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

Summary of Judgments of the Irish Superior Courts in 2022 relating to decisions of the International Protection Appeals Tribunal

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CREDIBILITY - ASSESSMENT OF MATERIAL FACTS

YD v International Protection Appeals Tribunal & Ors **[2022] IEHC 115, Ferriter J., 25 February 2022**

The Applicant was a Sri Lankan national who claimed that he would be subject to persecution on his return as he had been accused of being involved in a terrorist bombing in 2008. The Tribunal rejected the credibility of the claim based on material inconsistencies in the Applicant's accounts and the documentation supplied by him.

It was contended on review that the Tribunal's decision was vitiated by fundamental errors of fact rendering the decision unlawful.

The Court accepted that a material error of fact could be a basis to grant *certiorari* but found that no such material errors had been identified by the Applicant. The Court noted that the Tribunal had identified multiple grounds for rejecting the reliability of the Applicant's core claims and credibility and that it was not open to the Court to substitute its own views for those of the Tribunal. ***Certiorari*** **refused.**

O.O. v International Protection Appeals Tribunal & Anor **[2022] IEHC 155, Heslin J., 15 March 2022**

The Applicant was a Nigerian national who claimed that he was attacked in his country of origin on the basis that he was perceived as homosexual. The credibility of the claim was rejected by the Tribunal.

In the High Court it was contended by the Applicant's legal representatives that the Tribunal erred by rejecting the account on the basis of peripheral travel issues.

Heslin J. reiterated the principle that the role of the Court in a judicial review is not to engage in a merits-based analysis of the claim. The Court rejected the claim that the Tribunal had failed to consider the Applicant's core narrative. The Court noted that the Tribunal had stated that the claim was broadly internally coherent, consistent with country of origin information and not implausible but was lacking in specificity and detail. The Tribunal found that looking at the case in the round, the Applicant's core claim was not established. Heslin J. stated:

"Insofar as it might be suggested that, where the Tribunal considers a claim to be "broadly coherent and consistent" and does not find "implausibility" such as would provide a basis for making adverse credibility findings, it is axiomatic that an applicant's account satisfies the balance of probabilities test, I reject such a suggestion. It seems to me that such a proposition would rob the decision-maker of jurisdiction. It would be to suggest that, where a version of events is proffered under oath, the Tribunal is obliged to accept it without question as being sufficient to satisfy the balance of probabilities test, with no opportunity for the Tribunal to take anything else into account (be that the lack of specificity and lack of detail in the account proffered, and/or the demeanour of a witness and/or manner in which evidence was given, or any other issue). By contrast, the Tribunal in the present case did what it was entitled to do, namely, to look at the case "in the round" and come to its decision on the core claim."

The Tribunal then proceeded to examine whether the benefit of the doubt could be extended to the Applicant. The Tribunal stated that whilst travel was peripheral to the core of the Applicant's claim, it was relevant with respect to his general credibility. The Tribunal rejected the Applicant's claim of passing through airport security without having to show identity document as implausible, noting the Applicant was vague and evasive when questioned.

The Court found the Tribunal's approach to examining whether the benefit of the doubt could apply was fair and legally correct. The Tribunal was entitled to make a negative finding concerning the Applicant's general credibility given the issues concerning his travel to the State. The Court stated:

"It is appropriate to note that the complete rejection by the Tribunal of the applicant's account of his travel to Ireland was for the reasons which were detailed at para. [4.6]. As that section of the Tribunal's judgment made clear, it was not merely because of the implausibility of the account provided by the applicant insofar as its content was concerned; nor was it exclusively because of the vagueness of the account given by the applicant. Furthermore, it was not exclusively because the applicant was unreasonably hesitant and evasive and lacking in specificity in answering basic questions. It is clear however, that all of the foregoing were factors which caused the Tribunal to completely reject the applicant's account of his travel to Ireland and to make an adverse credibility finding.

Thus, all of the foregoing factors were material to the adverse credibility finding because all were specifically referred to by the Tribunal in its reasoned decision. Travel per se may well be a 'peripheral' matter but findings that the applicant was (i) vague; (ii) unreasonably hesitant; (iii) evasive; (iv) gave answers lacking in specificity, as regards answering basic questions; and (v) tendered an entirely implausible account, entitled the Tribunal to take the view that the applicant's general credibility had not been established." ***Certiorari*** **refused**

W.A. v International Protection Appeals Tribunal & Anor **[2022] IEHC 163, Meenan J., 21 March 2022**

The Applicant was an Egyptian Coptic Christian who claimed he was attacked in Egypt after being blamed for the conversion to Christianity of a Muslim friend named Mahmoud. The Applicant remained in Egypt for 18 months before travelling to Ireland on a tourist visa.

The Tribunal rejected the credibility of the Applicant's claim. The Tribunal found the Applicant's account of the meeting between the Applicant, Mahmoud and a priest implausible. The Tribunal found the Applicant's account of his friendship with Mahmoud to lack credibility as he did not know details such as where he worked or where he went after the conversation about conversion. The Tribunal determined the Applicant's statement that he intended to return to Egypt before a conversation with his family in Ireland convinced him to claim asylum was inconsistent with a well-founded fear of returning to Egypt. The medical evidence before the Tribunal was not consistent with the injuries claimed by the Applicant.

Meenan J. referred to the principles set out by Cooke J. in *I.R.* v. Minister for Justice and Equality [2015] 4 IR 144 and the statement of Burns J. in *R.K. v. International Protection Appeals Tribunal & Anor* [2020] IEHC 522 where she held:

"23. 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."

Meenan J. held that each individual credibility finding was fair and rational. The Tribunal did not err in its assessment that the Applicant had not established a well-founded fear of returning to Egypt. ***Certiorari*** **refused**

G.K. v International Protection Appeals Tribunal & Ors **[2022] IEHC 204, Barr J., 1 April 2022**

The Applicant was a Georgian national who claimed a well-founded fear of persecution on the basis of sexual orientation. The Tribunal rejected the credibility of the claim on grounds including inconsistencies in the narrative, vagueness and the Applicant's failure to seek protection in Austria. The *ratio* of the decision is a determination by the Court that the application was made out of time and the refusal of the Court to extend time. However, Barr J. stated that the Tribunal's decision would have been upheld in any event.

The individual negative credibility findings made by the Tribunal were not irrational as contended by the Applicant. The Tribunal was entitled to state that the Applicant's evidence was lacking in detail and specificity when taken as a whole. Referring to *O.M.A. (Sierra Leone) v. Refugee Appeals Tribunal* [2018] IEHC 370, Barr J. found that the Tribunal was entitled to make general comments on the evidence before it.

The Court also upheld the right of the Tribunal to take into account the failure of an applicant to seek protection in a safe country when assessing credibility. ***Certiorari*** **refused.**

M.I.A. v International Protection Appeals Tribunal & Ors **[2022] IEHC 244, Bolger J., 27 April 2022**

The Applicant was a Pakistani national who claimed that he had been harmed in his country of origin due to a family dispute. Before the Tribunal hearing, the Applicant stated that he did not have any medical records of his treatment in Pakistan. Subsequent to the Tribunal hearing, the Applicant submitted a Pakistani medical report.

In its decision, the Tribunal noted that it should have regard to the timing of the submission of the document and the previous narrative of the Applicant concerning the absence of any medical documentation. The Tribunal also extracted country of origin information as to the widespread availability of false documentation in Pakistan. The applicant criticised the Tribunal for failing to consider the content of the document, for disregarding it by reference to when it was submitted and for rejecting the document on the basis that forged documents are commonplace in Pakistan.

On the facts of the case, Bolger J. found the hospital document was not core to the Applicant's claim and the Tribunal did not make a finding that it was falsified, fake or contrived. In the alternative, the Court found that sufficient basis had been provided by the Tribunal for its findings related to the hospital document. ***Certiorari*** **refused**

Z.A. v The International Protection Appeals Tribunal & Ors **[2022] IEHC 280, Heslin J., 8 April 2022**

The Applicant left Pakistan in 2011, travelling to the UK, where he stayed until his visa expired. The Applicant arrived in Ireland in September 2016 but did not seek international protection until he was arrested by An Garda Síochána for possession of a fake identity card. The Applicant claimed to have suffered persecution in Pakistan on the basis of his sexual orientation as a bisexual man.

The Tribunal found the Applicant had not provided a reasonable explanation for his delay in seeking protection. The Applicant's claims concerning the alleged relationships and attacks in Pakistan were vague. The documents submitted were unreliable. The Tribunal concluded the Applicant was not bisexual and the claimed persecution had not occurred. The Applicant claimed that the Tribunal erred by unduly focusing on the delay in seeking protection when determining credibility.

The Court referred to the decision of Mac Eochaidh J. in *S.Z. v. The Refugee Appeals Tribunal* [2013] IEHC 325 (unreported, the High Court, 10 July 2013) and stated:

"The decision in the present case evidences that the Tribunal carried out a careful assessment of the facts which included that the Applicant, who travelled from Pakistan to the UK in 2011, did not seek asylum in the first safe country, nor did he make an application for international protection upon arrival in this State in November 2016. Among the facts in the present case, all of which were considered by the Tribunal, was that the Applicant first sought international protection in June 2018 and, in the context of considering all facts and circumstances, the Tribunal plainly considered the Applicant's evidence when asked why he did not seek international protection earlier, namely, his response that "he felt safe so didn't feel the need to apply". The Tribunal was entitled to consider the foregoing not to be a sufficient, or a reasonable, explanation in relation to the delay in the making of his application. There is no irrationality disclosed in the Tribunal's decision, in the sense in which that term is understood in judicial review. It was open to the Tribunal, having regard to the evidence, to take the view it did."

Having examined the decision as a whole, the Court found that any common sense reading of it demonstrated that the delay in seeking protection was not the sole or principal reason for rejecting credibility. The Court found the negative credibility findings made as to the core of the claim were fair, concluding:

"The Tribunal was tasked with analysing the evidence and coming to a view. It did so lawfully. The Tribunal found that the appellant gave a narrative of his past relationships which was not credible. That narrative concerning his past relationships was the basis of his whole claim. The Applicant's general credibility was not established and the answer to all four questions posed by the Applicant (and set out at para. 4 of this judgment) is in the negative. Thus, the Applicant is not entitled to any relief and his application must be dismissed." ***Certiorari*** **refused**

D.A. v International Protection Appeals Tribunal & Anor **[2022] IEHC 403, Heslin J., 15 June 2022**

The Applicant was a Ghanaian national who made a claim for international protection on the basis that he was attacked by his family for refusing to become a fetish priest. The Tribunal rejected the credibility of the claim.

It was contended by the Applicant that the Tribunal erred in making negative credibility findings in respect of the Applicant's narrative concerning his interaction with the police, his return to Ghana and the reliability of documents submitted.

The Applicant had claimed in the questionnaire that he had not reported any incidents to the police but this narrative changed in the s.35 hearing and Tribunal hearing to a claim that he reported incidents to the police but they did nothing. The Court found the Tribunal was entitled to refer to inconsistencies between the questionnaire and subsequent interviews in raising a negative credibility finding. The Tribunal was also found to have fairly concluded the Applicant's explanations for his changing narratives were incoherent, evasive and hesitant.

The Applicant submitted that he left Ghana but returned to his home area some time later. The Applicant provided multiple inconsistent explanations for this return. The Court found that the Tribunal did not err in raising a negative credibility finding in respect of this issue given it was core to the Applicant's claim.

The Court also found the Tribunal lawfully concluded that medical documentation from Ghana could not be relied upon in circumstances where the Applicant was not generally credible. ***Certiorari*** **refused.**

KB v International Protection Appeals Tribunal & Anor **[2022] IEHC 641, Barr J., 4 November 2022**

The Applicant was a Georgian national who claimed that her husband had been working as private security. She claimed that he abruptly fled Georgia in May 2017 and travelled to Ireland. The Applicant's husband made an international protection claim but he was not before the Tribunal.

The Applicant claimed that in June 2017, men from the Georgian security service visited the family home and made threats to the Applicant if her husband failed to return to Georgia. In September 2017, the Applicant was allegedly sexually and raped by men who also demanded that the Applicant's husband return to Georgia. The Applicant further alleges that other men approached her on the street in January 2018 threatening her daughter. The Applicant travelled to Ireland in February 2018.

The Tribunal raised negative credibility findings on the basis that the Applicant's husband had not mentioned the attack in October 2017 in his international protection claim and the Applicant had not sought to call him as a witness.

The Court quashed the Tribunal's decision. The Tribunal was incorrect in stating the Applicant's husband had not mentioned the attack in his international protection claim.

Given the factually incorrect basis for the finding, it was an unfair credibility assessment. The Tribunal also erred in making a negative credibility finding in respect of the failure of the Applicant to call her husband in evidence, when this was never put to her at hearing.
***Certiorari* granted**

***TG v International Protection Appeals Tribunal & Anor* [2022] IEHC 618, Bolger J., 9 November 2022**

The Applicant was a Zimbabwean national who claimed he had been accused by members of the Zimbabwean security service of involvement in a political party called the MRP after he had made negative comments about the Zimbabwean president.

The Tribunal rejected the credibility of the Applicant's claim. The Applicant challenged the Tribunal's rejection of the plausibility that the Applicant would be accused of membership of a party just because he had made negative comments about the Zimbabwean president. The Applicant also challenged the negative credibility finding made in respect of the absence of medical documentation to support the Applicant's claimed torture. The Court found the Tribunal was entitled to conclude the core claim did not make sense. The Court held:

"Not accepting explanations having considered them is neither irrational nor unreasonable as long as a decision maker can identify a basis for their rejection. I am satisfied that the Tribunal does identify a sufficient basis in the decision, i.e. that the applicant's evidence was vague and lacking in the detail expected of someone who had suffered the traumatic events described by him."

The Court also upheld the Tribunal's reliance on the absence of medical evidence:

"The Tribunal found that the applicant's credibility was undermined as he had not provided an adequate explanation for the absence of medical documentation from either Zimbabwe or Ireland. The Tribunal accepted that he had documentation confirming one attendance with a psychologist in Ireland but clearly did not consider that to be the detailed medical evidence it said it would have expected had the applicant been subjected to the torture described by him. Whilst a medical report might not confirm that symptoms were caused by torture, the

difficulty here was the lack of adequate evidence of symptoms. The Tribunal was entitled to consider that had the applicant been subjected to the torture he described, he would have had more medical evidence of his resulting symptoms than he presented. That was not a disproportionate or erroneous burden of proof on the applicant. The Tribunal was entitled to have regard to the lack of medical evidence, other than a single psychologist appointment in Ireland, in assessing the account the applicant gave of having been subjected to torture over a period of four days."
***Certiorari* refused**

CREDIBILITY – ASSESSMENT OF MATERIAL FACTS - DUTY TO GIVE REASONS

***X.T. v International Protection Appeals Tribunal & Anor* [2022] IEHC 423, Heslin J., 12 July 2022**

The Applicant was an Albanian national who claimed to be at a risk of persecution in Albania due to his and his father's political activities. The Tribunal rejected the credibility of the Applicant's claim. The Applicant contended in judicial review that the Tribunal failed to provide sufficient reasons for its conclusion.
The Court noted that the Applicant's narrative was fully set out by the Tribunal. Whilst there were no issues of inconsistencies in the narrative, the Tribunal noted that the Applicant's claim amounted to having received a threat in 2013 which was never acted upon until the Applicant left the country in 2019. The Court found that the reasons for the decision were intelligible and there is no obligation on the Tribunal to engage in micro-specific analysis. ***Certiorari* refused**

***S v International Protection Appeals Tribunal & Anor* [2022] IEHC 458, Bolger J., 25 July 2022**

The Applicant was a Georgian national who initially claimed to be LGBT. The Applicant was found not to be credible in this claim by IPO. At Tribunal hearing, the Applicant resiled from his LGBT claim but stated he had previously been attacked by members of a political party in Georgia.

The Tribunal raised negative credibility findings against the Applicant given the false LGBT claim and rejected his credibility.

The Court found the Tribunal did not engage in a consideration of the new claim. The Court noted that the Tribunal stated that it had "considered" the Applicant's claim but section 28(2) of the Act requires an "assessment" of the claim. The Court observed that it would have been within jurisdiction for the Tribunal to consider the credibility of the Applicant's new claim in reference to his general credibility, to include his admitted false claim. The Court found the Tribunal erred in not assessing the new claim at all. ***Certiorari* granted**

CREDIBILITY – ASSESSMENT OF MATERIAL FACTS – COUNTRY OF ORIGIN INFORMATION

***BC. v International Protection Appeals Tribunal & Anor* [2022] IEHC 564, Meenan J., 3 August 2022**

The Applicant was a Malawian national who alleged that his albino twin sister was murdered and her body parts harvested. The Applicant submitted that he was subsequently attacked and he believed it was because those who attacked his sister also planned to kill him for body parts. The Tribunal rejected the Applicant's claim on the basis that the country of origin information did not support a risk to the families of albinos save for one speech by the Malawian president. The Tribunal stated that it did not have the full speech before it and would not hazard a guess as to its contents.

The Court quashed the decision. Meenan J. stated that whilst the Tribunal had stated that it would not hazard a guess as to the full contents of the speech, it was hazarding a guess by finding this country information was not supportive of the Applicant. ***Certiorari* granted**

CREDIBILITY - ASSESSMENT OF MATERIAL FACTS - DOCUMENTS

***BBA, OAA & others v International Protection Appeals Tribunal & Anor* [2022] IEHC 685, Owens J., 23 November 2022**

The Applicants were a Nigerian family who claimed that their daughters were at a risk of FGM from family members if they returned. The Applicants supplied documents which included a Nigerian solicitor's letter dated 19 November 2018 and a reply to that letter from the Commissioner of Police in Lagos dated 15 January 2020.

The Court quashed the Tribunal decision on the basis of the failure of the Tribunal to consider the letter dated 15 January 2020. The Tribunal also erred by failing to determine the validity of the letter dated 19 November 2018 and by incorrectly stating that this letter post-dated the Applicants departure for Ireland.

The Court noted:

"A first stage in the enquiry was to decide whether to accept or reject the two documents as evidence of a complaint made by BBA's brother to the police relating to her allegation that she and her family were being subjected to wrongful threats and pressure from the clan. The Tribunal erred in not considering this issue and giving a reasoned decision.

Once that decision was made, the Tribunal could also look at the content of the documents for the purpose of deciding whether and to what extent they supported or undermined any proposition relevant to its decision. The Tribunal was obliged to consider the documents rationally." ***Certiorari* granted**

***RN v International Protection Appeals Tribunal & Anor* [2022] IEHC 669, Phelan J., 29 November 2022**

The Applicant was a Zimbabwean national who claimed that his two gay brothers were arrested by the Zimbabwean police. The Applicant stated that he attended the police station on several occasions attempting to locate his brother. A few days later the Applicant claimed that his mother received an arrest warrant stating that the Applicant was also wanted by the police for being gay.

The Tribunal rejected the Applicant's claim on the basis of inconsistencies as to whether he knew or did not know where his brothers were detained, issues with the coherency of the warrant and the plausibility that the police would wait several days to arrest the Applicant when he had been at the police station.

The Court upheld the Tribunal's decision. The Tribunal was entitled to consider inconsistencies in the Applicant's claim in assessing his credibility. The Court also found the Tribunal's treatment of the warrants to be correct and the plausibility findings were sound:

"In circumstances where the First Respondent, having identified concerns which might bear on the authenticity of the arrest warrants, concludes that they are not therefore reliable evidence in support of the claim but does not tie his findings as to the credibility of the Applicant to this conclusion, then it seems to me that it cannot be said that a view that arrest warrants might be in some-way bogus was weighed in favour or against the Applicant. Instead, it is clear that the First Respondent quite properly treats them as "unreliable" evidence.

Finally, I have not been persuaded by any submission made on behalf of the Applicant that there is a flaw in the Tribunal's reasoning that there is a lack of plausibility flowing from a claim that the police waited until the 5th of August, 2019 to come to his house to arrest the Applicant when he had been at the police station in previous days and could have been arrested at any time if the police wished to do so." ***Certiorari*** **refused**

CREDIBILITY – BENEFIT OF THE DOUBT – SECTION 28(7) OF THE 2015 ACT

AH & Ors v International Protection Appeals Tribunal & Anor **[2022] IEHC 84, Ferriter J., 16 February 2022**

The male Applicant was a Pakistani national who claimed a fear of persecution in Pakistan on the basis of his political activity and a love marriage. The issue in the judicial review was whether the Tribunal correctly applied the concept of the benefit of the doubt and section 28(7) of the Act when rejecting the credibility of the claim.

It was accepted that the Tribunal correctly set out the test to be applied as follows:
"The Tribunal must consider whether it is appropriate to apply the benefit of the doubt in respect of the Appellants' claim. It is appropriate to apply the benefit of the doubt where the Appellants' general credibility has been established. General credibility may be established where an Appellant or Appellants have been consistent in respect of the central aspects of their claim, where the claim does not run counter to available COI and where they have made a genuine effort to substantiate their claim to the best of their abilities. An Appellant may be

consistent even where there are minor inconsistencies, especially if those inconsistencies are in respect of non-central aspects of their claim. It is often appropriate to consider the application of the benefit of the doubt if there are a small number of such inconsistencies or credibility issues."

The Applicants' representative contended that whilst the Tribunal correctly set out the test, it did not make it clear how it was applying those principles.

The Court entirely rejected this contention and found that the approach of the Tribunal was correct. The Tribunal engaged with each material aspect of the Appellants' claims, pointed out issues of cogency, plausibility and lack of documentation and correctly applied the concept of the benefit of the doubt in rejecting those claims. The Tribunal correctly dealt with the issue of lack of documentation by referring to section 28(7) of the Act. ***Certiorari* refused.**

***A.C. and N.H.H.C v International Protection Appeals Tribunal & Anor* [2022] IEHC 430, Bolger J., 5 July 2022**

The Applicants were a mother and daughter from Zimbabwe who claimed that the child's father VM would subject her to forced marriage.

The Tribunal accepted that the mother had been subject to violence several years ago but rejected the claims concerning the daughter, having applied section 28(7) of the Act and the benefit of the doubt, bearing in mind negative credibility indicators.

The Applicants contended that considering section 28(7) of the Act as a basis to determine an applicant's general credibility is unlawful.
The Court followed the decision of Ferriter J. in *AH and ors v IPAT and Anor* [2022] IEHC 84 and quoted the relevant part of it:

"In short, it is clear that before the benefit of the doubt can be given in relation to undocumented aspects of an applicant's claims, the applicant's general credibility must be established (see s.28 (7)(e)). Once the applicant's general credibility has been established, undocumented aspects of the applicant's case do not need to be confirmed i.e. can get the benefit of the doubt where, but only where, the four other factors in s. 28 (7)(a) to (d) are satisfied".

The Court found:
"The Tribunal concluded that aspects of the applicants' claim remained in doubt. The first named applicant failed to discharge the burden of proof resting on her to establish credibility and the Tribunal was entitled to decline to apply the benefit of doubt to those facts that remained in doubt." ***Certiorari* refused**

WELL-FOUNDED FEAR OF PERSECUTION – SECTION 28(6) OF THE 2015 ACT

***M.Y. v International Protection Appeals Tribunal & Anor* [2022] IEHC 345, Ferriter J., 13 May 2022**

The Applicant was an Algerian Berber who claimed to have been a member of the Berber separatist movement, MAK. When a member of MAK in 2008, the Applicant claimed to have been subject to three separate attacks. The Applicant left MAK in 2009 because he feared for his life at the hands of the Algerian authorities if he remained an activist. The Applicant continued to reside in Algeria until 2013 when he travelled to the UK on a visa. He continued to reside in the UK illegally until 2018 when he travelled to Ireland and sought international protection.

The IPO accepted that the Applicant had been a member of MAK until 2009 but rejected his account of being subject to attacks in Algeria. The Tribunal accepted the Applicant's claimed membership of MAK and that he had been subject to attacks in 2008. In rejecting that this gave rise to a well-founded fear of persecution, the Tribunal did not refer to section 28(6) of the 2015 Act which states:

"The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such 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 also referred to the judgment of Burns J. in IL v IPAT [2021] IEHC 106 where she stated:

"13. There was an obligation on the First Respondent [the Tribunal] to engage in an analysis of this rebuttable presumption which it failed to do. Indeed, there is no reference whatsoever by the First Respondent to s. 28(6). This is an error on the part of the First Respondent. Section 28(6) provides a significant evidential presumption to an applicant which can be rebutted by good reason. However, it should be unambiguous from the First Respondent's decision that such a significant evidential presumption was considered by the First Respondent and the good reasons which rebutted the presumption should be stated. In NS (South Africa) v. Refugee Appeals Tribunal [2018] IEHC 243, Humphreys J stated:-

'If it is accepted that there was past persecution, the decision-maker needs to consider positively whether there is good reason to consider that there would be no future risk.'
14. The Respondent argues that good reasons did exist to rebut the presumption and that they are set out and apparent in the decision, although s.28(6) is not specifically analysed. This is not sufficient to deal with this issue. As already stated, s.28(6) is a significant evidential benefit which an applicant, who has been found to have been subjected to threats of serious harm, has. It is not appropriate that assumptions and inferences be made as to whether this issue had been considered by the First Respondent, and if so, what the good reasons were for determining that the presumption, which the Applicant is entitled to, has been rebutted."

After outlining the Tribunal's analysis of whether the Applicant had a well-founded fear of persecution, the Court concluded that it failed to apply the rebuttable presumption in its decision making function. The Court quashed the decision on this ground. The Court went on to consider an argument not run before the Tribunal, whether the principles outlined in the UK Supreme Court decision of *HJ (Iran) v. SSHD* [2011] 1 AC 596 applied to the Applicant's

claim. The Applicant submitted that the Tribunal erred in not asking itself why the Applicant had ceased his activities with MAK and, if this was because of the persecution he had suffered, he was entitled to international protection as a matter of law. The Applicant's statement of ground outlined this as follows:

"*The Tribunal erred in law and acted unreasonably and irrationally in expecting and/or requiring the applicant to hide his political beliefs and to take no part in the Berber separatist movement in Algeria for the rest of his life, to a avoid persecution and serious harm in Algeria."*

The Respondent replied to this ground that there was no evidence before the Tribunal to the effect the Applicant intended to become active again in Berber separatism. Therefore, the claim did not arise.

The Court outlined the *HJ (Iran)* test as follows:

"The essence of the test set down in HJ (Iran) is that, if the material reason the applicant will in fact conceal aspects of his or her sexual orientation if returned to the country of origin is that he or she fears persecution in the absence of such concealment, the Tribunal should then go on to consider whether that fear was well founded."

The Court found that *HJ (Iran)* applies to all international protection claims and not just those concerning sexual orientation. The Court concluded:

"As highlighted by the UK Supreme Court in HJ (Iran), a careful assessment of the facts is critical to an assessment of whether a well-founded fear of persecution can be made by reference to the need to conceal behaviours protected by a Convention ground. The applicant was, on the evidence accepted by the Tribunal, undoubtedly a Berber Separatist activist in the past. His evidence was also that he ceased being such an activist for fear of the persecution involved. However, he had not been active for many years and he did not give express evidence that he wished to resume such activism but believed he would not or could not for fear of persecution. As the question of the test in HJ (Iran) was not before the Tribunal and his evidence was not led with that test in mind, it is difficult to form a view as to the extent to which his evidence was or might have been such as to satisfy the test.

In my view, when a different Tribunal is freshly assessing the matter following remittal, it would be appropriate for the Tribunal to proceed on the basis that HJ (Iran) applies in principle and to seek to apply the principles set out by Lord Hope and Lord Rodger in HJ (Iran) in so far as the Tribunal considers them applicable to the facts.

I should emphasise in so saying that I am not holding that the applicant will be entitled to a declaration of refugee status in light of his evidence. Rather, the Tribunal should address its mind to the stages of the HJ (Iran) test and in particular, if the Tribunal takes the view that the applicant will be not be engaging in activism as regards his Berber Separatist views to ask itself the question of why that is so and whether it is for a reason or reasons which the law would regard as being based on a well-founded fear of persecution." ***Certiorari granted.***

SAFE COUNTRY OF ORIGIN AND STATE PROTECTION

NU v International Protection Appeals Tribunal & Anor **[2022] IEHC 87, Phelan J., 17 February 2022**

The Applicant was a Georgian national who claimed that she was in fear of domestic violence. The Tribunal accepted the Applicant's account of suffering physical and psychological violence from her former partner. The Tribunal determined that the Applicant had a well-founded fear of persecution but that state protection was available, relying on the safe country of origin designation.

The Court noted that the Tribunal relied on the concept of safe country of origin and state protection but did not refer to the relevant provisions of the 2015 Act. The Court found there was no requirement to do so but that it was good practice to detail the applicable statutory framework. The Court also noted that the Tribunal had accepted that the Applicant had been subject to acts of past persecution but failed to have regard to the rebuttable presumption. The Court found there was an obligation for the Tribunal to engage with the rebuttable presumption in the circumstances.

The Court noted that the safe country designation requires analysis as to whether serious grounds have been submitted for considering the country is not safe for the individual. The Court found the Tribunal had failed to engage in such an exercise. If the Tribunal found that Applicant's personal circumstances were such that there were no serious grounds for finding the country was not safe country for her, there would be no requirement for the Tribunal to make a determination of state protection as state protection is by definition available in a safe country.

In considering state protection, the Court expressed approval of the judgment of Barrett J in *BC v. IPAT* [2019] IEHC 763 where he set out the following questions to be answered by the Tribunal:

"(1) Does the State in question take reasonable steps to prevent the persecution or suffering of the serious harm feared by a particular applicant?

(2) Do such steps include the operating of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm?

(3) Is such protection effective and of a non-temporary nature?

(4) Does the particular applicant have access to such protection?"

The Court found that the concept of safe country of origin cannot be used to circumvent an individual and personal consideration of whether state protection was available to the individual applicant. The Court determined that it was unclear how the Tribunal approached the concepts of safe country of origin and state protection. There was material before the Tribunal that could have led to a conclusion that state protection was available but the

Tribunal failed to engage in an analysis of the country of origin information. ***Certiorari*** **granted.**

ES v International Protection Appeals Tribunal & Anor **[2022] IEHC 613, Phelan J., 4 November 2022**

The Applicant was a white South African who claimed that he had been the subject of crimes in South Africa on account of his race. These included robberies by the South African police. The credibility of the Applicant's claims was accepted by the Tribunal however the Tribunal found that adequate state protection was available. The Tribunal did not refer to the rebuttable presumption in section 28(6) of the 2015 Act in making its decision. The Applicant challenged the decision on this basis and also on the issue of whether the concept of state protection was properly applied.

The Court noted that in its decision in ***N.U. v IPAT & Anor*** **[2022] IEHC 87,** it had stated it was preferable for the Tribunal to refer to section 28(6) of the 2015 Act if it was satisfied that the Applicant had been subject to past persecution. The Court concluded that in the decision, the Tribunal had applied the rebuttable presumption in favour of the Applicant even though this was not explicitly outlined. The Court also found that the substance of the correct test for state protection was applied by the Tribunal. The Tribunal accepted that there was a high level of crime in South Africa but there are reasonable steps being taken to deal with same. The Tribunal also referred to avenues of complaint available to the Applicant in dealing with police corruption.

The Court concluded:

"Whether one agrees or not with the conclusion that State protection is available (which is not the test in judicial review proceedings), it cannot be said that the Tribunal did not conduct a rational analysis of conflicting country of origin information and did not justify any preferment of one piece of information over another.

The Decision arrived at with regard to the availability of State protection is made with full regard to the problems experienced with State protection in South Africa. The justification advanced for the Decision of the Tribunal is set out in a cogent and clear fashion. In my view the Tribunal came to a rational decision for reasons properly set out and the Decision has not been established to be unreasonable." ***Certiorari*** **refused**

PAPERS ONLY

I.M. v. International Protection Appeals Tribunal & Anor **(unreported, Meenan J., 28 February 2022**)

The Applicant was a Georgian national who made a claim for international protection on the basis of his fear of persecution due to the fact that he was half-Ossetian. The Tribunal rejected the Applicant's application for an oral hearing and subsequently rejected the international

protection claim. The Court found that the Tribunal engaged in the reasons for the request for an oral hearing and that it had been lawfully refused.

The Court went on to find that the Tribunal lawfully rejected the claim having rejected the Applicant's credibility. ***Certiorari* refused.**

***G.A and N.G. v. International Protection Appeals Tribunal, unreported, the High Court, Heslin J., 23 June 2022*.**

The Applicants were Georgian husband and wife who sought international protection on the basis of the husband's claim he had been beaten and extorted by Georgian criminals. The husband claimed to have paid over €30,000 to these men. He also claimed that he had been severely beaten by them but required no hospital treatment but had received dental repairs. The Applicant left Georgia on business after these events but returned sometime afterwards before leaving again and travelling to Ireland.

No medical or business documents were provided by the Applicants to the IPO or Tribunal. The IPO noted this lack of evidence before ultimately rejecting the husband's credibility.

The Applicants requested an oral hearing but this was refused by the Tribunal which invited further submissions on any credibility issues. The Tribunal rejected the credibility of the Applicants' claim on the papers. The Tribunal noted the absence of evidence to suggest the husband had paid or had access to €30,000 and the absence of medical or dental evidence. The Tribunal refused to apply section 28(7) of the Act in circumstances where the Applicants were not generally credible, pointing out inconsistencies and vagueness in the accounts.

The Applicants contended that the Tribunal erred by applying section 28(7) of the Act in circumstances where the Tribunal had not requested medical or financial documentation. The Court rejected this claim noting the Applicants had been on notice of the requirement to provide documents to support their claim from the statements in the Questionnaire and there was a statutory duty on them to cooperate. The Tribunal had not rejected the Applicants' credibility solely on the lack of documentation but had considered their credibility in full.

It was also contended that the Tribunal erred in making adverse findings against the Applicants without provided them with an opportunity to reply. The Court referred to *S.H.I. v IPAT (No. 2)* [2019] IEHC 269. The Court accepted the premise that an adverse credibility finding cannot be made on anything unknown to the Applicants but they are deemed to know the contents of their own interviews and questionnaires. The Applicants were aware since the IPO decision that their credibility had been rejected in part on the basis of their lack of documents and every reasonable opportunity was provided to them to deal with this issue before the Tribunal decision.

The Applicants argued that the Tribunal erred in rejecting their application for an oral hearing. The Court accepted that the letter sent by the Tribunal could be judicially reviewed but determined that this was made out of time and there was no reason to extend time. The Court noted that the case differed from *S.K. v. IPAT & Ors* [2021] IEHC 781, which involved issues of sexual orientation incapable of proof by documentary evidence, whilst the present case was

capable of being supported by documents but they were absent. The Court found that *S.K.* was relevant to sexual orientation claims and that it was only on its particular facts and circumstances that the Tribunal's decision was quashed.

The Court followed Meenan J. in *I.M. v. IPAT & Ors* [2022] IEHC 164 in concluding that the Tribunal was entitled to refuse an oral hearing even where credibility is in issue. The Applicant's challenged the lawfulness of the designation of Georgia as a safe country of origin by the Minister. The Court followed Burns J. *I.M. v IPAT & Ors.* [2020] IEHC 615 in rejecting this claim. The Court also rejected the Applicants' challenge that the 2015 Act is incompatible with the European Convention on Human Rights.

T.B. v International Protection Appeals Tribunal & Anor [2022] IEHC 275, Phelan J., 13 May 2022

The Applicant was a Georgian national who claimed she was harmed due to an extramarital affair in her country of origin. The IPO rejected the credibility of the claim due to internal inconsistencies in the account and the decision of the Applicant to return to Georgia after the claimed events. The IPO made a finding pursuant to section 39(4)(e) of the 2015 Act that Georgia was a safe country.
The Applicant's legal representative applied to the Tribunal for an oral hearing on the basis that statistics demonstrated applicants who have a papers only appeal enjoy a lower success rate. A further letter to the Tribunal stated that the Applicant wished to address the adverse credibility findings made by the IPO. The Tribunal rejected the Applicant's appeal on the papers without first replying to the Applicant's request for an oral hearing or addressing a request by the Applicant to delay its decision pending a medical report.

The Applicant's legal representative contended that:

"(a) adverse credibility findings were made about her personal account of abuse at the hands of her former partner, and that the only effective way in which she could appeal these was through an oral hearing in which her personal credibility could be assessed;
(b) further, the Tribunal also drew adverse inferences on the basis of a purported absence of corroborating documentation, a matter that would properly have been addressed orally;
(c) the Tribunal gave no adequate reasons as to why it was 'in the interests of justice' to refuse an oral hearing;
(d) in refusing to allow the applicant to submit a medical report and medical records, the Tribunal acted unfairly and contrary to its statutory duty and;
(e) the Tribunal made a number of irrational and unreasonable determinations, a number of which exemplify why an oral hearing should have been held."

The Court referred to the Supreme Court decisions in M.M v. Minister for Justice and Equality [2018] IESC 10, VJ v. Minister for Justice and Equality and Ors. [2019] IESC 75 (Unreported, 31 October, 2019), the High Court decision in SUN v. The Refugee Applications Commissioner & Ors [2013] 2 IR 555 and the more recent judgment of Ferriter J. in S.K. v International Protection Appeals Tribunal & Anor [2021] IEHC 781 (Unreported, 14 December 2021) before concluding:

"So while there is no "right" to an oral hearing in all cases, there are circumstances where the requirements of constitutional justice in ensuring an effective appeal may mandate the holding of an oral hearing, most particularly where the proper determination of the appeal turns on the personal credibility of the applicant in respect of matters of a kind that could have taken place but have been rejected purely because the applicant has been disbelieved when recounting them."

The Court went on to state:

"Depending on the nature of the credibility issues which arise from the documents recording the claim advanced, it is possible in some cases to ensure fairness to the applicant by affording her a right of reply which does not necessarily require the convening of an oral hearing. Where matters are fully canvassed during the IPO process in a manner which demonstrates that no new issue arises on appeal which has not already been put to the applicant, then it may be possible to be satisfied with the fairness of the process. However, where an issue of concern emerges for the first time on appeal and was not put to the applicant during the interview process, and it concerns a material matter, then it will be necessary to provide an appropriate opportunity to an applicant to address the new concern be it in writing or orally to safeguard the fairness of the process."

Phelan J. quashed the Tribunal's decision concluding:

"It seems to me that the credibility findings which underpinned the IPO's decision were findings as to the personal credibility of the applicant in respect of matters of a kind that could have taken place but were rejected purely because the applicant has been disbelieved when recounting them. Accordingly, they are classily of the type that would warrant a hearing. In this case, however, the applicant addressed the negative credibility findings that were contained in the IPO report in her written appeal submissions in such a manner that the Tribunal did not make credibility findings on the same grounds as had been identified in the IPO report but proceeded to make its own credibility findings. It may be for this reason that the Tribunal considered that an oral hearing was not required to effectively address the credibility findings which underpinned the IPO decision, albeit this is not expressed in the Tribunal Decision. However, this being the case, the Tribunal should also have considered whether credibility remained an issue on other grounds and whether an oral hearing was required in respect of any credibility findings it proposed to make. Indeed, in its Decision, the Tribunal acknowledges that "some" of the inconsistencies in the applicant's account of events at the core of her claim were put to her in the s. 35 interview. This was an acknowledgement by the Tribunal that not all had been. A view that not all matters had been put to her at an earlier stage should, in my view, have put the Tribunal on enquiry as to whether it could fairly proceed without providing an opportunity to the applicant to respond to the identified inconsistencies which had not been put to her and to reflect in the reasoning contained in the Decision that proper consideration had been given to this question and why, in the circumstances of the credibility issues in this case, an oral hearing was not required in the interests of justice." ***Certiorari*** **granted.**

FP v. International Protection Appeals Tribunal & Anor **[2022] IEHC 535, Ferriter J., 28 July 2022**

The Applicant was an Albanian national who claimed to be at risk of persecution in Albanian due to a blood feud. The IPO rejected the credibility of the claim and made a finding that the Applicant was from a safe country of origin. A notice of appeal was submitted to the Tribunal requesting an oral hearing but no reasons were given as to its necessity. The Tribunal determined the appeal on the papers without further correspondence with the Applicant. The Applicant submitted that the decision of the Court in *SK v IPAT* [2021] IEHC 781 mandated the Tribunal to engage with the Applicant on the issue of the oral hearing in advance of making a determination of the substantive claim.

The Court rejected this interpretation of *SK* and indicated that *SK* should be confined to its own facts. The Court noted that it had not considered the contents of the Tribunal's practice note on papers appeals such that the default position is not there will be no communication from the Tribunal if it determines to decide the appeal on the papers.

The Court found that the Tribunal was not required by section 43(b) of the 2015 to engage with the issue of whether to have an oral hearing in the circumstances of the case where the notice of appeal did not provide any reasons for having an oral hearing. ***Certiorari*** **refused**

DUBLIN III

M v International Protection Appeals Tribunal & Anor **[2022] IEHC 358, O'Regan J., 20 May 2022**

Prior to arriving in Ireland, the Applicant had applied for international protection first in Belgium, then in Sweden and then in the UK. Ireland requested that Sweden and the UK take back the Applicant, the latter refusing on the basis Sweden had previously accepted its take back request. Sweden accepted Ireland's request pursuant to Article 18(d) of the Dublin III Regulation and the Tribunal upheld the transfer decision.

It was contended that the Tribunal erred in concluding Sweden was the responsible Member State. It was asserted Belgium was the correct Member State, being the first Member State in which the Applicant sought international protection.

The Court determined the Tribunal erred in concluding Sweden failed to make a take back request, noting that other possible explanations were available. The Court concluded that this error was irrelevant given Sweden had accepted that it was the responsible Member State, and, applying the criteria, it was the responsible Member State. ***Certiorari*** **refused**