



**An Binse um Achomhairc i dtaobh Cosaint Idirnáisiúnta**  
**The International Protection Appeals Tribunal**

**Information Note on Preliminary Reference 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 and the Attorney General (C-322/19)* (Request for a preliminary ruling from the High Court (Ireland)) and *Ms R.A.T., Mr D.S. v The Minister for Justice and Equality (C-385/19)* (Request for a preliminary ruling from the International Protection Appeals Tribunal (Ireland))**

(3<sup>rd</sup> September 2020)

On 30 June 2018, the European Communities (Reception Conditions) Regulations 2018 came into force, giving effect to the Reception Conditions Directive (Recast) 2013/33. One of the changes brought about by the transposition of this Directive was that applicants for international protection could apply to the Minister for Justice and Equality for permission to access the labour market as long as they satisfied 2 conditions: firstly, the applicant must have been waiting longer than 9 months for a first instance decision, and secondly, any delay must not be attributable to the applicant.

Ireland included another condition in the statutory instrument, namely that a person who is the subject of a transfer decision under the Dublin Regulation is a “recipient” of reception conditions, not an “applicant” for international protection, and therefore debarred from applying to access the labour market.

Both the High Court and the International Protection Appeals Tribunal made preliminary references to the Court of Justice of the European Union pursuant to Article 267 TFEU (C-322/19 and C-385/19 respectively). The references both centred on the interpretation of the words “applicant” and “delay”.

On 3 September 2020, Advocate General de la Tour delivered his opinion in the matter <http://curia.europa.eu/juris/document/document.jsf?text=&docid=230624&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=18009331>.

He concluded as follows:

“127. In the light of the foregoing considerations, I propose that the Court should answer the second question referred for a preliminary ruling by the High Court (Ireland) in *The International Protection Appeals Tribunal and Others (C 322/19)* and the first question referred for a preliminary ruling by the International Protection Appeals Tribunal (Ireland) in *Minister for Justice and Equality (C 385/19)* as follows:

- (1) 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.

(2) 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.

128. Furthermore, I propose that the Court should answer the fourth and fifth questions referred for a preliminary ruling by the High Court in *The International Protection Appeals Tribunal and Others* (C 322/19) and the second question referred for a preliminary ruling by the International Protection Appeals Tribunal in *Minister for Justice and Equality* (C 385/19) as follows:

(1) 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.

(2) In those circumstances, a Member State may not attribute to the applicant for international protection the delay resulting from the procedure for determining the Member State responsible for examining his or her application for international protection either on the ground that he or she did not lodge his or her application for international protection in the first Member State of entry, or, if he or she is lawfully resident in a Member State, in his or her Member State of residence, or on the ground that he or she brought legal proceedings against the transfer decision adopted pursuant to Article 26 of Regulation No 604/2013.”

The judgment of the CJEU is now awaited.

ENDS.