An Binse um Achomhairc i dtaobh Cosaint Idirnáisiúnta

*The International Protection Appeals Tribunal*

# Summary of Judgments of the Irish Superior Courts in 2023 relating to decisions of the International Protection Appeals Tribunal

# Contents

# Section 1: Safe Country of Origin

***M.Z. v. International Protection Appeals Tribunal & Anor* [2023] IEHC 637**

**Hyland J. 25 September 2023**

M.Z. v International Protection Appeals Tribunal and Others (vlex.com)

CREDIBILITY – SAFE COUNTRY OF ORIGIN – STATE PROTECTION

The Applicant was a Georgian national who claimed he was at risk of harm in Georgia from criminal associates. The Tribunal accepted that the Applicant did face a reasonable chance of persecution from criminals in Georgia but found there was no nexus. The Tribunal accepted that there was a risk of serious harm but that state protection was available having also taken into account the designation of Georgia as a safe country.

It was contended that by accepting the Applicant faced serious harm if returned to his country of origin, the Applicant was ipso facto entitled to international protection. The Court noted that this had been rejected by the cases of *B.A. v The International Protection Appeals Tribunal [2020] IEHC 589* and *T.A. v The International Protection Office & Ors* [2023] IEHC 390. The Tribunal is entitled to assess state protection after determining the risk of serious harm.

The second argument advanced was that the Tribunal was not entitled to take into account the designation of Georgia as a safe country in determining the issue of state protection. This was rejected by the Court and it was determined that the Tribunal could rely on the designation and relevant recent country information in order to determine the availability of state protection.

The third argument involved a repetition of the issue of the standard of proof in Tribunal hearings. It was restated that the standard of proof is the balance of probabilities.

In respect of the issue of state protection, the Court restated the relevance of the decision in *BC v IPAT* [2019] IEHC 763 and found that the Tribunal correctly assessed the question. The Court specifically noted that: *"Section 31 does not require that the state prevent persecution by non-state actors but that it take reasonable steps to prevent such persecution"*

***Certiorari* refused.**

***N.G. v. International Protection Appeals Tribunal & Anor* [2023] IEHC 535**

**Phelan J. 29 September 2023**

N.G. v The International Protection Appeals Tribunal & Ors (Approved) [2023] IEHC 535 (29 September 2023) (bailii.org)

STATE PROTECTION

The Applicant was an Albanian national who claimed a fear of criminals. Credibility was accepted but it was determined state protection was available.

The first argument advanced by the Applicant was in the same terms as the first argument in *M.Z.* above. The Court also followed the decision in *TA v The International Protection Office & Ors* [2023] IEHC 390, the Tribunal is entitled to first make a determination on the persecution or serious harm before then determining whether state protection is available.

The Applicant also contended that the Tribunal failed to apply the test set out in *BC v. IPAT* [2019] IEHC 763 in deciding on state protection. It was also asserted that the Tribunal should not have referenced the designation of Albania as a safe country in determining state protection.

The Court rejected these contentions and found that the Tribunal had engaged in a fulsome analysis of state protection having engaged with the available country of origin information. The reference to the safe country designation was made in this context but was not relied upon as part of the analysis.

***Certiorari* refused.**

***T.A. v The International Protection Office & Ors* [2023] IEHC 390**

**Heslin J. 7 July 2023**

T.A. v The International Protection Office & Ors (Approved) [2023] IEHC 390 (07 July 2023) (bailii.org)

IPO – STATE PROTECTION

The Applicant submitted that, in order to consider whether there is a well–founded fear, the decision maker must simultaneously consider the availability of State protection (i.e., otherwise it is not a well–founded fear). Thus, contends the Applicant, well–founded fear / real risk is not separate from the concept of State protection, for the purposes of the 2015 Act / Qualification Directive.

The Court held:

*"Well–founded fear is certainly an element of the definition of refugee status. However, it seems to me that there is a clear distinction between the concept of well–founded fear and the entitlement to refugee status (whereas the applicant contends that a finding of the former automatically gives rise to the latter). Based on a literal interpretation of the words used (in s.2 of the 2015 Act/Article 2 of the Qualification Directive), it seems to me that State protection is an element of, but distinct from, the definition of refugee.* (para 63)

*In other words, the concepts of (i) fear of persecution and (ii) protection are certainly "intrinsically linked" (to cite OA), but this is a close linking of distinct elements making up a unitary definition. In the impugned decision, both these elements were considered by the IPO and I cannot accept that it is permissible for this Court to take issue with the clear and logical approach taken by the IPO when carrying out this consideration. In other words, I can identify nothing in the definition of refugee which entitles this court to hold that the IPO fell into error insofar as its careful consideration was concerned.* (para 66)

*Similar comments apply in respect of the definition of a "person eligible for subsidiary protection". Again, distinct elements of a unitary definition are linked by use of the word "and". It seems to me that the concepts of "risk" and "protection", whilst elements of a single definition, amount to distinct concepts."* (para 67)

***Certiorari* refused.**

***K. (Zimbabwe) v International Protection Appeals Tribunal & Anor* [2023] IEHC 6**

**Simons J. 11 January 2023**

K. (Zimbabwe) v International Protection Appeals Tribunal (Approved) [2023] IEHC 6 (11 January 2023) (bailii.org)

CREDIBILITY – COUNTRY OF ORIGIN INFORMATION

The Applicant was a national of Zimbabwe who claimed to have left the MDC and joined ZANU-PF under pressure. The Applicant said that she was tortured and raped by ZANU-PF after having informed the MDC in respect of a planned arson attack. The Applicant subsequently left Zimbabwe out of fear

of harm from both the MDC and ZANU-PF. The Tribunal rejected the credibility of the Applicant's claims.

The Court determined the Tribunal fell into error in failing to consider supportive general country of origin information in advance of rejecting the credibility of the Applicant's claim.

The Court also found that the Tribunal erred in adopting the Presenting Officer's contention that the Applicant had been inconsistent about which party she had been providing information to. The Court held that the Tribunal also failed to engage in explanations for inconsistencies provided by the Applicant.

The Court further found that the Tribunal should not have had regard to the s.35 interview in circumstances where it read as "a hostile cross-examination".

***Certiorari* granted.**

| ***E.S.O. v. International Protection Office & Anor* [2023] IEHC 197**<br>**Phelan J. 24 April 2023** |
|---|

E.S.O. v The International Protection Office & Ors (Approved) [2023] IEHC 197 (24 April 2023) (bailii.org)

CREDIBILITY – COUNTRY OF ORIGIN INFORMATION - IPO

Applicant claimed that he was a leader of the ESN, a branch of the IPOB, set up to deal with Fulani herdsmen attacks. The IPO rejected the claim of leadership within the IPOB and refused international protection.

In judicial review, it was claimed that the IPO erred in failing to make a determination on whether the Applicant was a member of the IPOB, having rejected the claim of leadership within the organisation. It was also alleged that the IPO erred in failing to put it to the Applicant that his account was vague when weighed against available country of origin information.

The Court found that the IPO had failed to make a determination of both aspects of the Applicant's claim. The decision maker was obliged to consider the issue of membership of the IPOB notwithstanding the determination that the Applicant was not a leader within it. However the Court refused to quash the decision on this basis given the availability of an appeal to the Tribunal.

In respect of the issue of vagueness, the Court found there was no obligation on the decision-maker to specifically put vagueness to the Applicant at interview. The Applicant was afforded multiple opportunities to comment when insufficient evidence had been given at interview.

***Certiorari* refused.**

# Section 2: Documents

***A.E.* v *Chief International Protection Officer and the International Protection Appeals Tribunal* [2023] IEHC 695**

**Phelan J. 6th December 2023**

A.E. v The Chief International Protection Officer & Ors (Approved) [2023] IEHC 695 (06 December 2023) (bailii.org)

DOCUMENTS - IPO

The Applicant was a Georgian national who claimed he had been present as a border guard at a well-known terrorist incident on the Georgian border in 2012. At the s.35 interview, the Applicant was provided with ten working days to provide any employment or bank documents which would tend to support his claim. Documents related to his work as a border guard were submitted but not considered by the IPO in the section 39 report refusing international protection on credibility grounds.

The issue was raised before the Tribunal which adjourned the hearing of the appeal to allow judicial review be taken against the section 39 report.

The Court noted the right of the Applicant under section 28 of the Act to have the documentation submitted considered by the IPO. The Court determined that the failure to consider the relevant document gave rise to such a fundamental unfairness that the availability of a de novo hearing before the Tribunal was not an acceptable alternative remedy.

***Certiorari* granted.**

***M.H. v. International Protection Office & Anor* [2023] IEHC 372**

**Phelan J. 28 June 2023**

M.H. v International Protection Appeals Tribunal & Anor (Approved) [2023] IEHC 372 (28 June 2023) (bailii.org)

CREDIBILITY – CONSIDERATION OF DOCUMENTS – ARTICLE 15(C)

The Applicant was a Kashmiri Pakistani from near the Line of Control. The Applicant claimed that he and his family were activists within the JKLF.

The Tribunal decision rejecting the Appellant's claim was challenged on the basis of a claimed failure to properly assess the claim under Article 15(c) and a failure to consider documentation correctly.

The Court held that the Tribunal's approach to the issue of Article 15(c) was correct.

The Court quashed the Tribunal on the basis of its consideration of documents. The Appellant had submitted some news articles and JKLF documents which could potentially have supported his claim. The Tribunal, relying upon the decision of Humpreys J. in *O.A. Nigeria v IPAT* [2020] IEHC 100, found that as the credibility of the Appellant had not been established, the reliability of the documents submitted was not accepted.

The Court rejected this interpretation of *O.A.* The Court found that the Tribunal should have considered the documents *in toto* and quoted approvingly from the *EASO Practical Guide to Evidence Assessment* of March 2015. The Court also stated that the Tribunal may be under an onus to authenticate documents and specifically noted that the documents in question had personal identifiers.

The Court concluded that "*A general lack of credibility should not be cited as an explanation for not considering documents submitted as to their contents as this is tantamount to a failure to assess and falls foul of the principles established in I.R., R.A."*

***Certiorari* granted.**

# Section 3: Medical Reports

***O.R.A. v. International Protection Appeals Tribunal & Anor* [2023] IEHC 438**
**Meenan J. 20 July 2023**

O.R.A. v The International Protection Appeals Tribunal & Anor (Approved) [2023] IEHC 438 (20 July 2023) (bailii.org)

CREDIBILITY – CONSIDERATION OF MEDICAL REPORT AND DOCUMENTS

The Applicant was a Nigerian national who claimed to have been kidnapped by herdsmen for a number of months. The Tribunal rejected the credibility of the claim based on internal inconsistencies and changes in the narrative provided. The Tribunal found that a medical report was based upon the self-reported claims of the Applicant and could not support the narrative in circumstances where credibility had been rejected. The Tribunal also rejected a police report from the Applicant's wife based on the same reasoning.

Meenan J. found that the credibility assessment was for the Tribunal to carry out and the role of the Court was not to substitute its own view. The Tribunal was entitled to take into account internal inconsistencies in the narrative and the failure of the Applicant to mention aspects of his claim in his questionnaire.

Meenan J. also held that the approach of the Tribunal to the medical report and police documentation was correct in law.

***Certiorari* refused.**

***A.S. v International Protection Appeals Tribunal & Anor* [2023] IEHC 53**
**Phelan J. 2 February 2023**

A.S. v International Protection Appeals Tribunal & Anor (Approved) [2023] IEHC 53 (02 February 2023) (bailii.org)

SEQUENCE OF CONSIDERATION OF MEDICAL REPORT

The Applicant was a national of Sierra Leone who claimed to have been subject to torture due to his political activity in his country of origin.

The Applicant submitted a SPIRASI report which noted physical scaring consistent with the Applicant's claims. The Tribunal noted that this amounted to the lowest positive level of consistency pursuant to the Istanbul Protocol and the conclusions reached in the report were based upon the self-reported claims of the Applicant. The Tribunal assessed the credibility of the claim, noting numerous inconsistencies. The Tribunal found that general credibility was not established and the conclusions contained in the SPIRASI report could not be relied upon in the circumstances.

The Court reviewed the case law and determined that the Tribunal is obliged to consider the SPIRASI report in arriving at credibility findings. The Court complemented the Tribunal's decision but found that it failed to weigh the medical report is assessing credibility. The Court determined the Tribunal made a definite conclusion on credibility first and only then considered the SPIRASI report. This sequencing was incorrect.

***Certiorari* granted.**

# Section 4: Accelerated Appeals (On Papers)

***C.C. v. International Protection Appeals Tribunal & Anor* [2023] IEHC 636**

**Hyland J. 27 October 2023**

C.C. v International Protection Appeals Tribunal & Anor (Approved) [2023] IEHC 636 (27 October 2023) (bailii.org)

PAPERS ONLY - ADMINISTRATIVE PRACTICE NOTE – NO ENTITLEMENT TO BE TOLD WHETHER AN ORAL HEARING WILL TAKE PLACE

The Applicant was a Kosovan national whose credibility was rejected by the IPO. A notice of appeal was served on the Tribunal which included legal submissions and a statement that further submissions would follow. The Tribunal determined the appeal without writing to the Applicant's solicitor. Credibility was accepted but the Tribunal refused international protection.

The sole ground of judicial review was whether it was a breach of fair procedures for the Tribunal to fail to notify Applicant that further submissions should be made as the application for an oral hearing had been refused.

The Court relied heavily on the Administrative Practice Note issued by the Chairperson of the Tribunal. It outlines that the Tribunal may not engage in correspondence in a papers only appeal before issuing a decision. The Court noted that the Applicant's solicitor was clearly aware of the Tribunal's procedure and that there was no entitlement per se to be told as to whether an oral hearing would take place or not. There was nothing to prevent the Applicant's solicitor in filing further written submissions and there was no explanation as to why this was not done.

***Certiorari* refused.**

# Section 5: Exclusion

***T. (Russian Federation) v International Protection Appeals Tribunal & Anor***

**[2023] IEHC 271**

**Simons J. 25 May 2023**

T. (Russian Federation) v International Protection Appeals Tribunal & Anor (Approved) [2023] IEHC 271 (25 May 2023) (bailii.org)

The Applicant claimed before the Tribunal that he was a Muslim man from the Caucasus who had been falsely accused by the FSB of travelling to Syria and being a member of a terrorist group. The Applicant submitted a number of documents to support this claim. The Applicant claimed that these documents were created by the Russian State to falsely accuse him of criminality.

The Tribunal accepted that the Appellant had a well-founded fear of persecution in Russia on the grounds of religion, imputed political opinion and membership of a particular social group, having accepted that persons suspected of membership of Islamic terrorist groups are subject to torture and murder.

The Court referred to the CJEU decision in the Joined Cases C-57/09 and C-101/09, Bundesrepublik Deutschland v. B and D, EU:C:2010:661 and found:

*"The fact that a person has been a member of a (proscribed) terrorist organisation and has actively supported the armed struggle waged by that organisation does not automatically constitute a "serious reason" for considering that that person has committed a "serious non-political crime". Rather, the finding, in such a context, that there are serious reasons for considering that a person has committed such a crime or has been guilty of such acts is conditional on an assessment, on a case-by-case basis of the specific facts, with a view to determining (i) whether the acts committed by the organisation concerned meet the conditions laid down, and (ii) whether individual responsibility for carrying out those acts can be attributed to the person concerned.*

*It must be possible to attribute to the person concerned—regard being had to the standard of proof required under Article 12(2)—a share of the responsibility for the acts committed by the organisation in question while that person was a member. To that end, the competent authority must, inter alia, assess the true role played by the person concerned in the perpetration of the acts in question; his position within the organisation; the extent of the knowledge he had, or was deemed to have, of its activities; any pressure to which he was exposed; or other factors likely to have influenced his conduct.*

*Any competent authority which finds, in the course of that assessment, that the person concerned has occupied a prominent position within an organisation which uses terrorist methods is entitled to presume that that person has individual responsibility for acts committed by that organisation during the relevant period, but it nevertheless remains necessary to examine all the relevant circumstances before a decision excluding that person from refugee status can be adopted."*

The Court found that the Tribunal fell into error by failing to adequately identify the nature of the crimes it considered the Applicant to have committed. The Tribunal was obliged to engage in an individual assessment and this required the identification of the crimes allegedly committed by the Applicant, including the broad circumstances of that crime. The Court found that it was insufficient for the Tribunal to make references to extraneous documents without making a specific finding in respect of the alleged criminal acts. The Court also made findings that the documents appeared to be insufficient to make findings of criminal acts against the Applicant given they related to the early stages of a criminal process, being search warrant and related documents. The Tribunal should have also determined whether it was appropriate to rely on these documents emanating from the Russian State given COI on fabricated criminal charges being brought against political opponents of the regime. The Court also noted that the onus of proof in respect of exclusion is on the competent authorities of the State, not the Applicant.

***Certiorari* granted.**

# Section 6: Labour Market Access

***A. (A minor) v. International Protection Appeals Tribunal & Anor***

**[2023] IEHC 141**

**Simons J. 23 March 2023**

A. (A Minor) v International Protection Appeals Tribunal (Labour Market Access) (Approved) [2023] IEHC 141 (23 March 2023) (bailii.org)

LABOUR MARKET ACCESS

The Applicant was the minor child of two failed applicants for international protection. The Applicant's parents had been provided access to the labour market for a period during their international protection application but this had been removed on the rejection of their application. The Applicant sought international protection and his parents sought access to the labour market on this basis. It was contended that as the child could not work, his parents should be entitled to exercise this right vicariously.

The Court noted that the Applicant was an eighteen month old child and had no right to work until they reached the age of 14 years. The Court found that the right to work could not be separated from access to the labour market. As the child had not right to work, no separate vicarious right of access to the labour market could arise.

It was also contended on behalf of the Applicant that the parents could enjoy a derived right of access to the labour market based on the Applicant's right to an adequate standard of living during an international protection application. The Court rejected this argument given that the State was obliged by the Reception Conditions Directive to ensure an adequate standard of living and the Applicant in fact enjoyed such an adequate standard of living on the facts.

***Certiorari* refused.**