



Chairperson's Guideline No: 2018/2

Adjournments and Postponements of Appeal Hearings

[1.] Introduction

[1.1] The **International Protection Act 2015** (hereinafter referred to as “the Act”) and the **International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017** (hereinafter referred to as “the Appeals Regulations”) set out various matters relating to the conduct of appeals before the Tribunal. This Guideline is intended to supplement the Act and Regulations and not to supplant them. In case of conflict, the provisions of the Act or relevant Regulation shall take precedence over these guidelines.

[1.2] This Guideline is informed by the Act, the Appeals Regulations, Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, and the UNHCR Handbook and Guidelines on Procedures and Criteria for

Determining Refugee Status (December 2011). Consideration has also been given to relevant case law and academic commentary.

[1.3] This Guideline is issued pursuant to s.63(2) of the Act.

[2.] Role of Members of the Tribunal

[2.1] In accordance with s.65(2)(a) of the Act, a Member of the Tribunal shall, in the performance of his or her functions under the Act, ensure that the business assigned to him or her is managed efficiently and disposed of as expeditiously as is consistent with fairness and natural justice.

[2.2] A high volume of postponements and adjournments of scheduled hearings have the potential to hinder the Tribunal's efficient disposal of appeals.

[3.] International Protection Act (Procedures and Periods for Appeals) Regulations 2017

[3.1] Regulation 6(1) of the Appeals Regulations provides that, unless a shorter notice period has been agreed by the parties, the Tribunal shall fix the date, time and location of an oral hearing and shall, not less than 20 working days before such date, send notice of the location, date and time for the oral hearing to the appellant and his or her legal representative (if any) and the Tribunal is also obliged to send such notice to the Minister for Justice and Equality.

[3.2] Any request for an adjournment or postponement of a hearing, following the notification of a hearing date, whether made by or on behalf of an appellant or the Minister, may be adhered to and the Tribunal may adjourn or postpone a hearing to a specified date, where it is satisfied that it is **in the interest of justice** to do so (Regulation 9 of the Appeals Regulations).

[4.] Adjournments and Postponements in the interests of justice

[4.1] When considering whether to adjourn or postpone the hearing of an appeal, and in assessing whether it is in the interests of justice to do so, Members of the Tribunal should take account of the decision of Barr J. in [A.P. \(Albania\) -v- Refugee Appeals Tribunal](#) [2014] IEHC 493, wherein he stated in relation to a request for an adjournment to remedy interpretation difficulties that had been made by an appellant that: *"(...) the RAT erred in not granting an adjournment to the applicant so that an interpreter who understood and spoke the applicant's dialect of Albanian could be found. (...)"*¹

[4.2] The High Court has also quashed a decision of the Tribunal because the Tribunal declined to give an adjournment so that the applicant could call a witness. Although recognising that: *"(...) a Tribunal Member must enjoy very considerable flexibility in deciding whether to adjourn a case or to permit a case to be re-opened and further evidence heard"*, and agreeing with Smyth J. in the case of *Mihalescu v. The Refugee Applications Commissioner & Anor* (unreported, High

¹ Para.50.

Court, 25th June, 2002) that there was *“the possibility that applications for adjournments and re-opening might, in some circumstances, serve as a delaying tactic”*,² Birmingham J. held that where *“(M)aterial was in existence which was clearly potentially relevant and the combined effect of Tribunal rulings precluded the applicant from relying on it. (...), there was a material unfairness in refusing to hear the evidence of [the witness]”*.³

[4.3] In contrast however, Tribunal Members should also bear in mind, as held by Mac Eochaidh in [L.H.C. \(a minor\) -v- Refugee Appeals Tribunal & ors](#) [2014] IEHC 75, that: *“Where it is alleged in judicial review proceedings that an asylum claimant has been unfairly denied the opportunity to submit evidence (whether by reason of refusal of an adjournment or by some other decision) it seems (...) that the applicant must describe the substance of the excluded evidence and in addition must describe the prejudice caused by its exclusion. (...)”*.⁴ In the particular case, Mac Eochaidh J. held that: *“The applicant has failed to establish what new evidence would or could have been submitted and has failed to establish any prejudice that arose from the refusal of the adjournment”*.⁵

[4.3] A postponement or adjournment should therefore be granted only where an appellant or the Minister establishes that prejudice will arise from the refusal of an adjournment.

² [N. \(J.\) v. Minister for Justice, Equality and Law Reform & Anor](#) [2009] 1 IR 146, [2008] IEHC 214, para.11.

³ *Ibid.*, para. 12.

⁴ Para.11.

⁵ Para.12.

[5.] Adjourments and Postponements in the context of pending judicial reviews of the underlying IPO recommendation

[5.1] Furthermore, when considering whether to adjourn or postpone the hearing of an appeal in on the basis of pending judicial reviews of the underlying IPO recommendation pursuant to s.39 of the Act, a Member of the Tribunal should have regard to the decision of MacEochaidh in [H.T.K. \(a minor\) v Minister for Justice, Equality and Law Reform & anor.](#) [2016] IEHC 43 wherein he ruled that:

“(...) the R.A.T. may only stay an appeal if so ordered by the High Court. Appeals must be processed notwithstanding a judicial review challenging the decision of the Commissioner unless an applicant obtains an injunction staying the appeal. Such application must of course be made on notice to the R.A.T. but I cannot imagine that the Tribunal would appear, much less participate at the injunction hearing”.⁶

[6.] Requests for and Decisions on Postponements and Adjourments

[6.1] Any request for a postponement of a hearing, whether made by or on behalf of an appellant or by the Minister, should be made in writing or adjournment of a hearing is made on the date of or on occasion of the

⁶ At para.23.

hearing in question, any such request should be made in writing to the Tribunal.



Hilkka Becker

Chairperson

International Protection Appeals Tribunal

Dated the 26th day of March 2018