Protection Act 2015. The Tribunal's jurisdiction for appeal type (4) is provided by the International Protection Act 2015 and the European Union (Dublin System) Regulations 2018. The Tribunal's jurisdiction for appeal type (5) is provided by the European Communities (Reception Conditions) Regulations 2018. The latter regulations are a notable innovation in 2018, and bear a brief discussion.

The commencement of the European Communities (Reception Conditions) Regulations 2018 on the 30th of June 2018, extended the Tribunal's remit to deal with appeals against decisions by the Minister for Justice to refuse to grant or to renew a labour market access as well as against a decision to withdraw such access. Furthermore, the Tribunal now has jurisdiction to decide appeals against decisions taken by the Minister for Justice in relation to the provision, withdrawal or reduction of material reception conditions such as housing, food and associated benefits in kind, the daily expenses allowance, and clothing provided by way of financial allowance under the Social Welfare Consolidation Act 2005. Moreover, the Tribunal has the jurisdiction to decide appeals against decisions of the Minister for Employment Affairs

and Social Protection to vary material reception conditions where a recipient of such conditions is in receipt of an income.

The following is an outline of the main features of the various appeals' procedures:

Substantive International Protection Appeals - Oral Hearing

A substantive international protection appeal is one where the applicant may seek an oral hearing pursuant to s.42(1)(a) of the International Protection Act 2015. The hearing occurs before a Member of the Tribunal and generally involves the applicant and his/her legal representative, an interpreter and an officer of the Minister (hereinafter referred to as 'Presenting Officer'). Furthermore, in addition to the examination and cross-examination of the application, the Tribunal is obliged, pursuant to s.42(6)(f) of the Act, to allow for the examination and cross-examination of any witnesses. Experience to date shows that on average an oral hearing takes a minimum of 1½ - 2 hours. Section 42(4) of the Act requires that an oral hearing be held in private. However, the UNHCR can attend for the purposes of observing the proceedings (s.42(5) of the Act). In the event that an oral hearing is not sought, the substantive appeal will be decided on the papers by the Tribunal, unless the Tribunal is of the opinion that it is in the interest of justice to hold an oral hearing.

Accelerated International Protection Appeals - No Oral Hearing

These arise where the report of the report of an International Protection Officer pursuant to s.39 of the International Protection Act 2015 includes any of the findings referred to in s.39(4) of the Act. Such appeals are determined without an oral hearing, unless the Tribunal considers it not in the interest of justice not hold an oral hearing (s.43(b)) and have shorter time limits for lodging the Appeal.

Dublin System Appeals

Dublin appeals arise under the European Union (Dublin System) Regulations 2018, SI No. 62 of 2018, which came into operation on 9 March 2018.

The 2018 Regulations give effect to the Dublin III Regulation in Irish law. Regulation 10 of the 2018 Regulations provides for the transfer of persons from the State to the Member State responsible under the Dublin III Regulation for receiving the person. Regulation 19 contains provisions in relation to the Tribunal.

It should be noted that following the disbanding of the Refugee Applications Commissioner with the International Protection Act 2015's repeal of the Refugee Act 1996 there was no transitional provision in those regulations transferring the Commissioner's jurisdiction to make a transfer decision to another body. Consequently, although transitional provisions in the International Protection Act 2015 transferred this jurisdiction to the Tribunal, there were only a limited number of 'legacy' Dublin appeals before the Tribunal in 2017 under the previously applicable Dublin System Regulations (i.e., the European Union (Dublin System) Regulations 2014, S.I. No. 525 of 2014), before the making of the 2018 Regulations.

Inadmissibility Appeals

Section 21 of the International Protection Act 2015 gives effect to Article 25 of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status. It provides that a person may not make an application for international protection where the application is deemed inadmissible. Where an International Protection Officer at first instance is of the opinion that an application is inadmissible he/she must recommend that the Minister deem the application inadmissible.

The decision of the International Protection Officer on admissibility is appealable to the Tribunal under s.21(6) of the International Protection Act 2015. Pursuant to s.21(7), appeals to the Tribunal on admissibility must be determined without an oral hearing.

Provisions such as those contained in s.21 of the International Protection Act 2015 were not contained in the Refugee Act 1996, the European Communities (Eligibility for Protection) Regulations 2006 or the European Union (Subsidiary Protection) Regulations 2013.

Subsequent Appeals

Section 22 of the International Protection Act 2015 gives effect to Article 32 of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status. It provides for the circumstances in which a person may be permitted to make a subsequent application for international protection after refusal or withdrawal (including deemed withdrawal) of a prior claim.

The first instance decision of an International Protection Officer on the matter is appealable to the Tribunal under s.22(8). Pursuant to s.22(9), appeals to the Tribunal on admissibility must be determined without an oral hearing. Provisions such as those

contained in s.22 of the International Protection Act 2015 are comparable to those that were in s.17(7) of the Refugee Act 1996, as amended (albeit that s.17(7) did not provide for an appeal to the Tribunal).

Appeals pursuant to the European Communities (Reception Conditions) Regulations 2018

On 30 June 2018, the European Communities (Reception Conditions) Regulations 2018 came into operation, transposing into domestic law Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast) (hereinafter "the Directive"). Regulation 21 of the Reception Conditions Regulations provides for appeals to be made to the International Protection Appeals Tribunal in respect of some decisions under Regulations.

The Tribunal has jurisdiction to determine appeals from the Minister for Justice in relation to access to the labour market, from appellants seeking permission to access the labour market or appellants whose permission to access the labour market has been withdrawn. The Tribunal has jurisdiction to hear appeals from the Minister for Children, Equality, Disability, Integration and Youth Affairs in relation to reduction or withdrawal of material reception conditions relating to accommodation. The Tribunal has jurisdiction to determine appeals from the Minister for Employment and Social Protection in relation to reduction or withdrawal of the daily allowance. To date, all the appeals to the Tribunal under the Reception Conditions Regulations have related to access to the labour market.

The decisions in these appeals to the Tribunal shall be made within 15 working days from the date on which the appeal is received by the Tribunal. This is the outer time limit and cannot be extended (Regulation 15(4)(a). To date, all of the appeals pursuant to Regulation 21 have been determined without an oral hearing as the issues raised have been purely legal issues (Regulation 21(4)(b)).

When determining these appeals, the Tribunal directs that written submissions be furnished on behalf of both the appellant and the Department of Justice, and thereafter shares each party's submissions with the other party. Further time is allocated for replies and observations, and the Tribunal will then determine the appeal within the statutory time-limit.

Reception conditions appeals shall, unless the designated Member of the Tribunal considers it not in the interest of justice to do so, be determined without holding an oral hearing.

2. Procedure for Lodging an Appeal

When an applicant receives a recommendation from the IPO pursuant to s.40 of the International Protection Act 2015, he/she is informed of the right to appeal and the requirement to do so within specific statutory time limits depending on the type of appeal:-

- **Substantive international protection appeals** – Applicants have **15 working days**, from the date of the sending of to the applicant of the notification of the International Protection Officer's recommendation, to complete and lodge the **Notice of Appeal**. They have the option of an oral hearing, which they must request on the Notice of Appeal Form.

- **Accelerated international protection appeals** – Applicants have **10 working days**, from the date of the sending to the applicant of the notification of the International Protection Officer's recommendation, to complete and lodge the **Notice of Appeal**. They do not have the option of an oral hearing; unless the Tribunal considers it not in the interest of justice not to hold an oral hearing.

- **Dublin Regulation appeals** – Applicants have **10 working days**, from the date of the sending to the applicant of the notification of the International Protection Officer's recommendation, to complete and lodge the Notice of Appeal. They have the option of an oral hearing. The lodging of an appeal suspends the transfer of an applicant to the relevant country.

- **Inadmissibility appeals** – Applicants have **10 working days**, from the date of the sending to the applicant of the notification of the International Protection Officer's recommendation, to complete and lodge a Notice of Appeal. They do not have an option of an oral hearing.

- **Subsequent appeals** – Applicants have **10 working days**, from the date of the sending to the applicant of the notification of the International Protection Officer's recommendation, to complete and lodge a Notice of Appeal. They do not have an option of an oral hearing.

- **Reception Conditions appeals** – Applicants have 10 working days from the date of notice of the Review Officer's decision, to complete and lodge an appeal which shall be made in writing and shall include copies of the documentation referred to in the appeal.

In all instances the applicant must specify the grounds of appeal in the Notice of Appeal Form, attach any supporting documentation, the submissions to be made and the authorities to be relied upon.

The Tribunal has discretion to direct the attendance of witnesses in cases where the applicant requests an oral hearing or the Tribunal is of the opinion that it is in the interest of justice to hold an oral hearing.

3. Procedure for Accepting Appeals

On receipt of the **Notice of Appeal**, the Tribunal considers whether it is within the prescribed time limit for the particular appeal type.

The Tribunal has discretion to allow late appeals where the applicant is able to demonstrate that there were special circumstances as to why the Notice of Appeal was submitted after expiry of the prescribed period, and, in the circumstances concerned, it would be unjust not to extend the prescribed period.

The Notice of Appeal is acknowledged to the applicant and his/her legal representative (if any)**.** The Minister and, where applicable, the UNHCR Dublin are notified by e-mail on the same day of receipt of the appeal, distinguishing the appeal type.

In respect of international protection appeals, the Minister is also requested, pursuant to s.44(1) of the International Protection Act 2015, to furnish the Tribunal with copies of the documents provided to the applicant under s.40 of the Act, namely a statement of the reasons for the recommendation of the International Protection Officer and a copy of the report under s.39 of the Act. Copies of the Notice of Appeal and all associated documents submitted to the Tribunal are furnished to the Minister, as required under s.41(3) of the Act.

4. Procedure for Assigning Cases to Members for Decision Making

The Chairperson has issued a Guideline to the Registrar for the purpose of his functions of assigning or re-assigning appeals under s.67(2) or (3) of the International Protection Act 2015. The Guideline is issued pursuant to S. 63(3)(a) of the International Protection Act 2015.

In assigning appeals to members of the Tribunal, the overriding objective is to ensure that the business of the Tribunal is managed efficiently and that the business assigned to each member is disposed of as expeditiously as may be consistent with fairness and

natural justice. Subject to the matters set out in paragraph 2.1 and paragraphs 3 to 7 of the Guideline, the Registrar should endeavour, insofar as is practicable, to assign and re-assign appeals fairly and proportionately amongst the Members.

5. Procedure in relation to Oral Hearings

Where an applicant has requested an oral hearing in the context of a substantive international protection appeal, the Tribunal must give not less than 20 working days' notice of the date of oral hearing to both the applicant and his/her legal representative (if any). In practice, the notice given exceeds the statutory requirement and the aim of the Tribunal is to give six weeks' notice to all Applicants. The Minister, UNHCR and witnesses (if any) are notified at the same time as the Applicant. The hearing is held in private and conducted through an interpreter, where necessary and possible. The hearing is intended to be conducted without undue formality and in such a manner as to ensure that the proceedings are fair, transparent, and efficiently progressed.

6. Procedure in Relation to Withdrawals

At any stage during the international protection process, an applicant may withdraw an appeal by sending a notice of withdrawal to the Tribunal. In the event of a withdrawal, the original Recommendation of the International Protection Officer stands.

Where an applicant fails, without reasonable cause, to attend an oral hearing of a substantive international protection appeal at the date and time fixed for the hearing then, unless the applicant, no later than three working days from that date, furnishes the Tribunal with an explanation for not attending the oral hearing which the Tribunal considers reasonable in the circumstances, his/her appeal shall be deemed to be withdrawn.

Furthermore, where, in the opinion of the Tribunal, an applicant has failed, or is failing in his or her duty under s.27 of the International Protection Act 2015 to cooperate, the appeal may – in line with the procedure set out in s.45(2) to (7) of the Act – be deemed withdrawn.

7. Procedure for Issuing Decisions

An appeal against the recommendation of an International Protection Officer is dealt with under s.41 of the International Protection Act 2015.

Decisions of the Tribunal are notified to the applicant, the legal representative (if any), and to the Minister for Justice. The decision is also communicated to the United Nations High Commissioner for Refugees.

All applicants receive a copy of the Tribunal's 'Information Leaflets for Applicants on Appeals Procedures' - (one document for each type of appeal) from the IPO with the issue of the International Protection Officer's recommendation on their case. A short explanatory note is also available in several languages on request.

8. Procedures in relation to the Refugee Office Members' Decisions Archive (ROMDA)

ROMDA, the facility for legal representatives to research and submit previous redacted decisions in support of their clients' asylum appeal, is maintained on a continuous basis. The decisions archive is updated on a monthly basis with the most recent decisions of the Tribunal. Decisions are redacted by Tribunal staff to ensure that confidential applicant details have been removed. The decisions are then converted to PDF files and uploaded onto the Tribunal Decisions Archive on the website. Access is now open to ROMDA and users can access the database by requesting a username and password. Please contact info@refappeal.ie for further information.

Appendix 2

Comprehensive summary of judgments of the Superior Courts in 2020 relating to decisions of the International Protection Appeals Tribunal

Below is a summary of the judgments of the Superior Courts in 2020 regarding Tribunal decisions. The Tribunal incorporates the guidance of the Superior Courts into its training for Members and Members' Resources.

The Tribunal is Functus Officio after Making a Decision

***ND (Albania) and Ors v IPAT and Anor* [2020] IEHC 451, Humphreys J., 22 September 2020**

The applicant challenged, inter alia, the decision of the Tribunal on the ground that the evidence at hearing was not given on oath or by affirmation. After the Tribunal issued a decision upholding the recommendation of the IPO, the applicant wrote to the Tribunal asking that it rehear the appeal, which request the Tribunal refused, saying it was *functus officio*. The applicant subsequently sought to quash the Tribunal's decision by judicial review. The Court rejected the application, but commented obiter on a number of matters relevant to the Tribunal.

In respect of the Tribunal's power to correct errors in its decisions, the Court stated (at para.22):

> '[A]s regards the applicants' request for a rehearing of their appeal, it is true that reg. 10 of the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 (S.I. No. 116 of 2017) allows for correction of errors in IPAT decisions. However, that does not give any authority to set aside a decision in full and to hold a rehearing after the decision has been made; nor is there any other legal authority for such a course. The request to the IPAT to rehear the matter was totally misconceived.'

Medical Panel

***MR (Albania) v MJE and Ors* [2020] IEHC 402, Humphreys J., 17 August 2020**

The applicant in this case challenged the Minister's failure to set up a medical panel for the purposes of s.23 of the International Protection Act 2015.
Section 23 of the International Protection Act 2015 provides that:

> *(1) Where, in the performance by the Minister or an international protection officer of his or her functions under this Act in relation to an applicant, a question arises regarding the physical or psychological health of the applicant, the Minister or international protection officer, as the case may be, may require the applicant to be examined, and a report in relation to the health of the applicant furnished, by a nominated registered medical practitioner chosen by the applicant.*
> *(2) Where, in the performance by the Tribunal of its functions under this Act in relation to an applicant, a question arises regarding the physical or psychological health of the applicant, the Tribunal may require the applicant to be examined, and a report in relation to the health of the applicant furnished, by a nominated registered medical practitioner chosen by the applicant.*
> *(3) The Minister shall establish a panel of registered medical practitioners who, in the opinion of the Minister, possess the qualifications and experience necessary for the performance of the functions of a nominated registered medical practitioner under this section*
> *(4) In this section, "nominated registered medical practitioner" means a registered medical practitioner who is a member of the panel established under subsection (3).*

The Court observed that s.23 of the 2015 Act was partly inspired by Article 12(3) of the Asylum Procedures Directive 2005/85/EC relating to medical examination where an applicant is unable to attend an interview, but noted, as in turn noted by Hughes & Hughes, *International Protection Act 2015: Annotated* (Dublin, Clarus Press, 2019) at p. 227, 'Section 23 is broader in its application … and is not limited to the personal interview.'

The Court noted that a misunderstanding of the scope of the section was clear from the correspondence of the Department of Justice, which countenanced the provision being used only for medical examinations where applicants do not attend for interviews or appeals, claiming to be ill.

The applicant sought various reliefs, including an order of mandamus requiring the establishment of the panel described in section 23(3). The Court was highly critical of the Minister for only clarifying late in the litigation that no such panel had been established.

In the judgment of the court (at para.38):

> '[T]he applicant has a clear and present entitlement to request to have the IPO consider the invocation of s. 23, and the clear intention of the legislation is that the IPO's consideration of whether to invoke s. 23 should be in the context of the prior existence of a s. 23 panel. The absence of such a panel is not a matter of no consequence. It means the request can't be considered in the correct context and it means that a negative decision could not command confidence that the request had been properly considered.'

Rather, refusal of such a request could appear to be influenced, consciously or unconsciously, by the lack of any panel. The Court ordered that the Minister establish a panel under s.23 by 1 December 2020.

The Court commended Patrick Murray, Registrar, and Stephen Hayden, of the Tribunal, in respect of their clear analysis and clarity of the need for the panel to be established, stating (at para.19):

> 'I can only hope that my commendation of the professionalism of Mr Hayden and Mr Murray will be duly noted by their superiors and the Department's HR unit because only a limited number of people on the respondents' side of this imbroglio seem to have allowed themselves to point out difficult facts in the best tradition of public service, even if administratively inconvenient. If the clarity of their analysis had been properly taken on board, the Department could have been saved a great deal of problems, this case would never have happened and the rule of law would have been better served.'

The Court also commended Hilkka Becker, Chairperson of the Tribunal, for her 'penetrating' approach to the matter in her correspondence with the Department, in particular in respect of the necessary for the panel to first exist in order for s. 23 to operate.

Oral Hearings

ND (Albania) and Ors v IPAT and Anor [2020] IEHC 451, Humphreys J., 22 September 2020

The applicant challenged, inter alia, the decision of the Tribunal on the ground that the evidence at hearing was not given on oath or by affirmation. After the Tribunal issued a decision upholding the recommendation of the IPO, the applicant wrote to the Tribunal asking

that it rehear the appeal, which request the Tribunal refused, saying it was *functus officio*. The applicant subsequently sought to quash the Tribunal's decision by judicial review. The Court rejected the application, but commented obiter on a number of matters relevant to the Tribunal. In respect of the giving of an oath or making of an affirmation before the Tribunal, the Court stated (at para.23):

> '[A]s regards the administration of the oath, it is true that s. 42(8)(d) of the 2015 Act is phrased in enabling rather than mandatory terms, but for consistency and in order to ensure that evidence […] given to the tribunal is offered with due solemnity and seriousness, the administration of an oath in line with the religious beliefs of each witness should be the default position for the tribunal. Affirmation arises, not if a witness declines to give an oath, but only in limited circumstances where the oath is contrary to the [witness's] religious beliefs or if the witness has no religious beliefs. Taking evidence without an oath or affirmation should only be in the limited circumstances set out in the Chairperson's Guideline No: 2019/1 on Taking Evidence from Appellants and Other Witnesses, where this is in the interests of justice (para. 11.2). Those guidelines were issued under a statutory power in s. 63(2) of the 2015 Act; and in sub-section (6) of that section, the legislature identifies consistency as a specific statutory *desideratum* and providing that the chairperson can take actions for "*the avoidance of undue divergence in the transaction of business by members*".

The Court continued, providing guidance on the relationship between the oath and credibility (also at para.23):

> 'The tribunal is fully entitled to view refusal to take an oath where the conditions for affirmation are not satisfied as being in and of itself undermining of the credibility of the account offered, all other things being equal. That is only common sense. Someone who hesitates about swearing to the truth of something is giving you important information about the reliability of their account, all other things being equal.

In this regard, the Court added that '[s]crapping the oath makes academic sense, but would materially increase the amount of false evidence in practice. Would that it were not so, but it would be wishful thinking to ignore the reality. Overall the real objection to oaths is that apocryphally attributed to Garrett Fitzgerald: "I know it will work very well in practice, but tell me … how will it work in theory?" (Seamus Martin, "Saturday Column", The Irish Times, 6th July, 1985, citing an attribution by Anthony O'Reilly).

Benefit of the Doubt

MR (Bangladesh) v IPAT & Anor [2020] IEHC 41, Humphreys J., 29 January 2020

The court in this judgment stated that the benefit of the doubt only applies if the applicant's general credibility is established. In the court's judgment, this is clear from s.28(7) of the International Protection Act 2015 and the Qualification Directive, and is supported by *MZ (Pakistan) v IPAT* [2019] IEHC 125, and the UNCHR Handbook on Procedures and Criteria for Determining Refugee Status at paras 196, 203 and 204.

Credibility (Generally)

DK (Ghana) v IPAT [2020] IEHC 14, Humphreys J., 17 January 2020

The applicant, a national of Ghana, challenged the Tribunal's decision on three bases. First, on the basis that the decision was irrational in that it accepted the applicant's subjective account, while finding there was no objective basis for it. The court rejected this finding no inconsistency. The court referred to *Fletcher v Commissioner of Public Works* [2003] IESC 13, [2000] 1 IR 465, where the Supreme Court said that stress and mental injury in relation to a fear of physical harm did not give rise to a cause of action where objectively the basis for the concern was not established.

Secondly, the applicant argued that the Tribunal had failed to take into account the secretive nature of the funeral practices in Ghana as a matter to be considered when weighing the applicant's claim that on the death of a tribal chief he would be subjected to a human sacrifice as part of the funeral rights. The court disagreed, observing that this point was part of the applicant's submissions to the Tribunal, and the decision stated that all matters submitted were considered. Thus, the applicant's argument had to be rejected in the absence of proof that the matter was not considered.

Thirdly, the applicant argued that the Tribunal had failed to give adequate reasons for its decision. The court rejected argument, finding that the following four reasons that were given by the Tribunal were adequate:

1. Indication of a lack of reference in the country material to the feared ritual killing as contended.
2. That country information stated that tribal leaders had 'dismissed' perceptions that such ritual killings took place.

3. That country information indicated that such incidents occurred 'several decades ago'.
4. That country information presented by the applicant was considered and it explained why it was unsupportive of the applicant's claims.

MR (Bangladesh) v IPAT & Anor [2020] IEHC 41, Humphreys J., 29 January 2020

The court in this judgment analysed the *obiter dicta* of the Hogan J. in *RA v RAT* [2017] IECA 297 at para 62:

> '…given the alleged provenance of the documents and their obvious relevance to his claim, if true, it was incumbent in these circumstances on the Tribunal member to assess such documentary evidence – if necessary, by making findings as their authenticity and probative value – so that that very credibility could be assessed by reference to all the relevant available evidence.'

In the opinion of the High Court:

> 'The words "if necessary" here are crucial and must be taken as referring only to that very limited category of documents that are capable of definite forensic objective verification, entirely independently of the personal credibility of the individual producing them. If contrary to my reading, Hogan J.'s obiter comment has the meaning that the credibility of documents can or should be more generally separated from the credibility of a person producing the document, I would have to respectfully conclude that that cannot be correct, apart, as I say, from cases, exceptional to vanishing point in the asylum context, where the document can be independently forensically validated. Leaving aside such extremely unusual cases, the credibility of any other document cannot be separated from the credibility of the person producing it. It would be an impossibility, and therefore an absurdity, to require a decision maker to make a final assessment of the reliability of a document prior to considering the reliability of the person producing it.

VH v IPAT [2020] IEHC 134, Barrett J., 12 March 2020

The applicant in this case, a national of Albania, claimed to have a well-founded fear of persecution in Albania arising from a land dispute involving his family, and, secondly, because of his Roma ethnicity.

The Tribunal, upholding the first instance decision against him, found that a Declaration purportedly from the head of his village stating that the relevant law in Albania was weak, a copy of which the applicant submitted in support of his claim, (1) 'was not submitted in its

original form', (2) was obtained for the purposes of the applicant's international protection application, and (3) was 'an improbable declaration by a local Government official', and not credible.

In the judgment of the court, in the first place, the IPAT breached fair procedures and failed to give reasons in failing to indicate that there was any inquiry why a copy was provided, and in failing to indicate any reasons why the declaration was objectionable. (para.4)

Secondly, that the evidence was self-serving was not a basis for rejecting it (*Kimbudi v Minister of Employment* (1982) 40 NR 566 (FCA); *R(SS) v Secretary of State for the Home Department* [2017] UKUT 164 (IAC); and *MJ (Singh v Belgium: Tanveer Ahmed unaffected) Afghanistan v Secretary of State for the Home Department* [2013] UKUT 253 IAC, cited with approval). (para.5)

Thirdly: 'the IPAT did not point to any false information in the Declaration but to an unexplained sense of the part of the IPAT official that what is stated in the Declaration is something that is unlikely to be stated by a local (village) government official. There is no reasoning offered for this sense, so there is a failure to provide reasons. Additionally, insofar as the IPAT considers the Declaration not to be credible, in effect casting a burden on Mr VH to establish the genuineness of the Declaration, without any mention of this at the hearing of thereafter, thus giving him no opportunity to discharge such burden, and then relying on his failure to discharge the burden so case to assail his credibility, this seems to the court to involve a near-classic breach of fair procedures.' (para.6)

The Tribunal further held that the applicant was vague in his account of an attack on his life. The Tribunal recorded the account in question in the following manner:

> 'At interview, the Appellant stated that 'during my journey from work to home, I was stopped by four armed people in a car. They punched me badly. And they threatened me. They pressured me.' He said that he was punched 'in my face and my abdomen'. He was later asked to provide further details of the attack and he responded that 'during the communist regime in the '90s the [Name Stated] family was powerful'. The Appellant was asked a further three times for the details of the attack and he simply responded, 'we fought all the time', 'as I said they put a gun to my head' and 'I was threatened by them'.

In the judgment of the court, there was thus a deficiency in the Tribunal's finding of vagueness in that there was no indication, in the court's opinion, why the Tribunal found the above account of the attack to be so vague as to require further details, or even an indication as to what further details it might have expected to be forthcoming (JB (Torture and Ill treatment – Article 3) DR Congo [2003] UKIAT 12 cited with approval). (para.8)

The Tribunal held that 'Given the appellant's lack of legal title or personal involvement in the contested matters, the Tribunal does not find the Appellant's [account] to be credible'. In the judgment of the court, there was no logical nexus between any lack of legal title or personal involvement in a land dispute claimed to exist between two families, and the credibility of the account. Further, lack of legal title and personal involvement did not seem to the court to be dispositive of the matter (the court suspected obiter that land disputes tend to arise because there is a dispute over legal title).

Finally, in respect of the Tribunal's finding that, notwithstanding it accepted on the basis of the country information that members of the Roma community may experience discrimination, the Appellant's testimony was not a credible account of past discrimination based on his Roma ethnicity, the Court considered this finding to be a bald, unreasoned, and thereby unlawful, rejection of credibility. (para.14)

***MS v IPAT & Anor* [2021] IEHC 30, Burns J., 15 December 2020**

The applicant claimed to have a well-founded fear of persecution in Albania because of threats from a criminal gang to whom his father owed money. He sought to quash the Tribunal's decision on the basis that the Tribunal erred in incorrectly determining the case on a single issue, i.e., that he did not know how much his father's debt was for, and/or was otherwise irrational.

The Tribunal had held that it was not satisfied that a demand for an unspecified sum of money was a plausible, coherent or detailed basis for a claim for international protection. The Tribunal set out further matters that undermined the claim, including (a) inconsistency re how the applicant's father could afford to send the applicant to college; (b) inconsistency re the family not being pursued for the debt; (c) the illogicality of the applicant only pursued for the debt years after it was incurred by his father; (d) why the family, other than the applicant, was safe in Albania now; and (e) speculativeness of the claimed connection between the alleged persecutors and the Albanian police.

The Court rejected the applicant's request for judicial review, finding that the Tribunal had not determined the appeal on a single issue, as claimed. Rather, the Tribunal considered a number of matters, as outlined above. In the view of the Court, the Tribunal found that the lack of specificity about the amount of the debt meant that it could not properly assess the significance of these matters.

Duty to Give Reasons for Credibility Findings

VH v IPAT and Ors [2020] IEHC 134, Barrett J., 12 March 2020

Mr VH, an Albanian national, applied for international protection on the basis that if returned to Albania he would be subjected to persecution or serious harm arising from a land dispute involving his family.

The Tribunal had stated the following in its decision:

> "[W]hile the Appellant submitted a copy of a Declaration by...[Mr X], the purported head of village...in support of his claim, [1] it was not submitted in its original form and [2] is understood to have been obtained for the purposes of the Appellant's international protection application. [3] In particular, the Tribunal finds the statement 'the state law is still weak in Albania in order to guarantee the safety of its citizens', contained therein, to be an improbable declaration by a local Government official. For these reasons, the Tribunal finds this Declaration not to be credible."

In the judgment of the court, the Tribunal did not indicate that there was any inquiry as to why a copy of the Declaration was provided, or give any reasons why the Declaration was found to be objectionable. Thus the Tribunal breached fair procedures or failed to give reasons for its decision. The Court explain further that:

> 'the IPAT does not point to any false information in the Declaration but to an unexplained sense on the part of the IPAT official that what is stated in the Declaration is something that is unlikely to be stated by a local (village) government official. There is no reasoning offered for this sense, so there is a failure to provide reasons. Additionally, insofar as the IPAT considers the Declaration not to be credible, in effect casting a burden on Mr VH to establish the genuineness of the Declaration, without any mention of this at the hearing or thereafter, thus giving him no opportunity to discharge such burden, and then relying on his failure to discharge the burden so cast to assail his credibility, this seems to the court to involve a near-classic breach of fair procedures.'

In the judgment of the court, that evidence might be self-serving is not of itself a basis for rejecting that evidence (*Kimbudi v. Minister of Employment and Immigration* (1982) 40 NR 566 (FCA); *R. (S.S.) v. Secretary of State for the Home Department* [2017] UKUT 164 (IAC); *M.J. (Singh v. Belgium: Tanveer Ahmed unaffected) Afghanistan v. Secretary of State for the Home Department* [2013] UKUT 253 (IAC), at para. 33 considered).

The Tribunal, in its decision, had also stated as follows:

> 'The Appellant was vague in his account of a...2016 attack on his life, at both his oral hearing and at his section 35 interview. At interview, the Appellant stated that 'during my journey from work to home, I was stopped by four armed people in a car. They punched me badly. And they threatened me. They pressured me.' He said that he was punched 'in my face and my abdomen'. He was later asked to provide further details of the attack and he responded that 'during the communist regime in the '90s the...[Name Stated] family was powerful'. The Appellant was asked a further three times for the details of the attack and he simply responded, 'we fought all the time', 'as I said they put a gun to my head' and 'I was threatened by them''.

In the court's judgment, there was no indication why the Tribunal found the account of the attack to be so vague as to require further details or indication of what further details it might have expected (*J.B. (Torture and III treatment - Article 3) DR Congo* [2003] UKIAT 12, at para. 7, adopted).

The Tribunal also found the applicant's claim to lack credibility because of his lack of legal title or personal involvement in the contested matters. However, the court saw no connection between a lack of legal title or personal involvement in a land dispute and the credibility of an account of a particular attack. In the opinion of the court, lack of legal title or personal involvement are not determinative of whether a particular attack occurred.

The Tribunal also rejected the applicant's secondary claim to have a fear of persecution as a person of Roma ethnicity. In so doing, the Tribunal recounted the applicant's evidence of past ill treatment, before stating:

> 'The Tribunal accepts on the basis of the COI submitted, that members of the Roma community may experience discrimination in accessing services such as education, employment and housing. However, the Appellant and the Appellant's brother's testimony, are not credible accounts of past discrimination on the basis of their mixed Roma ethnicity.'

In the judgment of the court, this 'bald, unreasoned rejection of credibility' breached constitutional law, the 2015 Act, the Qualification Directive, case-law, and all guidance of relevance, including the UNHCR Handbook

SKS v IPAT [2020] IEHC 560, Burns J., 3 November 2020

The applicant, a national of Bangladesh and a Hindu, applied for international protection on the basis of his claimed well-founded fear of persecution in Bangladesh for reasons related to

his religion and his membership of a particular social group. He claimed in particular that he was framed for a kidnapping, and faced imprisonment in connection with the matter. An IPO recommended that he not be declared a refugee, and the Tribunal affirmed that decision. The Tribunal found some aspects of his claim to be credible, but certain material aspects of his claim not to be credible, in particular that he was the subject of a kidnapping charge. The Tribunal's analysis (set out in some detail in the Court's judgment) gave certain reasons for its findings, including finding that certain letters, said to be from the applicant's lawyer in Bangladesh advising of the situation in relation to the alleged kidnapping charge, were not probative of the kidnapping charge because they were written long after the alleged kidnapping, and did not refer to certain matters, and overstated others.

The applicant argued that the Tribunal had failed to give adequate reasons for its conclusion that his claim was not credible. The Court outlined key judgments that engage with the essence of the duty to give reasons (*Connelly v An Bord Pleanala* [2018] IESC 31; *Mallak v MJ* [2017] IESC 6; *YY v MJ* [2017] IESC 61). Applying this law to the Tribunal's decision, the Court held that:

> 'While the decision of the [Tribunal] in this matter does not engage in an analysis of the oral evidence, but rather recites portions of it, it cannot be said that the reasons for the decision are not discernible. It is abundantly clear that the [Tribunal] simply did not find the Applicant's evidence credible and specifically the evidence which is recited in the decision. A more detailed analysis of the evidence would clearly be preferable but in terms of the ultimate question as to whether it is discernible why the [Tribunal] did not find the applicant credible, the answer is that it is so discernible: the applicant simply was not believed on *all* of the evidence which was set out in the [Tribunal's] decision.

With respect to the documentary evidence, which included letters said to be from the applicant's lawyer in Bangladesh advising of the situation in Bangladesh, the Court found that:

> 'The [Tribunal] engaged in a detailed assessment of the documentary evidence and provided a reasoned decision as to why such evidence was not probative of the Applicant's claim. It is also clear that the [Tribunal's] determination regarding the documentary evidence was then considered by it when assessing the Applicant's credibility on whether he had been falsely accused of kidnap […] and whether his family were targeted […].'

Finally, the Court provided the following guidance in respect of what was to be expected of the Tribunal in analysing personal documents for the purpose of a credibility analysis:

> 'Just as with oral evidence, the fact that these letters exist, does not mean that the [Tribunal] must simply accept them. They are evidence in the case and as such they must be analysed by the [Tribunal] to determine whether they are credible, whether they can be relied upon, and what weight can attach to them. In carrying out that exercise, the [Tribunal], must of necessity determine what one would reasonably expect to find in a professional advisory letter of this nature. Clearly, in carrying out that task, a level of perfection cannot be required: instead the rest must be what is reasonable to expect such a letter to contain having regard to the nature of the professional advice being administered.'

'Consistency' as a Credibility Indicator

MR (Bangladesh) v IPAT & Anor [2020] IEHC 41, Humphreys J., 29 January 2020

In this judgment the court noted the judgment of the court in *B v IPAT* [2019] IEHC 767, and noted that calling a medical report 'expert opinion' and saying there was no suggestion 'it would be anything less than an entirely professional report from a known and reliable source' (Ibid, para.2) does not add anything to the credibility of an applicant's account, and that, as per *B v IPAT*, '[t]he point remains that a medical report can establish that an account could be true, but it does not establish who caused the injury or in what circumstances'.

The court cited with approval the comment of Ouseley J at para.17 of *HE (DRC)* [2004] UKIAT 321, that 'rather than offering significant separate support for the claim, a conclusion as to mere consistency generally only has the effect of not negating the claim.'

The Tribunal's decision stated that the appellant gave an inconsistent and confusing narrative, and one that lacked cogency in respect of the claimed material facts. The applicant contended that the Tribunal erred in law in importing a standard of proof of 'cogency'. The court disagreed, seeing nothing irrational or unlawful in this regard.

The court stated further:

> 'The fact that the applicant's story is consistent with country of origin information does not support the story as such; it merely removes a negative. I might add that the same goes for consistency […] – telling a consistent story does not make it true, rather it removes an objection. Neither self-corroboration nor consistency with country information amounts to 'support' for a claim' (para.25).

The court cited with approval the comment of Ouseley J at para.17 of *HE (DRC)* [2004] UKIAT 321, that 'rather than offering significant separate support for the claim, a conclusion as to mere consistency generally only has the effect of not negating the claim.'

Speculation

LH (Algeria) v IPAT [2020] IEHC 157, Humphreys J., 4 March 2020

The applicant, an Algerian national, was accused of misappropriation by his employer, but did not contact his employer to protest his innocence. The Tribunal accepted that as credible that the applicant's employer engaged in unethical and fraudulent practices. In rejecting his international protection appeal, however, the Tribunal did not accept that the applicant would not have appreciated that his failure to contact his employer to protest his innocence would reinforce the impression of guilt.

The applicant complained that in circumstances where it was accepted as credible that his employer engaged in unethical and fraudulent practices, the Tribunal erred in making a negative credibility finding against him because of his failure to protest his innocence to his employer, the feared actor of persecution.

In rejecting this claim, the court stated that it is the role of the tribunal to assess *all* of the facts and circumstances of a claim, and that '[w]hether or not the applicant contacts the person from whom he says he fears harm, or whether or not he entertains that person's attempts to make contact, is a part of the facts and circumstances of the case and cannot be arbitrarily disregarded.'

The applicant also contended that the Tribunal erred in failing to appreciate the cultural context of the claim, or by engaging in conjecture or speculation in making credibility findings, in circumstances where he had provided a consistent narrative. In rejecting this claim the court stated that '[t]he fact that the applicant gave a consistent narrative does not make his story true. A story can be consistent but false', and that '[m]aking an adverse decision having assessed the evidence is not conjecture or speculation' (para.19), particularly where a decision explicitly considered country of origin information (para.20).

RK v IPAT [2020] IEHC 522, Burns J., 20 October 2020

The applicant, a national of Albania, claimed to have a well-founded fear there because of a blood feud in the context of Kanun law, consequent on the fact that his father murdered a man with whom he had a land dispute. An IPO recommended against the applicant being declared to be a refugee, and the Tribunal upheld that decision on appeal, finding that while blood feuds exist in Albania, the applicant had not established the credibility of his account on the balance of probabilities in circumstances where he was vague and non-specific in respect of some of his evidence, and inconsistent in respect of some of his evidence.

Speculation and Conjecture

The applicant argued that the Tribunal impermissibly engaged in speculation and conjecture when determining various credibility issues against him. The court, applying the principles from the *locus classicus* case of *IR v MJE* [2015] 4 IR 144 (see esp. para. 10), in respect of the Tribunal's credibility analysis, rejected the various particular arguments in this regard advanced by the applicant.

The applicant had claimed to have resided clandestinely in a village called Fierz in Kosovo for 18 years. He was unable to give much information about Fierz, stating for example that he did not know if there was a river in the village because he had never seen the village in daylight and only came out at night. The applicant also was unable to provide details about the family with whom his family allegedly had a blood feud.

The Court disagreed that these, and other, findings were of the nature of conjecture or speculation. In the judgment of the Court, it was open to the Tribunal to make the findings it did. The findings were not conjecture or speculation, but 'based on a detailed analysis of the applicant's evidence […] with the [Tribunal Member] applying her common sense and knowledge of life to the evidence given.'

The Court provided, at para.23, the following guidance regarding the Tribunal's role as fact finding:

> 'A fact finder is not obliged to accept the evidence given. Rather, a fact finder must analyse and assess the evidence to determine whether she accepts the evidence and what weight she attaches to it. To conduct that exercise, a fact finder should apply their knowledge of life and common sense to the evidence. In asylum cases, because a fact finder is dealing with different cultures and norms, it is necessary to take account of the different cultures and conditions in the country in question when analysing the evidence. An assessment of what one might reasonably expect in a situation, having regard to the different culture and conditions in the country in

question, should be carried out so that a rational assessment of the evidence given can be engaged in.'

Assessing Credibility in 'Papers-Only' Appeals

HI v MJE, AI v MJE [2020] IECA 20, Court of Appeal, Whelan J., 5 February 2020

The appeals in this matter arose from orders made by the High Court in *HI and Anor v MJE and Ors* [2018] IEHC 275, wherein the High Court refused applications for certiorari in respect of the Minister's decisions refusing subsidiary protection. The Minister's decisions were made under the regime that predated the current 'single procedure' regime under the International Protection Act 2015, and in particular under the European Communities (Eligibility for Protection) Regulations 2006 (SI No. 518 of 2006), before national law developed by way of the European Union (Subsidiary Protection) Regulations 2013 (SI No. 426 of 2013) as amended, which developments were necessitated by CJEU case law (specifically, Case C-604/12, *HN*, EU:C:2014:302, and Case C-429/15. *Danqua*, EU:C:2016:789).

The key issue for the Court of Appeal was whether the High Court erred in effectively concluding that the Minister correctly interpreter the country information with regard to the applicants' country of origin, Albania, and the capacity of its police authority to provide an appropriate response and protection.

An adverse decision on the same facts as presented by the applicants in their applications for subsidiary protection had been previously made in respect of the applicants' asylum applications by both the Refugee Applications Commissioner and, on appeal, the Refugee Appeals Tribunal, and in the applications for subsidiary protection in each case the applicants did not raise any substantial grounds challenging the conclusions on credibility in the decisions of the RAC or RAT.

The Court of Appeal considered it clear from the country information and material taken into account that it was reasonable for the Minister to conclude that it was not credible that such matters would give rise to a risk of serious harm on the facts advanced (para.101).

In the judgment of the court at para.105:

> 'Provided the Minister is satisfied that the findings of the RAT were reasonable the Minister is entitled to adopt the said findings and have regard to same. There is no obligations on the Minister to reconsider the same facts and events to decide whether they are plausible or credible in the absence of new or additional information or

evidence or some other basis capable of demonstrating that the original findings were vitiated by fundamental error.'

The court concluded that, in the light of the authorities (*HM v MJELR* [2011] IEHC 16; *Barua v MJ* [2012] IEHC 456; *Meadows v MJELR* [2010] IESC 3, [2010] 2 IR 701, [2011] 2 ILRM 15; *Kouaype v MJELR* [2011] 2 IR 1)), and

> 'in the absence of unusual, special or changed circumstances or in the absence of there being evidence that the [Minister] did not consider the matters specified by s.5 [of the Refugee Act 1996 – re the prohibition of refoulement] in coming to his opinion […] it was not open to the High Court to go behind the [Minister's] reasoning and hence his conclusions were correct.' (para.107)

Thus, the High Court 'was correct in circumstances where there was clear evidence before the Minister in the form of COI which entitled him to make the decision, draw the inferences and reach the conclusions which he did.' (para.109)

Assessment of Facts: Personal Documents

RK v IPAT [2020] IEHC 522, Burns J., 20 October 2020

The applicant, a national of Albania, claimed to have a well-founded fear there because of a blood feud in the context of Kanun law, consequent on the fact that his father murdered a man with whom he had a land dispute. An IPO recommended against the applicant being declared to be a refugee, and the Tribunal upheld that decision on appeal, finding that while blood feuds exist in Albania, the applicant had not established the credibility of his account on the balance of probabilities in circumstances where he was vague and non-specific in respect of some of his evidence, and inconsistent in respect of some of his evidence.

The Tribunal incorrectly stated that a Police Certificate proffered by the applicant in evidence post-dated when the applicant applied for refugee status.

Moreover, the Court found that the Tribunal had not put the applicant on notice that this and a second certificate were under review by the Tribunal, and that they raised a concern about the veracity of the claim that the applicant's father had carried out the killing that was alleged to have given rise to the blood feud.

In the view of the Court, the question that arose was whether the Tribunal's finding that it had not been established that the applicant's father committed the killing alleged to have instigated the blood feud, was a material concern that affected the outcome of the appeal. In the judgment of the Court, it was not such a concern because the date of the applicant's protection claim, about which she was in error, was not relied on by the Tribunal Member in her assessment of weight. Rather, the Tribunal determined that no weight should attach to the document in question in the light of the negative credibility findings that were open to her.

Thus, while the applicant was not on notice of the concern regarding whether his father carried out the alleged murder, the issue did not have a material effect on the outcome of the decision.

Assessment of Facts: Medico-Legal Reports

MR (Bangladesh) v IPAT & Anor [2020] IEHC 41, Humphreys J., 29 January 2020

In this judgment the court noted the judgment of the court in *B v IPAT* [2019] IEHC 767, and noted that calling a medical report 'expert opinion' and saying there was no suggestion 'it would be anything less than an entirely professional report from a known and reliable source' (Ibid, para.2) does not add anything to the credibility of an applicant's account, and that, as per *B v IPAT*, '[t]he point remains that a medical report can establish that an account could be true, but it does not establish who caused the injury or in what circumstances'.

Future Risk and Accepted Facts

ZNUD (Pakistan) v IPAT and Ors [2020] IEHC 7, Humphreys J., 15 January 2020

The applicant, a Pakistani national who claimed to be a member of the Model Town branch of the PAT party in Pakistan, sought to quash the Tribunal's decision on the basis that the Tribunal did not properly consider his prospective risk in the light of his factual circumstances and the country information. Noting, however, that the Tribunal accepted that the applicant was an ordinary member of the PAT party, but that it had not made a specific finding on which branch he was a member of, the court held that the application must fail as there was no general obligation on the Tribunal to analyse in detail an incidents that do not involve the applicant. The court noted that the applicant could have challenged the decision on the basis that the Tribunal failed to make a factual finding re the branch of the party that the applicant was a member of, but did not.

***I v IPAT & Anor* [2020] IEHC 63, Barret J., 18 February 2020**

The applicant claimed international protection on two bases, i.e., (i) that she had worked as a prostitute in Nigeria since she was a minor and fears the reaction of her family if she is now returned there; and (ii) that she was trafficked to Ireland and fears the response of the traffickers if she is returned to Nigeria.

The Tribunal accepted that the applicant worked as a prostitute in Nigeria and that she was disowned by her family because of her work as a prostitute. It did not accept that her family had attacked her. Also, the Tribunal did not accept that the applicant was trafficked to Ireland, or that she faced any risk from traffickers if she were to be returned to Nigeria.

In the section on 'objective basis' in its decision, the Tribunal concluded as follows:

> 'Considering the Tribunal's conclusion, viz. that while the appellant had been disowned by her family at one time for working as a prostitute, she did not endure attacks from her family, and was now reconciled with her mother and her sister […] and considering the COI relevant to the analysis […] the Tribunal finds that there is not a reasonable chance that if she were to be returned to Nigeria she would face a well-founded fear of persecution on the basis of her membership of a particular social group. For example […], in the UK Home Office's Country Policy and Information Note, Nigeria: Trafficking of Women, Version 2.0, November 2016, para. 2.3.12 it states that, in general, even women are unlikely to be at risk of reprisal on return to Nigeria and the Tribunal has already concluded that the Appellant had not been trafficked.'

The applicant claimed that the Tribunal failed to consider properly the issue of her family as potential actors of persecution, and instead wrongly conflated the two claims, in respect of her family on the one hand, and the traffickers, on the other.

In the judgment of the court, at para.9:

> 'the forward-looking fear of family as actors of persecution, solely on the basis of Ms I's having acted as a prostitute, was not addressed by the IPAT. Yet, once the fact that Ms I had worked as a prostitute was accepted, the IPAT was required to [investigate] the case put forward regarding the family members as potential actors of persecution' (*PD v MJELR* [2015] IEHC 111 applied by analogy).

The court observed that the obligation to assess depends on whether sufficient facts have been accepted (*MLTT (Cameroon) v MJELR* [2012] IEHC 568 applied), and that in the instant

case Ms I's history and characteristics (i.e., that she had been disowned by her extended family because of her work as a prostitute, including while she was a minor) were accepted, such that the assessment of whether her family would persecute her was not a hypothetical exercise (para.10).

Furthermore, the applicant had put forward specific country information relating to the risk of violence against women from family members, while the Tribunal merely referred to this country information and *unlawfully preferred other country information without providing adequate reasons for such preferment (DVTS v MJELR* [2008] 3 IR 476)

The court also found that the Tribunal's reasoning to the effect that because the applicant had 'worked as a prostitute and managed to sustain herself', including while a child, meant she would be in a better position to sustain herself and resettle in Nigeria should she return there, was egregiously offensive in, so the court understood, in implying that once returned the applicant could return to prostitution to sustain herself.

Note: This judgment demonstrates the importance of a decision being clear about what claim or claims are analysed in the context of future risk. Where there are multiple claims, they must be analysed fully.

Future Risk: Obligation to Consider Hypothetical Claim?

FD and Anor [2020] IEHC 545, Burns J., 29 October 2020

The applicants in this case were a woman and her dependant daughter. They claimed, inter alia, a well-founded fear of persecution in Pakistan on the basis that the daughter, in refusing to marry an elderly business associate of her father's, had defied her father's wishes. The first applicant claimed she was estranged from her husband, the father of the second applicant.

The IPO refused the claim, and the Tribunal upheld that refusal on appeal. The Tribunal accepted some aspects of the claim, but did not accept as credible the claim that the father wished the second applicant to enter an arranged marriage, or that the first applicant and her husband were estranged.

The applicants first argued that the Tribunal had failed to have proper regard to certain country information. Observing that the country information in question had limited relevance to the specific claim made by the applicants, the Court held on this point that in light of the statement by the Tribunal that all evidence and material submitted to it were considered, it was not appropriate for the Court to engage in a guessing game about what weight was attached to the country information evidence.

Secondly, the applicants argued that s.28(6) of the 2015 Act put an onus on the Tribunal to be satisfied that good reasons existed to consider that persecution would not be repeated and that it therefore was necessary to consider whether the husband would return to Pakistan. Section 28(6) states:

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

The Court rejected this argument, observing that the applicants had not made the case that the husband would return to Pakistan. In a situation where the claim was not made, there was no requirement for the Tribunal to consider its possible effect.

The Court said that it was a personal choice for the applicant, and her husband how they ordered their affairs. In this regard, the Court commented that:

> 'Protection status is not afforded because a family have chosen to order their affairs in a particular way which results in a possible future risk to the family. Protection status is granted to a person where there is a necessity in their situation arising from circumstances external to the asylum seeker.'

Safe Country of Origin

***EV and Ors v IPAT* [2020] 556 JR, Burns J., 25 November 2020**

The applicants in this case were nationals of South Africa. The Minister designated South Africa to be a safe country of origin. The IPO, in recommending that the applicants not be declared to be refugees, made a finding that South Africa is a safe country of origin. Consequently, the appeal before the Tribunal proceeded without an oral hearing, unless the Tribunal was satisfied that it was in the interests of justice to hold an oral hearing.

The appeal proceeded without an oral hearing. In its decision, the Tribunal accepted certain aspects of the applicants' claims, but was satisfied that state protection was available to the applicants, and in making that finding had regard to the fact that South Africa had been designated a safe country of origin.

The applicants argued that the designation of South Africa as a safe country of origin for the purposes of ss. 33 and 72 of the 2015 Act was ultra vires the Procedures Directive or otherwise unlawful. First, the applicants argued that the safe country concept was rooted in the Recast Procedures Directive and that, as Ireland had not opted into that Directive, the State was not entitled to avail of the relevant provisions. The Court rejected this argument, observing that the concept was derived from the original Procedures Directive, on which basis it had been given effect in Irish law in the legislation that existed prior to the 2015 Act, as well as in the 2015 Act.

Secondly, the applicants sought a declaration to the effect that in designating South Africa as a safe country of origin, the Minister was in breach of s.72(2) of the 2015 Act in that the Minister could not reasonably have been satisfied that there was 'generally and consistently no persecution, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict' in South Africa in light of conditions there as disclosed by country information.

The Court, observing that, as the relief in question was declaratory in nature, the test for judicial review was one of arguability, granted the applicants leave for judicial review in this matter, in particular because of the following features:

1. Another applicant previously got leave to apply for judicial review seeking similar declaratory relief (*SUN v RAC*, High Court, Cooke J., 30 March 2012), albeit that the previous matter was disposed of due to determination of a preliminary matter.
2. There was significance to the applicants in the designation of South Africa as a safe country of origin in that an oral hearing was not conducted and the designation was relied on by the Tribunal in its finding re state protection.
3. It appeared that South Africa is not generally classified as a safe country of origin by member states, with only the UK and Slovakia designating it as such.
4. The available country information.

***IM v IPAT* [2020] IEHC 615, Burns J., 25 November 2020**

The applicant in this case was a national of Georgia. The Minister designated Georgia to be a safe country of origin. The IPO, in recommending that the applicant not be declared to be a refugee, made a finding that Georgia is a safe country of origin. Consequently, the appeal before the Tribunal proceeded without an oral hearing, unless the Tribunal was satisfied that it was in the interests of justice to hold an oral hearing.

The applicant requested an oral hearing, saying that this was needed for him to present certain medical evidence, and explain why it was being provided belatedly. The Tribunal was

satisfied that the interests of justice did not necessitate an oral hearing on this basis, and the appeal proceeded without an oral hearing. The Tribunal affirmed the decision of the IPO.

The applicant argued that the designation of Georgia as a safe country of origin for the purposes of ss. 33 and 72 of the 2015 Act was ultra vires the Procedures Directive or otherwise unlawful. First, the applicant argued that the safe country concept was rooted in the Recast Procedures Directive and that as Ireland had not opted into that Directive the State was not entitled to avail of the relevant provisions. The Court rejected this argument, observing that the concept was derived from the original Procedures Directive, on which basis it had been given effect in Irish law in the legislation that existed prior to the 2015 Act, as well as in the 2015 Act.

Secondly, the applicant sought a declaration to the effect that in designating Georgia as a safe country of origin, the Minister was in breach of s.72(2) of the 2015 Act in that the Minister could not reasonably have been satisfied that there was 'generally and consistently no persecution, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict' in Georgia in light of conditions there as disclosed by country information.

The Court, observing that as the relief in question was declaratory in nature the test for judicial review was one of arguability, refusing the applicant leave for judicial review in the matter, notwithstanding that another applicant previously got leave to apply for judicial review seeking similar declaratory relief (*SUN v RAC*, High Court, Cooke J., 30 March 2012), and notwithstanding the leave granted in *EV and Ors v IPAT*, Burns J., 25 November 2020, because the instant case was distinguishable from the EV case for the following reasons:

1. The applicant failed to establish any particular significance to him with respect to the designation of Georgia as a safe country of origin in circumstances where his reason for requesting an oral hearing was to explain medical reports and why they were late, and as the Court did not understand why an oral hearing was necessary for this purpose, and unlike *EV*, the Tribunal did not rely on the safe country designation in a state protection analysis.

2. Georgia is classified as a safe country of origin by eleven other EU Member States.

State Protection

BA v IPA [2020] IEHC 589, Burns J., 20 October 2020

The applicant, a Nigerian national, claimed a well-founded fear of persecution in Nigeria in circumstances where she claimed a history of sexual violence against her, and that her ex-partner threatened that he would kill her. An IPO recommended that she not be declared a refugee, and the Tribunal upheld this decision on appeal.

The Tribunal, having accepted various material factual issues and claims of past harm, found 'that there is a reasonable chance that if she were to be returned to her country of origin she would face a well-founded fear of persecution from her ex-partner.' However, the Tribunal found that the applicant could avail of state protection. In this regard, the Tribunal summarised the country information before it, relating to state protection for women subjected to gender-based violence, as follows:

> '[N]o laws of nationwide applicability criminalise gender-based violence and only [specified states] had enacted domestic violence laws. [W]here such laws do exist they were often not effectively implemented in practice and there is widespread under reporting. [T]here is a reluctance amongst women to report abuse to the authorities. This is because the police are perceived as being reluctant to take violence against women seriously and pursue allegations.'

In the light of that summary, the Tribunal concluded that the 'Nigerian authorities are willing and able to provide protection from non-state agents, albeit that women face greater difficulties in seeking and obtaining protection than men particularly for gender based violence.'

In the judgment of the Court, it was difficult to see how the Tribunal was satisfied that the applicant could avail of state protection (s.31(2)(a)); that such protection was generally available (s.31(2)(b)), that the Nigerian state had taken reasonable steps to prevent serious harm from gender-based violence to women to include an effective legal system for the detection and prosecution of such gender-based violence (s.31(2)(b)(i) and s.31(4), and that the applicant had access to such protection (s.31(2)(b)(ii)).

Were those the Court's only concerns, the matter might have ended there, with the Court not wishing to transpose its view for the view of the Tribunal. However, the Tribunal's conclusion on state protection, i.e. the positive finding that the Nigerian authorities are willing to provide protection to women facing gender-based violence, was not reflective of its own summary of the relevant country information, which 'was negative regarding the existence of domestic

protection laws, negative regarding the implementation of such laws, where they exist; and negative of police investigation into allegations of domestic violence'. Thus the Tribunal's decision was found to be irrational and fell to be quashed.

The Court commented that the Tribunal should have considered its summary of the country information in terms of whether it constituted clear and convincing proof that state protection was available to the applicant.

Internal Protection Alternative

S.T. (Zimbabwe) v IPAT and Ors [2020] IEHC 5, Humphreys J., 13 January 2020

The applicant, a Zimbabwean national claimed a well-founded fear of persecution from uncles who, she claimed, abducted, assaulted and raped her. The Tribunal accepted her account of abuse but held that there was an internal protection alternative available. The applicant challenged the Tribunal's decision essentially on the ground that the Tribunal's decision was irrational in its application of the internal protection alternative.

In rejecting the application for judicial review, the court listed the five steps it considered to be envisaged by Article 8 of the Qualification Directive (and therefore also s.32 of the 2015 Act) to be as follows:

1. Identification of a part of the country: That was done here, that part being Bulawayo.
2. Consideration of whether there was a well-founded fear of being persecuted there: Here the Tribunal did so. Its decision is not irrational even if it could have taken a more favourable view of the evidence from the applicant's point of view.
3. Consideration of whether it is reasonable for the applicant to stay in that part of the country: That was also considered and reasons were given. Again the decision is not irrational.
4. Consideration of country circumstances: The general circumstances in the country were considered and in particular in the part of the country concerned.
5. Consideration of applicant's circumstances: The personal circumstances of the applicant were also considered.

In circumstances where the Tribunal noted that the applicant's 'only concern' was that she might 'bump into a cousin someday who would relay details of her movements to other family members', the court considered there was no illegality to the decision re internal protection. The court also rejected outright an argument that the Tribunal failed to apply the provisions of the UNHCR Internal Flight Guidelines. In the judgment of the court, 'The UNHCR guidelines

are not law and even if they were not applied that does not give rise to grounds for judicial review.'

NNM v IPAT **[2020] IEHC 590, Burns J., 18 November 2020**

The applicant, a citizen of South Africa, claimed that she left South Africa to avoid a forced marriage. The Tribunal accepted the applicant's credibility in this regard, and found too that there was not adequate state protection in South Africa for her. However, ultimately it refused her claim on the basis that internal protection was an option. In this regard, the Tribunal identified Cape Town as the location of the internal protection alternative. The Tribunal found considering factors such as the substantial distance between Cape Town and where her family lived, and the size of the city, the Appellant would not be at real risk of suffering serious harm there. Secondly, the Tribunal found that the applicant could safely and legally travel to Cape Town and gain admittance to the area.

In respect of whether it was reasonable for the applicant to settle in Cape Town, the Tribunal noted that the applicant had thirteen years of education and that Cape Town had one of the lowest rates of unemployment in South Africa, which factors in the view of the Tribunal indicated a likelihood of the applicant securing gainful employment there, obviating fears of falling into prostitution or exploitation.

In the judgment of the Court, however, the Tribunal had failed to consider that overall there was a very high rate of unemployment in South Africa. The Court commented that '[h]aving the lowest rate of unemployment is of little importance if the unemployment rate is in itself very high.' Further, in the Court's opinion, there was no assessment by the Tribunal of what supports would be in place for the applicant in Cape Town, particularly in circumstances where the country information before the Tribunal documented concerns regarding prostitution and exploitation there.

In light of the failure of the Tribunal to carry out this analysis, the Court held that the Tribunal had failed to carry out an analysis as required by *KD (Nigeria) v RAT* [2013] 1 IR 448, Harding Clark J. (see esp. paras 4 to 13). The Court stated that the principles in *KD* remain the governing principles with respect to the internal protection alternative test in s.32 of the 2015 Act, and that, per the *dicta* of *KD*, a 'high threshold' must be crossed before the Tribunal can be satisfied that internal relocation is a reasonable option for an applicant.
The Court quashed the paragraphs in the Tribunal's decision concerned with internal protection, but left intact the rest of the decision in light of its significant determinations, and remitted the matter back to the Tribunal.

Inadmissibility

HZ (Iran) v IPAT [2020] IEHC 146, Humphreys J., 17 February 2020

The applicant in this case was an Iranian national who obtained refugee status in Greece. After obtaining status in Greece, he left that Member State, and travelled through other EU states before arriving in Ireland, where he again applied for asylum. An international protection officer (IPO) recommended that his application be deemed inadmissible, on the ground that he had refugee status in Greece, and the applicant appealed that decision to the Tribunal.

Section 21(2) of the International Protection Act 2015 provides that:

> 'An application for international protection is inadmissible where one or more than one of the following circumstances applies in relation to the person who is the subject of the application: (a) another Member State has granted refugee status or subsidiary protection status to the person ...'

Section 21(2) of the 2015 Act gives effect to Article 25 of the Procedures Directive. The court acknowledged that it was accepted that s.21(2) should be read in the light of the decision of the CJEU in Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17 *Ibrahim*, which provides that in a return or inadmissibility decision, the Member State's competent authority should have regard to Article 4 of the EU Charter of Fundamental Rights, which prohibits torture or inhuman and degrading treatment and thus prohibits treatment of that kind in another member state which "*must attain a particularly high level of severity*" in the limited number of cases where that may apply.

The court commented that Article 4 of the EU Charter cannot be infringed merely because of a decision declaring an application inadmissible, which possibility, in the judgment of the court, only arises at the expulsion stage. The court observed, however, that *Ibrahim* notes the right to asylum in Article 18 of the EU Charter can arise at the inadmissibility stage. In the opinion of the court, this 'explains the reference in Ibrahim to the consideration of conditions in the country in which asylum was granted as being something that can arise at the admissibility stage of the process rather than at the removal stage' (para.14).

The applicant contended that the Tribunal was irrational in finding that he fell short of establishing that his fundamental rights protected by EU law and the ECHR would be infringed if he was returned to Greece. The court recounted, and commented on, the applicant's particular difficulties, as follows:

'(i). the applicant does not speak Greek; the tribunal notes this claim at para. 4.10 and does not seem to take issue with it, but that is not a basis to hold that the applicant is facing torture or inhuman or degrading treatment;

(ii). the applicant has certain mental health issues; the tribunal accepted that he was on anti-depressants and was awaiting a psychiatric appointment, see para. 4.11, but again that is not a basis for holding that he is facing torture or inhuman or degrading treatment in Greece;

(iii). the applicant claims that he had no access to accommodation or healthcare and was living on the streets in the past; in that regard the tribunal noted that the applicant had failed to document his situation or his efforts to obtain accommodation […], and considered that the country information relied on by the applicant was of limited value in assessing current conditions in Greece given that the document from the PRO Asyl Foundation "*Protected only on paper: beneficiaries of international protection in Greece*" dated from 23rd July, 2017 - the tribunal by contrast relied on more up-to-date country material, particularly the Asylum Information Database (AIDA) country report, which showed certain progress on the social and economic facilities available to persons in the applicant's situation; and

(iv). the applicant complained that accommodation that could be available is overcrowded; that difficulty was to some extent acknowledged by the tribunal, but does not in and of itself amount to torture or inhuman or degrading treatment or punishment.'

The court held that it was open to the Tribunal in these circumstances to find that the allegation that the applicant faced torture or other treatment in breach of Article 4 of the EU Charter was not established. In the court's judgment, the applicant's case fell short of the threshold at which mutual trust between EU Member States break down and agreed with the respondent that 'to displace the presumption of mutual respect the threshold must be that of extreme material poverty, not even significant but extreme'.

The applicant also argued that the Tribunal erred in holding against him that he had not provided any evidence of his situation in Greece while he lived here, or of the opportunity to obtain accommodation, employment or welfare supports. The court rejected this argument, stating that 'it is not obviously impermissible to hold against an applicant the failure to provide *any* such documentary material' (para.26).

The applicant argued further that the Tribunal erred in failing to give the applicant an opportunity to provide oral evidence. The court, rejecting this argument, observed that this was not a case in which the applicant's credibility was rejected as such, that that the Tribunal

in any event 'went the extra mile' in terms of fair procedures by seeking considerable additional clarification from the applicant, and the applicant had not challenged (or referred to) s.21(7)(a) of the 2015 Act, which provides that the Tribunal shall make its decision on the matter in question without an oral hearing.

Finally, the applicant argued that the Tribunal erred in failing to seek assurances from the Greek authorities in respect of the conditions the applicant would face if returned there. The court, rejecting this argument, stated at para.33 that:

> 'It is inherent in the system of mutual confidence between members of the EU that member states do not seek assurances from each other or make enquiries regarding conditions, unless a significant threshold is first overcome. Had the applicant demonstrated a *prima facie* case that art. 4 rights would be breached, the question of undertakings or information might have arisen, but he did not do so. In written submissions the applicant says that this point follows from ECHR caselaw, but that is incorrect for the reasons already explained.'

Dublin Transfer: Systemic Deficiency in the UK post BREXIT?

AHS v IPAT [2020] IEHC 647, Burns J., 8 December 2020

The United Kingdom, on the basis of a 'EURODAC hit' agreed to take back the applicant, a national of Iraq who made an application of international protection in the State in April 2019, under the Dublin III Regulation. In the light of the UK's agreement, an IPO issued the applicant with a transfer decision, and the Tribunal upheld this decision on appeal. In the context of his representations to the IPO, and his appeal to the Tribunal, as well as subsequent representations to the Minister, the applicant asked that the 'sovereign discretion' set out in article 17(1) of the Dublin III Regulation be applied so that Ireland would deal with his international protection application. The Tribunal declined to deal with the matter for want of jurisdiction. Subsequent to the bringing of the judicial review, the Minister undertook to make a decision in respect of article 17(1) by 16 December 2020.

The applicant sought various reliefs against both the Tribunal and the Minister. First, he sought an order of mandamus compelling the Minister to make a decision in respect of the article 17(1) request. The Court said that this relief was no longer available now that the Minister had undertaken to make a decision on the matter by 16 December 2020.

Secondly, the applicant sought the quashing of the Tribunal decision on the basis that the Tribunal failed to engage properly or rationally with article 3(2) of the Dublin III Regulation in respect of the implications for the applicant of the withdrawal of the UK from the EU, and in

the assessment of the claimed separation of the applicant from his family in Ireland. Article 3(2) of the Regulation provides, inter alia, that where it is impossible to transfer an applicant the member state primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that member state, resulting in a risk of inhuman or degrading treatment within the meaning of article 2 of the EU Charter, the determining member state shall continue to examine the criteria in Chapter III of the Dublin Regulation to establish whether another member state can be designated as responsible.

The applicant alleged, inter alia, that the Internal Market Bill reflected the UK's intention to break international law.

The analysis of the Tribunal in this regard (set out in some detail in the Court's judgment) was to the effect that there was no reason to presuppose that systemic deficiency in the UK's asylum system would arise from withdrawal from the EU.

In respect of family members in Ireland, two cousins of the applicant resided in the state (not as asylum applicants). The Court noted that the Tribunal's jurisdiction to consider family connections within the State is contained in article 7 of the Regulation, which had the effect that the Tribunal has jurisdiction to consider 'family members, relatives or any other family relations' resident in Ireland for the purposes of determining whether the criteria in articles 8, 10 and 16 of the Regulation apply.

In the judgment of the Court, on the basis of the evidence before the Tribunal, and having regard to the ruling in Case C-661/17 *MA* (esp. paragraphs 80 to 84), the decision of the Tribunal was entirely open to it to make. In the Court's judgment, the arguments in respect of systemic deficiency in the UK's system included 'wild conjecture'.

The Court said it was premature to consider the non-application of the Dublin III Regulation to the UK after the end of the transition period in circumstances where the Minister had undertaken to make a decision on article 17(1) by 16 December 2020, i.e., before the end of the transition period.

In respect of the family member argument, the relationship of a cousin was not covered under the definition of 'family members' at article 2(g) of the Regulation, such that article 10 of the Regulation did not apply. Article 8 related to a minor applicant, and so did not apply. And Article 16 did not apply as that is for where an applicant is dependent on the assistance of his or her child, sibling or parent (or them on him or her), because of pregnancy, a new born child, severe illness, severe disability or old age.

Dublin Transfer: Article 17(1) 'Sovereign Discretion'

NVU and Ors v RAT and Ors S:AP:IE:2019:000193, Supreme Court, 24 July 2020

The judgment overturns the judgment of the Court of Appeal (see *NVU v Refugee Appeals Tribunal* [2019] IECA 183, Court of Appeal, 26 June 2019, above) and resolves the issue of whether the Tribunal has jurisdiction in respect of the discretion set out at Article 17(1) of the Dublin III Regulation.

It is clear from the judgment that the Tribunal does not have jurisdiction in respect of Article 17(1). As the Court stated, in respect of the Article 17(1) discretion, at para.36,

> *'There is no sign of any such delegation or of any basis on which that discretion could ever be exercised by anyone other than the Minister. Of their nature, administrative bodies exist to make decisions based on fact and quasi-judicial bodies are there to assess facts and to issue rulings within rigid boundaries of the powers so enjoyed through the setting of jurisdiction pursuant to statue. That does not embrace this discretion'*.

What the Dublin System Regulations devolved to the first instance decision maker and, on appeal, the Tribunal, are *'the functions as to determining, as Dublin III requires, which country is responsible for examining the application'* (para.33 of the judgment).
The Tribunal's remit in Dublin System appeals is to assess facts and make decisions affirming or setting aside transfer decisions at first instance in respect of whether the correct country responsible for examining the application has been identified, applying the hierarchy or criteria in Chapter III of the Dublin III Regulation subject to any legal derogation where necessary.

It will be for the Minister to decide any circumstances in which the wide discretion under Article 17(1) might operate to render a case appropriate to be processed in the State as a matter of sovereign discretion, notwithstanding another Member State being responsible, and to exercise that discretion in any particular case (see paras. 34 and following of the judgment).

LK v IPAT [2020] IEHC 626, Burns J., 4 December 2020

The applicant in this case challenged the Tribunal's decision to uphold the IPO's Dublin transfer decision on two grounds. Firstly, that the Tribunal was incorrect in determining that the IPO's decision was unlawful when the first instance decision was in effect a decision of a panel member, rather than an IPO, who did not have jurisdiction to make the decision.

Secondly, that a portion of the Tribunal's decision, in that it ventilated matters related to whether Article 17(1) of the Dublin III Regulation should be applied in the applicant's case, was outside its jurisdiction and prejudicial to any future Article 17(1) decision by the Minister, and should be severed from the Tribunal's decision.

The Tribunal's jurisdiction in Dublin cases:

In respect of the first ground, the applicant claim had two aspects. Firstly, that the Tribunal wrongly declined to deal with the issue of the panel member's jurisdiction on appeal. The applicant argued that he raised the matter before the Tribunal, and relied on regulation 6(1) of the Dublin System Regulations 2018 which states that '[a]n applicant may, in accordance with this Regulation, appeal to the Tribunal, in fact and in law, against a Transfer Decision.' The applicant also relied on the principle recited in the Dublin III Regulations that international protection applicants be speedily processed (recital 5).

The Court rejected this argument. In the judgment of the Court, while there was much to commend the applicant's argument, the options available to the Tribunal were limited in that it could only affirm or set aside a transfer decision, whereas the 2018 Regulations are not broad enough to cover a situation where the point of law is of such a nature that acceptance of it requires the matter to be remitted to the IPO for a lawful decision to be made.

The IPO's jurisdiction, and the role of panel members, in Dublin III cases

Secondly, the applicant submitted that the panel member did not have jurisdiction to make the decision. The Court rejected this argument. In the judgment of the Court, the 2018 Regulations provide for panel members to be engaged under a contract of services to provide assistance to an IPO in the performance by the IPO of his or her functions under the Dublin III Regulation. The Court observed that the 'report' of the panel member 'recites a history of relevant events; sets out some relevant law; comments on the submissions made by the Applicant; and, makes submissions in relation to the Applicant's submissions.' In the Court's view, this is at most 'a briefing document, bringing together in a report, the various steps, strands and considerations relevant to the decision which is to be made by the IPO, namely whether a Transfer Decision should be made.'

The Court stated that the applicant's assertion that the panel member 'recommended' to the IPO which member state should be responsible, and that the panel member 'recommended' whether Article 17(1) should be applied, were mischaracterisations of the factual situation. No delegation of the IPO's function occurred.

The Court added that if it was wrong in this regard, the 2018 Regulations nonetheless provide, albeit in a cumbersome manner, that the IPO may delegate his or her functions, as a determining member state, to a panel member.

Prejudicial comments re Article 17(1)?

In respect of the Article 17(1) consideration point, the applicant submitted that in a situation where the Tribunal did not have jurisdiction to exercise the Article 17(1) discretion, its comments on the matter were inappropriate. (The Tribunal had recited the then fraught situation re Article 17(1) in Irish law, and stated that it found in any event that the applicant would not succeed on an application under Article 17(1).)

The Court acknowledged that the Tribunal was in effect 'riding two horses' in this context so that it covered the Article 17(1) issue in the event that, if the then extant stay on the Court of Appeal decision in *NVU* were to be lifted, the Tribunal decision would have covered the Article 17(1) issue. In the Court's view, the Tribunal's comments in this regard now had no effect. While the comments in question were adverse to the applicant's article 17(1) application, it was, in the Court's opinion, inconceivable that the Minister would be swayed by them in circumstances where the Minister would have to approach the matter anew, and was a professional and experienced decision maker well used to making decisions in the asylum and immigration arena.

***MG v IPAT & Ors* [2020] IEHC 701, Burns J., 21 December 2020**

The applicant in this case sought to quash the Tribunal's decision to uphold a transfer order made by an IPO to the UK, as the member state responsible under Dublin III. The applicant also sought to compel the Minister to make an article 17(1) decision in the light of the claim in this regard to the Tribunal, and to compel the Minister to put in place a process and effective remedy to deal with article 17(1) claims.

Systemic deficiency in the UK?

The applicant claimed that the Tribunal had erred in irrationally determining that the applicant's prospective complaints of human rights infringements in the UK could be answered by recourse to the UK courts. In this regard, the applicant had claimed that the UK's policy of detention would be in breach of his Article 4 EU Charter rights in circumstances where he had PTSD and other mental health concerns. The Tribunal had stated in its decision that on the basis of information in an AIDA report and the applicant's personal circumstances (including medical evidence) there were no substantial grounds for believing that there are

systemic deficiencies in the UK reaching the Article 4 threshold. In the Court's judgment, these were findings open to the Tribunal to make.

Obligation for the Minister to make an Article 17(1) decision?

The applicant claimed that as he had made an Article 17(1) application to the Tribunal, the Minister was no obliged to make an Article 17(1) determination, and in this context sought an order of mandamus. The Court, rejecting this request, did not accept that the making of an Article 17(1) application to the Tribunal (however erroneous) equated with an application being made to the Minister.

Obligation for the Minister to put in place a process and effective remedy for Article 17(1) claims?

The applicant sought an order of mandamus compelling the Minister to put in place a system for applications pursuant to Article 17(1) of the Regulation, and to provide for an effective remedy in this regard. In rejecting these requests, the Court held that it was clear that neither EU nor Irish law requires a system relating to Article 17(1) (e.g., Case C-528/11 *Halaf*, paras 35-37; Case C-578/16 *CK*, paras 88 and 96), and that the applicant had failed to explain why judicial review is defective for the purpose of reviewing an erroneous Article 17(1) decision (Case C-661/17 *MA* considered, esp. para. 79).

Dublin Transfer: Automatic Stay in Litigation re Dublin Transfers?

LK v IPAT [2020] IEHC 616, Burns J., 25 November 2020

The judgement arose from a case in the 'holding list' following the judgment in NVU v RAT [2020] IESC 46, which was concerned with the matter of who had power to consider the Article 17(1) 'sovereign discretion' set out in the Dublin III Regulation.

The judgment concerned the Minister's application to set aside the stay over the impugned transfer decision, which stay applied to the case, and all cases in the 'holding list' by virtue of para. 8(2) of High Court Practice Direction 81. Paragraph 8(2) of the Practice Direction provides:

> '[W]here the relief in respect of which leave is sought includes a challenge relating to a decision under the Dublin system, the court has directed by way of a global order that the filing of any such application acts as a stay on the decision proposed to be challenged, until the final determination of the proceedings on that application

including the substantive proceedings if leave is granted and any appeal therefrom unless the court subsequently otherwise orders.'

The Minister argued that the stay was no longer necessary, now that NVU had been determined, and that para. 8(2) of the Practice Direction was contrary to the spirit of the Dublin III Regulation.

In the Court's judgment, the State had already provided an effective remedy for Dublin transfer decisions by way of the Tribunal's jurisdiction, and had provided for a stay on a transfer decision during the currency of that appeal. Moreover, it was clear from EU law that the Dublin III Regulation does not require an effective remedy in respect of Article 17(1) of the Regulation (Case C-661/17 *MA*).

More critically, in the Court's judgment para. 8(2) of the Practice Direction was not necessitated by the Regulation, and ran contrary to the intention of the Regulation, i.e., rapid identification of the appropriate member state to deal with international protection applications and the speedy determination of such proceedings (recital 5 of the Dublin III Regulation, and para. 78 of Case C-661/17 *MA*).

Accordingly, the Court lifted the stay, and stated that henceforth para. 8(2) of the Practice Direction would be dis-applied in respect of Dublin III decisions.

The Court noted that the normal procedure whereby a stay can be sought on an individual basis is more effective and appropriate in relation to Dublin III decisions.

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Appendix 3

Judicial Review Knowledge Management Project Report

During 2020 the Tribunal continued to consolidate and order all information available to it in respect of litigation against the Tribunal. This has enabled the Tribunal to have useful statistics in respect of litigation against its decisions. That information is summarised below, first in respect of the Tribunal's decisions generally, including specifically with regard to 2020 decisions, and then in respect of the particular types of decision made by the Tribunal. The information is based on the most up to date information available to the Tribunal.[9]

Litigation re all Tribunal Decisions

	Total	Set Aside	Affirm	JRs Total	JRs Rejected	Decisions Quashed	JRs Ongoing
International Protection	3572	1049	2523	204	63	68	73
Subsidiary Protection only	385	79	306	22	14	7	1
Inadmissible	38	2	36	5	1	3	1
Subsequent	115	36	79	5	3	2	0
Dublin	507	63	444	173	29	3	141
Reception	29	4	25	14	0	1	13
Total	4641	1232	3409	421	110	81	230

TABLE A5(1): All Tribunal Decisions since 2017

This table shows the overall picture in respect of judicial reviews against all decisions of the Tribunal since 2017. Notable statistics arising from this table include:

- Percentage of Tribunal decisions affirming IPO decisions is 73.5%.
- Percentage of Tribunal decisions the subject of litigation: 9%.
- Percentage of concluded JRs rejected: 58%.

[9] As the information received by the Tribunal in any given year can clarify matters in respect of previous years, the Tribunal's information in respect of all years is continually reviewed and improved.

- Percentage of concluded JRs resulting in quashed Tribunal decisions: 42%.

TABLE A5(2): All 2020 Tribunal Decisions

	Total	Set Aside	Affirm	JRs Total	JRs Rejected	JRs resulting in quashing	JRs ongoing
Single Procedure	922	284	638	53	0	6	47
Subsidiary	16	4	12	0	0	0	0
Inadmissible	19	2	17	0	0	0	0
Subsequent	23	9	14	0	0	0	0
Dublin	102	18	84	28	4	0	24
Reception	6	2	4	0	0	0	0
Total	1088	319	769	81	4	6	71

This table shows the picture in respect of judicial reviews against all decisions of the Tribunal made during 2020. Some key statistics arising from this table are:

- Percentage of 2020 Tribunal decisions affirming IPO decisions: 71%.
- Percentage of 2020 Tribunal decisions affirming IPO decisions the subject of JR: 7.4%.

Tribunal Decisions by Jurisdiction

Below are tables showing the situation in respect of judicial reviews for each of the appeal jurisdictions of the Tribunal, i.e.:

- Single Procedure;
- Inadmissibility
- Subsequent Applications
- Dublin Transfers; and
- Reception Conditions;

For clarity, at the end, there are also tables in respect of judicial reviews challenging decisions made by the Tribunal relating to decisions on subsidiary protection only, pursuant to the transitional provisions under the International Protection Act 2015.
In each instance, there is first a table showing the following information:

(a) the number of appeal decisions made by the Tribunal in per year, and in total;

(b) the number of appeal decisions that set aside the decision of the IPO, per year and in total;

(c) the number of appeal decisions that affirmed the decision of the IPO, per year and in total;

(d) the number of judicial reviews challenging appeal decisions in each year and in total;

(f) the number of the concluded judicial reviews that have resulted in the challenge being rejected;

(g) the number of the concluded judicial reviews that have resulted in the Tribunal's decision being quashed (including on consent by way of settlement); and

(h) the number of judicial reviews that are ongoing.

Secondly, in each instance, there is also a table showing, per year and in total, in respect of the appeal jurisdiction in question:

(a) the percentage of Tribunal decisions affirming the IPO decision;

(b) the percentage of Tribunal decisions the subject of judicial review;

(c) the percentage of concluded JRs that were rejected; and

(d) the percentage of concluded JRs that resulted in the Tribunal decision being quashed (including on consent by way of settlement).

Litigation and Single Procedure Decisions

Table A5(3): Litigation and Single Procedure Decisions A

Year	Decisions	Set aside [10]	Affirm	JRs	JRs refused	Decision quashed	JR ongoing
2017	90	15	75	15	10	4	1
2018	855	267	588	56	28	25	3
2019	1705	483	1222	80	25	33	22
2020	922	284	638	53	0	6	47
Total	3572	1049	2523	204	63	68	73

[10] The figures do not distinguish between decisions that set aside first instance single procedure decisions on asylum and subsidiary protection, and those that aside one or other of those parts of the decisions.

Table A5(4): Litigation and Single Procedure Decisions B

Year	Percentage of Tribunal decisions affirming IPO decisions	Percentage of decisions subject to judicial review	Percentage of concluded judicial reviews refused	Percentage of concluded JRs resulting in quashing orders
2017	83%	17%	71%	29%
2018	69%	7%	53%	47%
2019	72%	5%	43%	57%
2020	69%	6%	0%	100%
Total	71%	5%	48%	52%

The number of single procedure appeal decisions made by Tribunal that have been the subject of judicial review is relatively low, with only 5% of such decisions of the Tribunal being subject of JR, and 6% of the Tribunal's 2020 decisions in this regard being the subject of judicial review. The Tribunal believes that this reflects the overall high quality of its decision-making. Issues that have arisen in the context of these applications for judicial review in 2020 include:

- failure to apply the correct standard of proof in the assessment of facts;
- credibility analysis;
- credibility and mental health issues;
- credibility in claims brought by spouses;
- failure to consider relevant documents in credibility analysis;
- failure to consider medico-legal reports and evidence of vulnerability;
- the concept of 'compelling reasons', in respect of cases considered under the transitional provisions of the 2015 Act;
- failure properly to consider past persecution;
- failure to properly consider whether an applicant was a member of a particular social group;
- failure to properly consider country information in respect of the forward looking analysis of risk of persecution.

Litigation and Inadmissible Appeal Decisions

Table A5(5): Litigation and Inadmissible Appeal Decisions A

Year	Decisions	Set aside	Affirm	JRs	JR refused	Decision quashed	JR ongoing
2017	5	0	5	0	0	0	0
2018	9	0	9	3	0	0	3
2019	5	0	5	1	1	0	0
2020	19	2	17	0	NA	NA	NA
Total	38	2	36	4	1	0	3

Table A5(6): Litigation and Inadmissible Appeal Decisions B

Year	Percentage of Tribunal decisions affirming IPO decisions	Percentage of decisions subject to judicial review	Percentage of concluded judicial reviews refused	Percentage of concluded JRs resulting in quashing orders
2017	100%	0%	NA	NA
2018	100%	33%	NA	NA
2019	100%	20%	100%	0%
2020	89%	0%	NA	NA
Total	95%	18%	100%	0%

The few judicial reviews that have arisen in the context of inadmissibility tend to relate to the issue of whether the ground for inadmissibility under the 2015 Act whereby the application for international protection in Ireland by a person with *subsidiary protection* status in another Member State is deemed inadmissible, notwithstanding that the Qualification Directive, to which the 2015 gives effect, allows this ground expressly in respect of persons with *refugee status* only. In 2020 the Court of Justice of the European Union resolved this issue in its judgment in Case C-616/19 *MA and Ors v Minister for Justice and Equality* (10 December 2020). This judgment confirmed that it is in order for an IPO to recommend as inadmissible an application for international protection where the applicant already has either refugee *or subsidiary protection status* in another Member State.

Litigation and Subsequent Application Appeal Decisions

Table A5(7): Litigation and Subsequent Application Appeal Decisions A

Year	Decisions	Set aside	Affirm	JRs	JR refused	Decision quashed	JR ongoing
2017	10	7	3	0	NA	NA	NA
2018	47	11	36	5	3	2	0
2019	35	9	26	0	NA	NA	NA
2020	23	9	14	0	NA	NA	NA
Total	115	36	79	5	3	2	0

Table A5(8): Litigation and Subsequent Application Appeal Decisions B

Year	Percentage of Tribunal decisions affirming IPO decisions	Percentage of decisions subject to judicial review	Percentage of concluded judicial reviews refused	Percentage of concluded JRs resulting in quashing orders
2017	30%	0%	NA	NA
2018	77%	11%	60%	40%
2019	74%	0%	NA	NA
2020	61%	0%	NA	NA
Total	69%	5%	60%	40%

The few judicial reviews that have arisen in the context of subsequent application decisions have tended to turn on their own facts in the context of the consideration, in line with section 22 of the 2015 Act, of whether an appellant demonstrated that new elements arose since the determination of his or her previous application, that make it significantly more likely that the person will qualify for international protection, and whether the person through no fault on his or her part was incapable of presenting those elements for the purposes of his or her previous application.

Litigation and Dublin Transfer Appeal Decisions

Table A5(9): Litigation and Dublin Transfer Appeal Decisions A

Year	Decisions	Set aside	Affirm	JRs	JR refused	Decision quashed	JR ongoing
2017	230	20	210	92	20	3	69
2018	23	5	18	5	0	0	5
2019	152	20	132	48	5	0	43
2020	102	18	84	28	4	0	24
Total	507	63	444	173	29	3	141

Table A5(10): Litigation and Dublin Transfer Appeal Decisions B

Year	Percentage of Tribunal decisions affirming IPO decisions	Percentage of decisions subject to judicial review	Percentage of concluded judicial reviews refused	Percentage of concluded JRs resulting in quashing orders
2017	91%	40%	87%	13%
2018	78%	22%	0%	0%
2019	87%	32%	100%	0%
2020	90%	27%	100%	0%
Total	88%	34%	91%	9%

Most of the litigation in respect of Dublin transfer appeal decisions has concerned whether the Tribunal has what is often referred to as the 'sovereign discretion' option set out in Article 7(1) of the Dublin III Regulation, which would allow it to decide that the State should process a particular application for international protection due to political, humanitarian, or practical considerations, notwithstanding that another Member State is technically responsible under the legal criteria in the Dublin III Regulation. In 2020 the Supreme Court resolved this issue in its judgment in *NVU and Ors v RAT and Ors* S:AP:IE:2019:000193 (24 July 2020). That judgment clarified that in an appeal before the Tribunal under the Dublin System Regulations, in which an appellant asks that the Tribunal consider matters in the context of Article 17(1) of the Regulation, the Tribunal must be clear that it has no jurisdiction to entertain such a request.

Litigation and Reception Conditions Appeal Decisions

Table A5(11): Litigation and Reception Conditions Appeal Decisions A

Year	Decisions	Set aside	Affirm	JRs	JR refused	Decision quashed	JR ongoing
2017	NA	NA	NA	NA	NA	NA	NA
2018	20	3	17	14	0	1	13
2019	6	1	5	0	NA	NA	NA
2020	6	2	4	0	NA	NA	NA
Total	32	6	26	14	0	1	13

Table A5(12): Litigation and Reception Conditions Appeal Decisions B

Year	Percentage of Tribunal decisions affirming IPO decisions	Percentage of decisions subject to judicial review	Percentage of concluded judicial reviews refused	Percentage of concluded JRs resulting in quashing orders
2017	NA	NA	NA	NA
2018	85%	70%	0%	100%
2019	83%	0%	NA	NA
2020	67%	0%	NA	NA
Total	81%	48%	0%	100%

The judicial reviews that have arisen in the context of reception conditions cases have tended to relate to whether a person who is the subject of a transfer order under the Dublin III Regulation may benefit from the reception condition allowing that person to apply for access to the labour market if his or her application for international protection does not result in a first instance decision within a particular time frame. Both the High Court (see *KS, MHK v The International Protection Appeals Tribunal, the Minister for Justice and Equality, Ireland and the Attorney General* (Case C-322/19) and the Tribunal itself (see *Ms R.A.T., Mr D.S. v Minister for Justice and Equality* (Case C-385/19)) made preliminary references to the Court of justice of the European Union on the matter, and the CJEU was due to make its ruling in 2021.[11]

[11] *The CJEU would make its ruling on the matter in its judgment in Joined Cases C-322/19 and C-385/19 KS & Ors v IPAT & Ors, on 14 January 2021, ruling, inter alia, that the relevant EU law precluded national legislation which excludes an applicant for international protection from access to the labour market on the sole ground that a transfer decision has been taken in his or her regard under the Dublin III Regulation.*

Litigation and Subsidiary Protection Appeal Decisions under the Transitional Provisions of the 2015 Act

Table A5(13): Litigation and Transitional Cases/Subsidiary Protection Only Appeal Decisions A

Year	Decisions	Set aside	Affirm	JRs	JR refused	Decision quashed	JR ongoing
2017	249	46	203	15	9	5	0
2018	79	21	58	5	3	2	0
2019	41	8	33	2	2	0	0
2020	16	4	12	0	NA	NA	NA
Total	385	79	306	22	14	7	0

Table A5(14):Litigation and Transitional Cases/Subsidiary Protection Only Appeal Decisions B

Year	Percentage of Tribunal decisions affirming IPO decisions	Percentage of decisions subject to judicial review	Percentage of concluded judicial reviews refused	Percentage of concluded JRs resulting in quashing orders
2017	82%	6%	64%	36%
2018	73%	6%	60%	40%
2019	80%	4.5%	100%	0%
2020	75%	0%	NA	NA
Total	79%	6%	67%	33%

These cases arise where the Tribunal makes an appeal decision on subsidiary protection after an appellant was previously given a decision of the erstwhile Refugee Appeals Tribunal in respect of refugee status, and then subsequently required a decision on appeal in respect of subsidiary protection.

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