ANNUAL REPORT 2019

An Binse um Achomhairc i dtaobh Cosaint Idirnáisiúnta

The International Protection Appeals Tribunal

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APPENDICES:

Charles Flanagan T.D.
Minister for Justice and Equality
Department of Justice and Equality
51 St. Stephens Green
Dublin 2

31st March 2020

International Protection Appeals Tribunal – Annual Report 2019

Dear Minister,

I am pleased to present to you the Annual Report of the International Protection Appeals Tribunal for the year 2019.

Over the year, the Tribunal has continued to increase its output and in many ways, 2019 could be considered the Tribunal's first year of reaching full operational capacity with the Tribunal Members having gained the necessary experience in this complex area of law and having fully developed their skills as quasi-judicial decision makers. Moreover, vacancies in the staff complement of the Tribunal were mostly filled by the end of the year, thereby enabling the Registrar of the Tribunal, Pat Murray, to increase the efficiency of the administration of the Tribunal.

As a result, over the two-year period from 2017 to 2019, the Tribunal's overall output regarding decisions and otherwise completed appeals increased by *221%*; and I look forward to being in a position to measure 2019's output against what we are working towards in 2020, and I am confident we will be reporting further improvements, in particular with regard to processing times.

I would like to thank the Department of Justice and Equality for its collegiality and provision of support to the Tribunal throughout 2019 and for working with the Tribunal on establishing new governance structures in the context of the Department's own Transformation Programme and in consideration of the Tribunal's status as a quasi-judicial body that is independent in the performance of its functions.

I am grateful also to the Registrar, Deputy Chairpersons, staff and Members of the Tribunal for the extraordinary effort they are making at this difficult time, arising from the COVID-19 pandemic, to ensure the excellent work of the Tribunal continues, and in particular that this Annual Report could be completed on time and in line with the Tribunal's statutory duties.

Yours sincerely,

Hilkka Becker
Chairperson

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's predecessor was 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 and Equality 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 and Equality 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.

[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 System Regulations, which determines the appropriate European country to determine an asylum application;

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

(v) 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 will strive 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; and
- in a spirit of openness and transparency in how the appeals process is managed.

[1.4] Strategy Statement 2017-2020

In 2017, the Tribunal launched its first Strategy Statement 2017-2020. This Strategic Plan guides the Tribunal in drafting its annual Business Plan. The annual Business Plan details how each Unit within the Tribunal will work in the year ahead towards achieving the goals and objectives set out in the Strategy Statement.

The Strategy Statement identifies the following five high level goals as the key goals that the Tribunal will focus on in the three-year 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. It is planned, in line with the 2020 Corporate Governance Agreement between the Department of Justice and Equality and the Tribunal, to establish a formal process in 2020 for setting the Tribunal's strategy for 2021 – 2023.

[1.5] Membership of the Tribunal

The Tribunal consists 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 and Equality, 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.

On the 31st of December 2019, the Tribunal had a Chairperson, two Deputy Chairpersons, three whole-time Tribunal Members, and 58 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 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 assigned to the Tribunal from the Department of Justice and Equality. 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. On 31st December, 2019 the staff complement was 39, 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 and Equality by the end of the year.[1]

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 beginning of 2017, ending that year with a caseload of 653 pending appeals. In contrast to that, the Tribunal received a total of 2,080

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

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.

It is likely that the caseload of the Tribunal will continue to rise over the coming period and it is 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. This in particularly pertinent in light of the three-year term of appointment of the majority of Tribunal Members pursuant to s.62(7)(d) of the International Protection Act 2015 ending during the course of 2020.

[1.8] Decision Template

The Tribunal has continued to develop its decision templates for use by Members. These templates were first introduced at the start of 2014, and have been amended and updated to reflect new legislation and the extended jurisdiction of the Tribunal. The templates for international protection decisions were originally developed in conjunction with the office of the United Nations High Commissioner for Refugees (UNHCR) in Dublin.

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. It appears that the new decision template has continued to contribute to the low number of applications for Judicial Review against Tribunal decisions. For example, in the case of *K.M.A. (Algeria)* [2015] IEHC 472, the High Court found the structure provided by the template, especially the use of numbered paragraphs to be *"particularly helpful"*.

[1.9] Quality Audit System

Throughout the year 2019, the Tribunal continued to implement its Quality Audit System which enables the it to analyse its decisions and relevant judgments from the Irish superior courts, the CJEU and the ECtHR. The Quality Audits, which are carried out on a quarterly basis, are intended to enable the Tribunal to identify and address training needs of Tribunal Members, highlight and remedy procedural issues arising and further increase efficiencies in the delivery of decisions by Tribunal Members. In further developing the Quality Audit System, the Tribunal now carries out systematic reviews of judicial review applications brought against its decisions, ensuring the learning from the outcome of the reviews, whether by way of the superior courts upholding or quashing its decisions or by way of settlement, feeds into the ongoing professional training of Tribunal Members and any procedural issues identified in such proceedings can be addressed.

[1.10] Chairperson's 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 purponse 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 Chaiperson's Guidelines were in place at the end of the year 2019:

- 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;
- Chairperson's Guideline No. 2018/1: Compelling Grounds;
- Chairperson's Guideline No. 2018/2: Adjournments and Postponements of Appeal Hearings; and
- Chairperson's Guideline No. 1/2019 on Taking Evidence from Appellants and Other Witnesses

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

[1.11] 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.

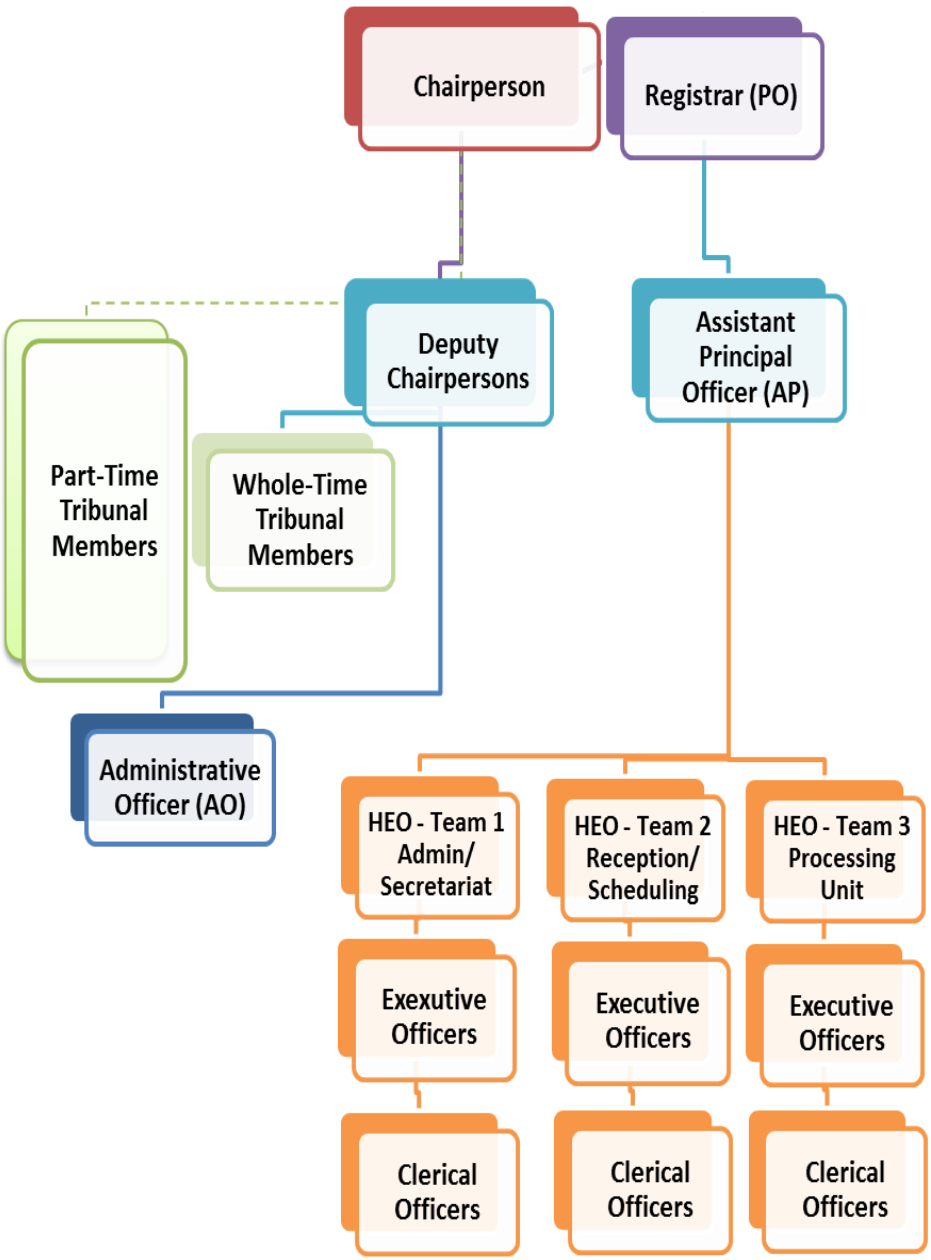
- Pending subsidiary protection and Dublin III appeals were retained and decided by the International Protection Appeals Tribunal.

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 2019 and beyond.

2. Tribunal Operations and Support

[2.1] General

The organisational structure of the Tribunal is set out below.



Appeal Procedures are detailed in **Appendix 2**.

[2.2] Appeals Processing/Administration

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 included in **Annex 2** to this report.

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; and
- 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 Equality 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 see - Appendix 2.8) and maintaining the webpage.

[2.3] Administration/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 and Equality (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 2019 by the Tribunal are outlined in Chapter 3.

[2.4] Personnel

[2.4.1] 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 appointed by the Minister for Justice and Equality 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 and Equality 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 2019 Oversight Agreement between the Tribunal and the Department, including the Chairperson, Deputy Chairperson and whole-time Members, as well as the actual level of staffing as per 31st December 2019. As previously stated, for much of 2019 the Tribunal carried administrative staff vacancies as illustrated below. Additionally, a number of Tribunal staff avail of atypical working arrangements.

TRIBUNAL STAFF LEVELS 31/12/19	**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	3	*2.8*	4
EXECUTIVE OFFICERS	8	*7.6*	8
CLERICAL OFFICERS*	25	*23.8*	27
SUB TOTAL	**38**	***36.2***	**41**
TOTAL	**44**	***42.2***	**47**
*1 CO to EO acting up post agreed as an additional temporary post			

The continuing increase in appeals expected to reach the Tribunal in 2020 and beyond will require a corresponding increase in support staff to the level agreed in the Corporate Governance Agreement to enable the Tribunal to further increase efficiencies and deal with such appeals in a fair and efficient manner. In that regard, the efforts made by Miriam Joyce, the Tribunal's HR Business Partner, in the Department of Justice and Equality to ensure that the Tribunal has sufficient staff resources available to it throughout 2019 and beyond, including the filling of any vacancies is greatly appreciated.

[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:

- Microsoft Word (Intermediate)
- Microsoft Excel (Intermediate and Advanced)
- Communication Skills
- Building Resilience
- Interview Skills Seminar
- Customer Service Skills
- Minute Taking and Meeting skills
- Report Writing
- Middle Management Development Course
- Assertiveness Skills
- Advanced Diploma in Immigration and Asylum Law
- Health and Safety Training
- First Aid Training
- Fire Warden Training
- Suicide Awareness
- Innovation in Public Service
- Performance Management Development System training on effective meetings

[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 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. The Tribunal also has a training room with a maximum capacity of 35 as well as several work spaces for part-time Tribunal Members.

[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 and Equality. Having regard to the fact that the Tribunal does not have its own budget, 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. Throughout most of the year 2019, and prior to the implementation of the Department's Transformation Programme, this was managed through INIS Corporate Services.

The Tribunal shares the Hanover Street premises with a number of other offices / agencies, including Department of Justice and Equality 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.

Tribunal Expenditure 2019

Category	Expenditure in 2019
First Aid and Manual handling courses	€3,950
Incidental Expenses	€309
IT Costs	€146,157
Legal Costs	€268,247
Members Fees	€992,231
Members Training	€4,364
Membership of Professional Bodies	€7,928
Office and Premises Expenses	€274,726
Office Machinery and Other office Supplies	€66,490
Postal and Communications Services	€82,649
Publications	€3,843
Salaries and Wages	€2,146,908
State Claim Agency	€4,128
Training	€3,214
Translation/Interpretation	€188,968
Travel and Subsistence/Incidental Expenses	€2,123
Grand Total	**€4,196,234**

[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 will be 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 and Equality, who 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, 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 information notes for the benefit of Tribunal Members.
- Implementation in Chairperson's Guidance Notes pursuant to section 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 in 2019 by the Superior Courts in 2019 regarding the Tribunal's decisions is at **Appendix 4**.

During 2019, 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 5**, first in respect of the Tribunal's decisions generally, including specifically with regard to 2019 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 and Equality's Legal Support Services Unit (LSSU), the Chief State Solicitor's Office (CSSO) and the Office of the Attorney General. The Department of Justice and Equality 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
2009	€4,523,622
2010	€4,363,114
2011	€3,168,952
2012	€1,427,510
2013	€1,625,971
2014	€2,688,787
2015	€1,833,385
2016	€2,696,339
2017	€1,580,537
2018	€855,132.74
2019	€268,247.38

In 2019, the total legal costs paid arising out of successful and settled judicial reviews of decisions of the Tribunal amounted to €268,247.38. 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.

The expense to the State in defending judicial reviews emphasises the benefit of investing in the training of Members of the Tribunal to ensure the production of high quality decisions that are consistent with fairness and natural justice.

3. Membership of the Tribunal

[3.1] Introduction

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 been in the position of interim Chairperson of the Tribunal pursuant to s.62(8) of the International Protection Act 2015since 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 and Equality 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 and Equality 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 three whole-time Members and 66 part-time Members at the beginning of the year 2019. During the course of the year 2019, a number of part-time Members left the Tribunal for a variety of reasons, including full-time employment elsewhere, bringing the total number of part-time Members to 58 at the end of the year and all three whole-time Tribunal Members remaining with the Tribunal.

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. Marguerite Fitzgerald, Solicitor
9. Brid O'Flaherty, B.L.	10. Marie-Claire Maney, Solicitor
11. Christopher Hughes, B.L.	12. Mark Byrne, B.L.
13. Ciara McKenna-Keane, B.L	14. Mark William Murphy, B.L.
15. Ciaran White, B.L.	16. Mary Forde, Solicitor
17. Clare O'Driscoll, B.L.	18. Meg McMahon, B.L.
19. Colin Lynch, Solicitor	20. Michael Kinsley, B.L.
21. Conor Feeney, B.L.	22. Michael McGrath, S.C.
23. Conor Keogh, B.L.	24. Michael Ramsey, B.L.
25. Cormac Ó Dúlacháin, S.C.	26. Michelle O'Gorman, B.L.
27. Denis Halton, B.L.	28. Moira Shipsey, Solicitor
29. Elizabeth Davey, B.L.	30. Morgan Shelly, B.L.
31. Elizabeth Mitrow, Solicitor	32. Niall O'Hanlon, B.L.
33. Elizabeth O'Brien, B.L.	34. Nicholas Russell, Solicitor
35. Emma Toal, B.L.	36. Nuala Dockry, B.L.

37. Eoin Byrne, B.L.	38. Nuala Egan, B.L.
39. Evelyn Leyden, Solicitor	40. Olive Brennan, B.L.
41. Finbar O'Connor, Solicitor	42. Oluwafemi Daniyan, B.L.
43. Fiona McMorrow, B.L.	44. Patricia O'Connor, Solicitor
45. Folasade Kuti-Olaniyan, Solicitor	46. Patricia O'Sullivan Lacy, B.L.
47. Frank Caffrey, Solicitor	48. Paul Brennan, Solicitor
49. Ger O'Donovan, B.L.	50. Paul Kerrigan, Solicitor
51. Helen-Claire O'Hanlon, B.L.	52. Peter Shanley, B.L.
53. Jeanne Boyle, Solicitor	54. Rosemary Kingston O'Connell, Solicitor
55. Joanne Williams, B.L.	56. Sharon Dillon-Lyons, B.L.
57. John Buckley, B.L. (W/T)	58. Shaun Smyth, B.L.
59. John Noonan, B.L.	60. Shauna Ann Gillan, B.L. (W/T)
61. Katherine McGillicuddy, B.L.	62. Simon Brady, B.L.
63. Kevin Lenahan, B.L.	64. Stephen Boggs, B.L.
65. Kim Walley, Solicitor	66. Steven Dixon, B.L.
67. Lalita Pillay, B.L.	68. Una McGurk, S.C.
69. Zeldine O'Brien, B.L.	

[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 2019 took place on the 6th of December 2019 in the Chartered Accountants' House, 47/49 Pearse Street, Dublin 2.

[3.4] Members' Fees

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

Type	2019
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 2019

Member's fees paid and number of decisions completed for 2019 is set out in the following tables:

[3.5.1] Decisions completed by Members of the Tribunal:

Member of Tribunal	No of Decisions for 2019
Agnes McKenzie, B.L.	89
Ann Marie Courell, B.L.	0
Bernadette McGonigle, Solicitor	0
Brian Cusack, B.L.	13
Brid O'Flaherty, B.L.	42
Christopher Hughes, B.L.	89
Ciara McKenna-Keane, B.L	43
Ciaran White, B.L.	42
Cindy Carroll, B.L. (Deputy Chairperson)	9
Clare O'Driscoll, B.L.	45
Colin Lynch, Solicitor	33
Conor Feeney, B.L.	20
Conor Keogh, B.L.	3
Cormac Ó Dúlacháin, S.C.	34
Denis Halton, B.L.	51
Elizabeth Davey, B.L.	0
Elizabeth Mitrow, Solicitor	6
Elizabeth O'Brien, B.L.	93
Emma Toal, B.L.	24
Eoin Byrne, B.L.	29
Evelyn Leyden, Solicitor	7
Finbar O'Connor, Solicitor	28
Fiona McMorrow, B.L.	2
Folasade Kuti-Olaniyan, Solicitor	4
Frank Caffrey, Solicitor	9
Ger O'Donovan, B.L.	5
Helen-Claire O'Hanlon, B.L.	4
Hilkka Becker, Solicitor (Chairperson)	3
Jeanne Boyle, Solicitor	0
Joanne Williams, B.L.	26
John Buckley, B.L.	91
John Noonan, B.L.	82
John Stanley, B.L. (Deputy Chairperson)	2
Katherine McGillicuddy, B.L.	3
Kevin Lenahan, B.L.	57

Kim Walley, Solicitor	7
Lalita Pillay, B.L.	2
Leonora Doyle, Solicitor	47
Majella Twomey, B.L.	57
Margaret Browne, B.L.	45
Marguerite Fitzgerald, Solicitor	0
Marie-Claire Maney, Solicitor	24
Mark Byrne, B.L.	129
Mark William Murphy, B.L.	21
Mary Forde, Solicitor	23
Meg McMahon, B.L.	5
Michael Kinsley, B.L.	30
Michael McGrath, S.C.	36
Michael Ramsey, B.L.	1
Michelle O'Gorman, B.L.	2
Moira Shipsey, Solicitor	9
Morgan Shelly, B.L.	7
Niall O'Hanlon, B.L.	0
Nicholas Russell, Solicitor	60
Nuala Dockry, B.L.	2
Nuala Egan, B.L.	0
Olive Brennan, B.L.	17
Oluwafemi Daniyan, B.L.	8
Patricia O'Connor, Solicitor	22
Patricia O'Sullivan Lacy, B.L.	28
Paul Brennan, Solicitor	13
Paul Kerrigan, Solicitor	11
Peter Shanley, B.L.	6
Rosemary Kingston O'Connell, Solicitor	32
Sharon Dillon-Lyons, B.L.	9
Shaun Smyth, B.L.	13
Shauna Ann Gillan, B.L.	117
Simon Brady, B.L.	5
Stephen Boggs, B.L.	50
Steven Dixon, B.L.	35
Una McGurk, S.C.	56
Zeldine O'Brien, B.L.	27
Grand Total	**1944**

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

Member of Tribunal	Fees for 2019
Ann Marie Courell, B.L.	€0
Bernadette McGonigle, Solicitor	€0
Brian Cusack, B.L.	€10,475
Brid O'Flaherty, B.L.	€31,685
Christopher Hughes, B.L.	€48,920
Ciara McKenna-Keane, B.L	€27,635
Ciaran White, B.L.	€20,092
Clare O'Driscoll, B.L.	€31,881
Colin Lynch, Solicitor	€19,350
Conor Feeney, B.L.	€15,582
Conor Keogh, B.L.	€2,435
Cormac Ó Dúlacháin, S.C.	€22,647
Denis Halton, B.L.	€32,754
Elizabeth Davey, B.L.	€730
Elizabeth Mitrow, Solicitor	€0
Elizabeth O'Brien, B.L.	€50,090
Emma Toal, B.L.	€13,136
Eoin Byrne, B.L.	€13,777
Evelyn Leyden, Solicitor	€4,870
Finbar O'Connor, Solicitor	€14,735
Fiona McMorrow, B.L.	€2,195
Folasade Kuti-Olaniyan, Solicitor	€4,635
Frank Caffrey, Solicitor	€10,475
Ger O'Donovan, B.L.	€0
Helen-Claire O'Hanlon, B.L.	€2,680
Jeanne Boyle, Solicitor	€0
Joanne Williams, B.L.	€14,247
John Noonan, B.L.	€36,568
Katherine McGillicuddy, B.L.	€0
Kevin Lenahan, B.L.	€39,675
Kim Walley, Solicitor	€4,380
Lalita Pillay, B.L.	€1,705
Leonora Doyle, Solicitor	€24,539
Majella Twomey, B.L.	€31,640
Margaret Browne, B.L.	€29,737
Marguerite Fitzgerald, Solicitor	€0
Marie-Claire Maney, Solicitor	€14,360
Mark Byrne, B.L.	€72,722
Mark William Murphy, B.L.	€13,760
Mary Forde, Solicitor	€17,252
Meg McMahon, B.L.	€5,115
Michael Kinsley, B.L.	€13,635

Michael McGrath, S.C.	€17,773
Michael Ramsey, B.L.	€0
Michelle O'Gorman, B.L.	€1,460
Moira Shipsey, Solicitor	€7,185
Morgan Shelly, B.L.	€6,220
Niall O'Hanlon, B.L.	€0
Nicholas Russell, Solicitor	€39,445
Nuala Dockry, B.L.	€1,460
Nuala Egan, B.L.	€0
Olive Brennan, B.L.	€15,680
Oluwafemi Daniyan, B.L.	€7,074
Patricia O'Connor, Solicitor	€16,805
Patricia O'Sullivan Lacy, B.L.	€17,340
Paul Brennan, Solicitor	€10,595
Paul Kerrigan, Solicitor	€9,396
Peter Shanley, B.L.	€2,190
Rosemary Kingston O'Connell, Solicitor	€20,815
Sharon Dillon-Lyons, B.L.	€7,805
Shaun Smyth, B.L.	€9,130
Shauna Ann Gillan, B.L.[2]	€490
Simon Brady, B.L.	€3,900
Stephen Boggs, B.L.	€27,859
Steven Dixon, B.L.	€15,695
Una McGurk, S.C.	€39,565
Zeldine O'Brien, B.L.	€14,235
Grand Total	**€992,231**

[2] Ms Gillan was appointed a whole-time Member of the Tribunal in October 2018. The fees paid to her in 2019 arose from her previous activity as a part-time Member of the Tribunal.

4. Summary of the Work of the Tribunal for 2019

[4.1] Executive Summary for 2019

At the beginning of 2019 the Tribunal had 70 part-time Members the majority of whom were appointed in 2017. The Tribunal started the year with 1,544 appeals on hand. The number of appeals under the International Protectoin Act 2015 and European Union (Dublin System) Regulations 2018 submitted to the Tribunal reached a total of 2,043 in 2019, compared to a total of 2,127 such appeals reaching the Tribunal in 2018. The Tribunal ended the year with 1,558 such appeals pending before it. Additionally, the Tribunal received 21 appeals under the European Communities (Reception Conditions) Regulations 2018 during the course of the year, amounting to a total of 2,064 appeals reaching the Tribunal in 2019.

The number of appeals scheduled for hearing in 2019 stood at 2,633, an increase of *53.6%* when compared to the number of hearings scheduled in 2018 (1,714). The total increase of the number of hearings scheduled by the Tribunal over the two-year period from 2017 (616) to 2019 (2,633) now stands at *327%*, showing a significant impact of measures taken by the Tribunal in this period to increase its efficiency.

These measures also impacted positively on the Tribunal's productivity with regard to the completion of appeals. The number of decisions issued by the Tribunal in 2019 totalled 1,944, a further increase of *78%* from the previous year. Additionally, the Tribunal completed 236 appeals which were 'no shows' or appeals that were withdrawn or deemed withdrawn. Over the two-year period from 2017 (680) to 2019 (2,180), the Tribunal's overall output regarding decisions and otherwise completed decisions increased by *221%*.

The Tribunal continues to monitor and review its work processes and has further improved its efficencies throughout the year, setting it on target for

achieving its mission of determing all appeals in accordance with the law, in accordance with fairness and natural justice, with respect for the dignity of applicants, efficiently, with with the highest standard of professional competence, and in a spirit of openness and transparency in how the appeals process is managed.

Summary – Tribunal Caseload 2019

2019	
Appeals Received	**2064**
Cases Scheduled	**2633**
Decisions Issued	**1944**
Total Appeals Completed	**2180**
Live Appeals on Hand at Year End	**1558**

Summary – Types of Appeals received in 2019

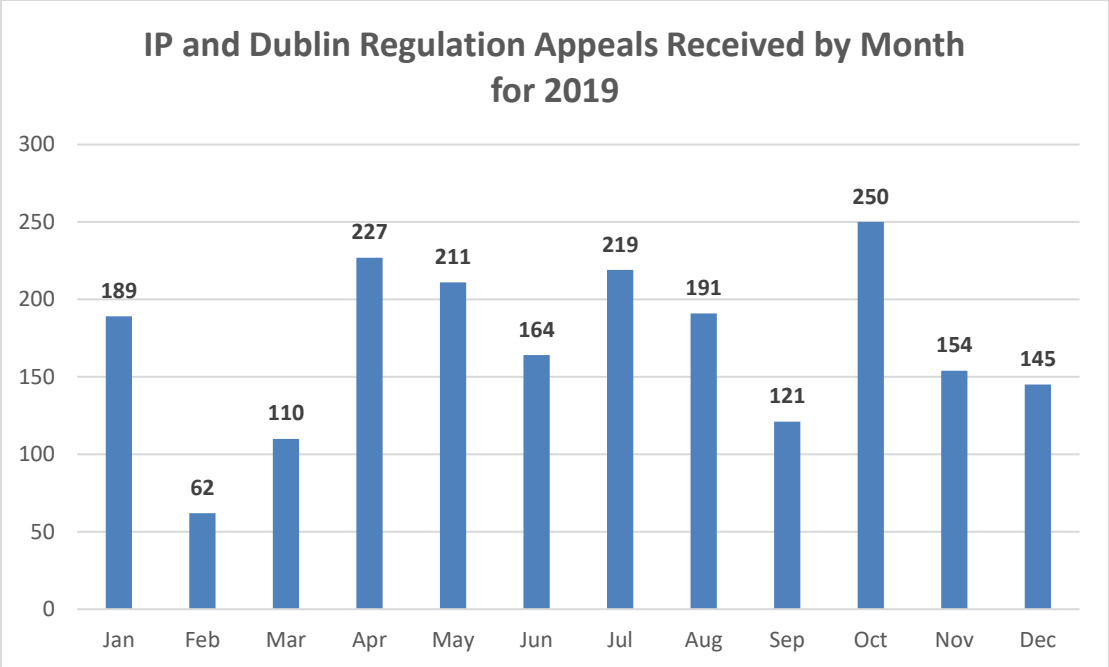
Appeal Type	Appeals Received
Substantive IP Appeal	1478
Substantive IP Appeal *Asylum only*	83
Substantive IP Appeal *SP only*	12
SP Appeal – *Legacy*	23
Accelerated IP Appeal	235
Dublin III	148
Inadmissible Appeal	26
Subsequent Appeal	38
Reception Conditions Appeal	21
Grand Total	**2064**

[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 2019:

[4.2.1] International Protection Act and Dublin Regulation Appeals Received in 2019

Month	Appeals Received
Jan	189
Feb	62
Mar	110
Apr	227
May	211
Jun	164
Jul	219
Aug	191
Sep	121
Oct	250
Nov	154
Dec	145
Grand Total	**2043**



[4.2.2] Substantive International Protection Appeals Received

Month	Appeals Received
Jan	152
Feb	24
Mar	76
Apr	193
May	178
Jun	137
Jul	192
Aug	169
Sep	111
Oct	221
Nov	131
Dec	129
Grand Total	**1713**

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

Month	Appeals Received
Jan	3
Feb	0
Mar	0
Apr	0
May	2
Jun	1
Jul	1
Aug	2
Sep	2
Oct	0
Nov	1
Dec	0
Grand Total	**12**

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

Month	Appeals Received
Jan	19
Feb	3
Mar	6
Apr	13
May	8
Jun	5
Jul	10
Aug	7
Sep	5
Oct	6
Nov	1
Dec	0
Grand Total	**83**

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

Month	Appeals Received
Jan	0
Feb	1
Mar	5
Apr	1
May	2
Jun	0
Jul	0
Aug	0
Sep	0
Oct	6
Nov	6
Dec	2
Grand Total	**23**

[4.2.6] Dublin III Regulation Appeals Received

Month	Appeals Received
Jan	13
Feb	30
Mar	21
Apr	19
May	14
Jun	14
Jul	13
Aug	6
Sep	1
Oct	5
Nov	5
Dec	7
Grand Total	**148**

[4.2.7] Inadmissibility Appeals Received (s.21)

Month	Appeals Received
Jan	0
Feb	2
Mar	1
Apr	1
May	1
Jun	2
Jul	1
Aug	0
Sep	1
Oct	8
Nov	5
Dec	4
Grand Total	**26**

[4.2.8] Subsequent Appeals Received (s.22)

Month	Appeals Received
Jan	2
Feb	2
Mar	1
Apr	0
May	6
Jun	5
Jul	2
Aug	7
Sep	1
Oct	4
Nov	5
Dec	3
Grand Total	**38**

[4.2.9] Reception Conditions Appeals Received

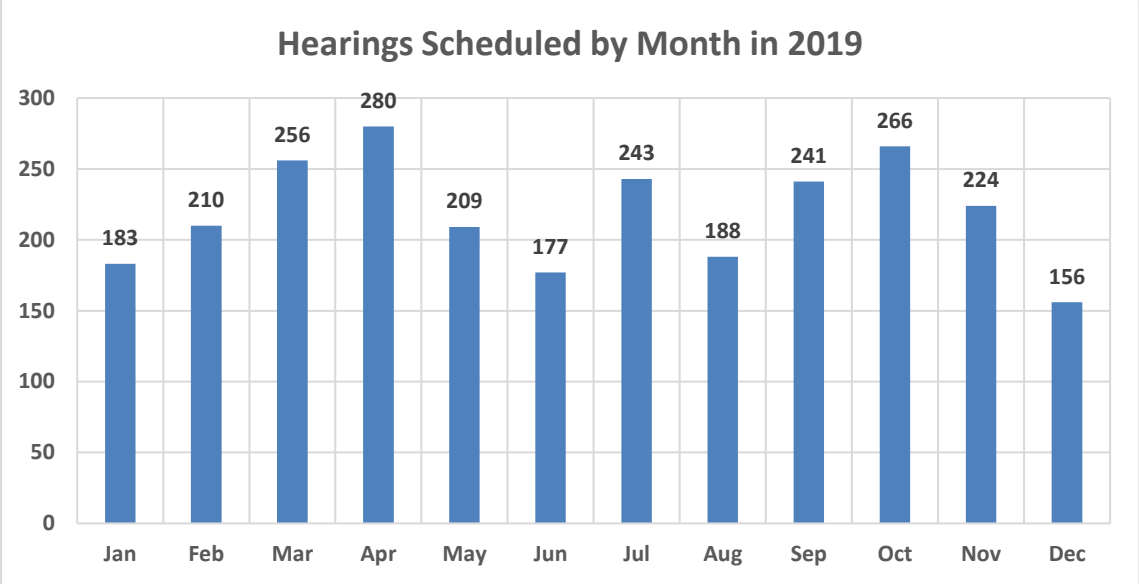
Month	Appeals Received
Jan	0
Feb	2
Mar	2
Apr	3
May	2
Jun	1
Jul	2
Aug	0
Sep	3
Oct	3
Nov	2
Dec	1
Grand Total	**21**

[4.3] Number of Appeals Scheduled for Hearing

The number of appeals scheduled for hearing in 2019 stood at 2,633. This figure represents significantly more than the 2,064 appeals received in 2019 and 73% of the total number of appeals that were before the Tribunal during the year. When considering the 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. When scheduling a hearing, the Tribunal is required to provide 20 working days' notice of the scheduled hearing date and time unless the parties have agreed to a shorter notice period.

[4.3.1] Number of Hearings Scheduled in 2019

Month	No of Hearings Scheduled
Jan	183
Feb	210
Mar	256
Apr	280
May	209
Jun	177
Jul	243
Aug	188
Sep	241
Oct	266
Nov	224
Dec	156
Grand Total	**2633**



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

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 ciccumstances, the appeal will be deemed withdrawn.

In 2019, the number of 'no shows' was 72, which represented approximately *2.75%* of the total number of appeals scheduled for hearing.

An applicant may withdraw his or her appeal at any stage in the process for a variety of reasons. In the event of a withdrawal, the original recommendation of the International Protection Officer stands. 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.

In 2019, the number of withdrawals and deemed withdrawals was 236, which represents just under *9%* of the total number of appeals on hand.

Table 4.5.1 sets out the number of 'no shows' and withdrawals in 2018.

[4.4.1] Number of 'No Shows' and Withdrawals/Deemed Withdrawn in 2019

2019	No of Appeals
No Shows	72
Appeals Withdrawn/Deemed Withdrawn	236

[4.5] Postponements and Adjournments

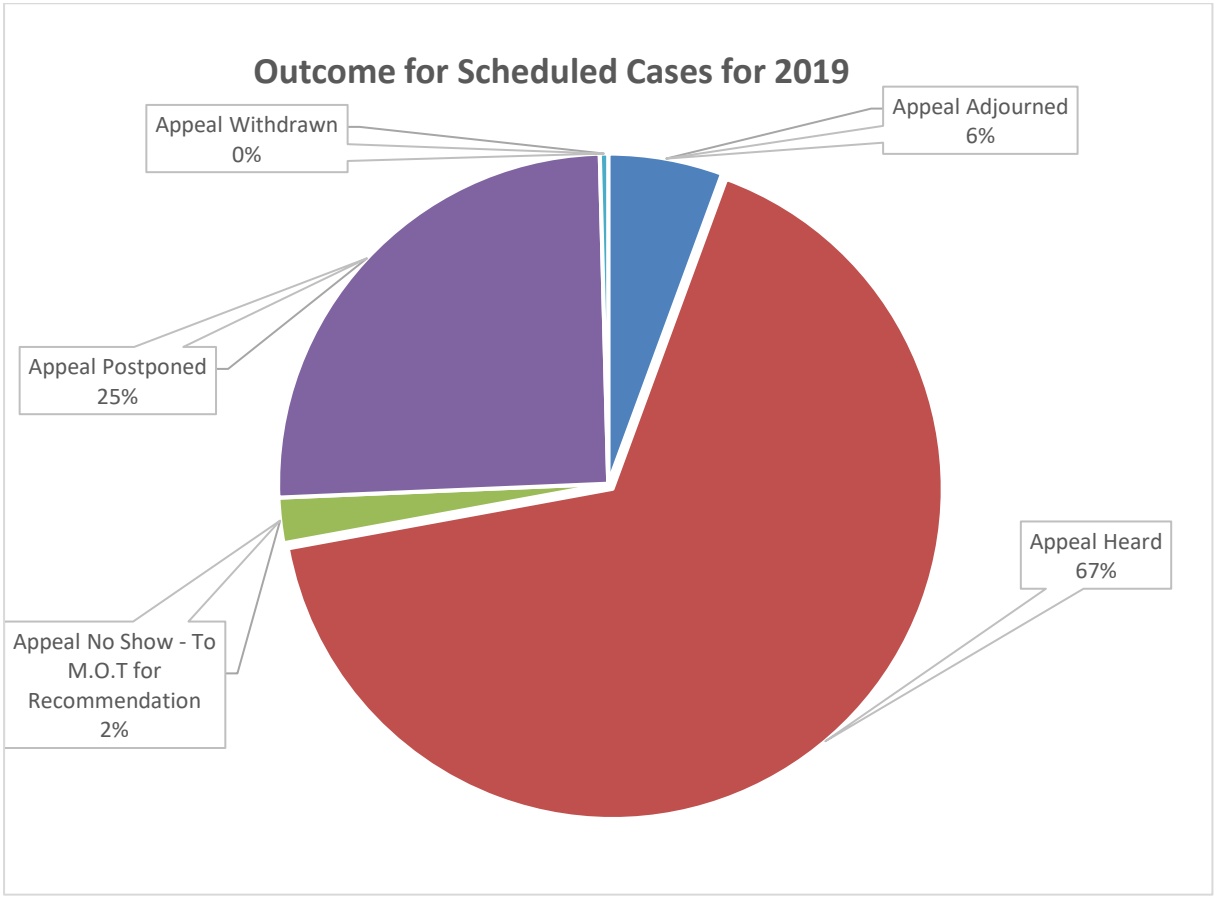
A postponement occurs where it is necessary for a variety of reasons and may be prompted by either party or by the Tribunal itself. The parties to the hearing are informed as soon as possible in advance of the hearing date of any postponement. However, on occasion, hearings have to be postponed on the 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 reresentatives, 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.

38.9% of scheduled hearings were either postponed or adjourned in 2019. Out of these, a significant percentage of appeals were postponed based on a pending High Court challenge against the validity of the underlying recommendation from the IPO under s.39(3) of the International Protection Act 2015 and an injunction granted by the Court of Appeal in the matter of *RS v The Chief International Protection Officer & Ors* [2018] IECA 322 in October 2018.

[4.5.1] Number of Postponements and Adjournments

2019	No of Appeals
Adjournments	95
Postponements	930
Grand Total	**1025**


Outcome for Scheduled Cases for 2019
Appeal Withdrawn 0%
Appeal Adjourned 6%
Appeal Postponed 25%
Appeal Heard 67%
Appeal No Show - To M.O.T for Recommendation 2%

[4.6] Total number of decisions issued in 2019

The number of decisions issued by the Tribunal in 2019 totalled 1944.

[4.6.1] Total number of decisions issued

Month	Decisions Issued
Jan	177
Feb	149
Mar	170
Apr	149
May	164
Jun	183
Jul	199
Aug	150
Sep	149
Oct	187
Nov	176
Dec	91
Grand Total	**1944**

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

Month	Decisions Issued
Jan	160
Feb	130
Mar	137
Apr	124
May	140
Jun	158
Jul	170
Aug	133
Sep	123
Oct	162
Nov	143
Dec	65
Grand Total	**1645**

[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
Jan	2
Feb	3
Mar	4
Apr	4
May	5
Jun	1
Jul	4
Aug	3
Sep	2
Oct	1
Nov	2
Dec	0
Grand Total	**31**

[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
Jan	4
Feb	1
Mar	2
Apr	4
May	4
Jun	6
Jul	3
Aug	1
Sep	2
Oct	2
Nov	1
Dec	0
Grand Total	**30**

[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	2
Feb	5
Mar	6
Apr	5
May	5
Jun	3
Jul	5
Aug	1
Sep	2
Oct	1
Nov	2
Dec	3
Grand Total	**40**

[4.6.6] Total number of Dublin III Regulation decisions issued

Month	Decisions Issued
Jan	5
Feb	5
Mar	19
Apr	8
May	9
Jun	11
Jul	14
Aug	5
Sep	12
Oct	19
Nov	26
Dec	19
Grand Total	**152**

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

Month	Decisions Issued
Jan	1
Feb	0
Mar	0
Apr	0
May	0
Jun	0
Jul	1
Aug	1
Sep	1
Oct	0
Nov	1
Dec	0
Grand Total	**5**

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

Month	Decisions Issued
Jan	2
Feb	4
Mar	1
Apr	2
May	1
Jun	4
Jul	2
Aug	5
Sep	7
Oct	2
Nov	1
Dec	4
Grand Total	**35**

[4.6.9] Reception Conditions Appeals decisions issued

Month	Decisions Issued
Jan	1
Feb	1
Mar	1
Apr	2
May	0
Jun	0
Jul	0
Aug	1
Sep	0
Oct	0
Nov	0
Dec	0
Grand Total	**6**

[4.7] Appeals on Hand at 31st December, 2019

A total of 1,558 appeals were on hand on the 31st of December 2019.

Summary of pending appeals at 31st December 2019

Appeal Type	Appeals
Substantive IP Appeal	**1152**
Accelerated IP Appeal	**171**
Dublin III	**111**
Inadmissible Appeal	**29**
Substantive IP Appeal Asylum only	**28**
SP Appeal	**24**
Subsequent Appeal	**15**
Substantive IP Appeal SP only	**11**
Legacy – Asylum Appeal	**3**
Reception Condition Appeals	**14**
Total number of appeals on hand as at 31st December 2018	**1558**

[4.8] Length of Appeal Process

Over the year, the Tribunal has continued to increase its output and in many ways, 2019 could be considered the Tribunal's first year of reaching full operational capacity with the Tribunal Members having gained the necessary experience in this complex area of law and having fully developed their skills as quasi-judicial decision makers. Moreover, vacancies in the staff complement of the Tribunal were mostly filled by the end of the year, thereby enabling the Registrar of the Tribunal, Pat Murray, to increase the efficiency of the administration of the Tribunal. As a result, over the two-year period from 2017 (680) to 2019 (2,180), the Tribunal's overall output regarding decisions and otherwise completed appeals increased by *221%*. The Tribunal is aiming to report further improvements in the coming year, in particular with regard to processing times.

The average length of time taken by the Tribunal to process and complete substantive international protection appeals in 2019, including 'transition cases', was approximately 170 working days. However, in relation to appeals that were both accepted and completed wihtin the year 2019, the average processing time was significantly reduced to 100 working days. The processing times for appeals during the year were impacted by several factors, including a high number of postponements which were based on a pending High Court challenge against the validity of the underlying recommendation from the IPO under s.39(3) of the International Protection Act 2015 and an injunction granted by the Court of Appeal in the matter of *RS v The Chief International Protection Officer & Ors* [2018] IECA 322 in October 2018.

For the year 2020, the Tribunal has set as an objective that the average processing times for appeals, where an oral hearing is required, will be reduced to 90 working days. However, it must be acknowledged that there are number of factors outside the control of the Tribunal that could impede this, including the availability of adequate resources and postponements of hearings due to legal proceedings, medical issues, or the inavailability of suitable interpreters for Tribunal hearings.

Average and Median Processing Time in Working Days for Decisions in 2019 from Appeal Accepted Date to Appeal Decision Date		
Appeal Type	**Average**	**Median**
Total	170	145
Accelerated IP Appeal	80	85
Dublin III	170	160
Inadmissible Appeal	105	100
SP Appeal - Legacy	335	260
Subsequent Appeal	120	65
Substantive IP Appeal	165	145
Substantive IP Appeal –Asylum only	250	250
Substantive IP Appeal –SP only	250	240

Average and Median Processing Time in Working Days for Appeals Lodged in 2019 and with Decisions in 2019 only from Appeal Accepted Date to Appeal Decision Date		
Appeal Type	**Average**	**Median**
Total	100	90
Accelerated IP Appeal	80	90
Dublin III	125	120
Inadmissible Appeal	80	75
SP Appeal - Legacy	120	95
Subsequent Appeal	55	45
Substantive IP Appeal	100	90
Substantive IP Appeal –Asylum only	60	65
Substantive IP Appeal –SP only	120	90

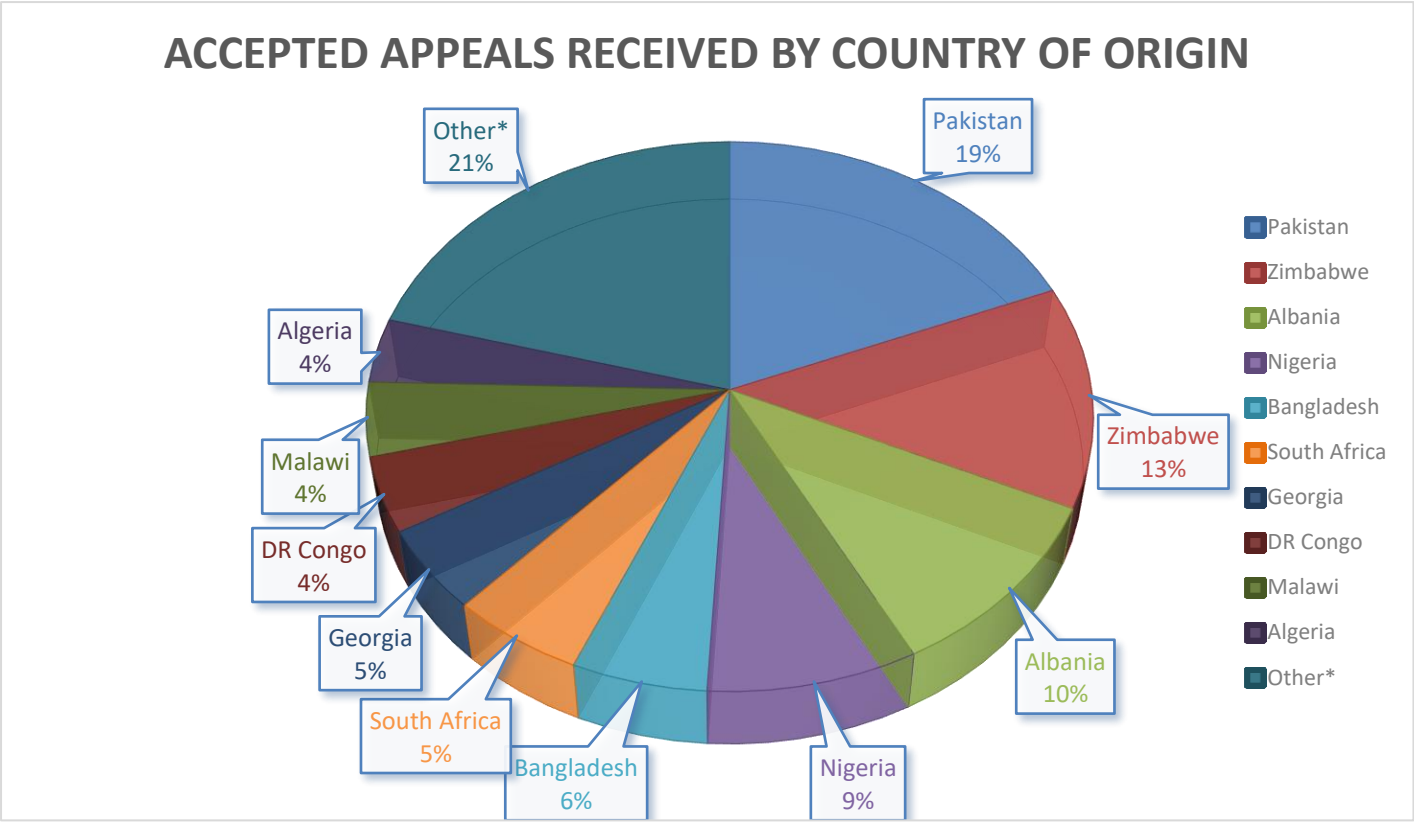
[4.9] Country of Origin of Applicants 2019

The highest proportion of substantive appeals received by the Tribunal in 2018 were from Pakistani and Zimbabwean nationals, followed by Albanian nationals.

[4.9.1] Substantive International Protection Appeals, Subsequent Appeals and Inadmissible Appeals accepted[3] in 2019 by country of origin.

Nationality	Total Appeals Received	Total %	Substantive IP Appeal		Inadmissible Appeal		Subsequent Appeal	
			Appeals Received	%	Appeals Received	%	Appeals Received	%
Pakistan	283	19%	281	19%	1	4%	1	6%
Zimbabwe	196	13%	196	13%	0	0%	0	0%
Albania	157	10%	157	11%	0	0%	0	0%
Nigeria	129	9%	126	9%	1	4%	2	13%
Bangladesh	83	6%	81	6%	0	0%	2	13%
South Africa	82	5%	81	6%	0	0%	1	6%
Georgia	73	5%	72	5%	0	0%	1	6%
DR Congo	66	4%	65	4%	0	0%	1	6%
Malawi	65	4%	65	4%	0	0%	0	0%
Algeria	57	4%	55	4%	1	4%	1	6%
Other*	**312**	**21%**	**282**	**19%**	**23**	**88%**	**7**	**44%**
Grand Total	**1503**	**100%**	**1461**	**100%**	**26**	**100%**	**16**	**100%**

[3] A total of 887 appeals were received by the Tribunal in 2017 – 22 remained at the pre-acceptance stage at the end of the year.



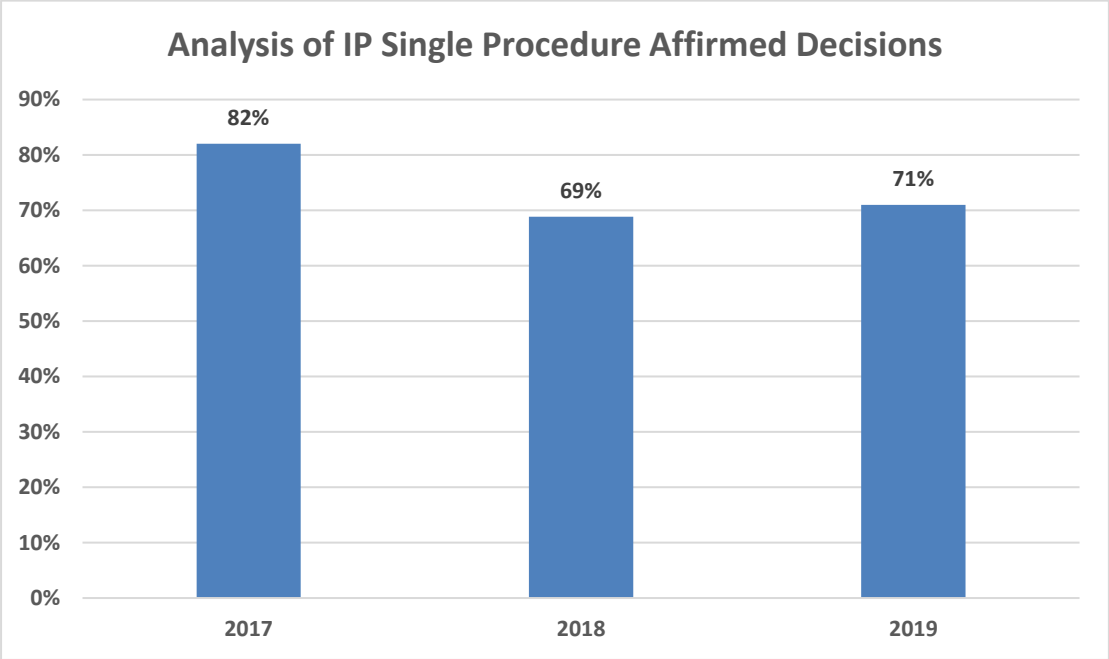
[4.10] Outcome of Appeals

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 2019. These figures do not include withdrawals or abandoned cases.

[4.10.1] International Protection Single-Procedure Appeals 2018

International Protection Appeals 2019			
Granted/Set Aside – Asylum	**Granted/Set Aside - Subsidiary Protection (SP)**	**Total Affirmed**	**Total Decisions**
411	41	1133	1585
26%	2.5%	71%	100%

[4.10.2] Analysis of single procedures International Protection recommendations affirmed in 2019



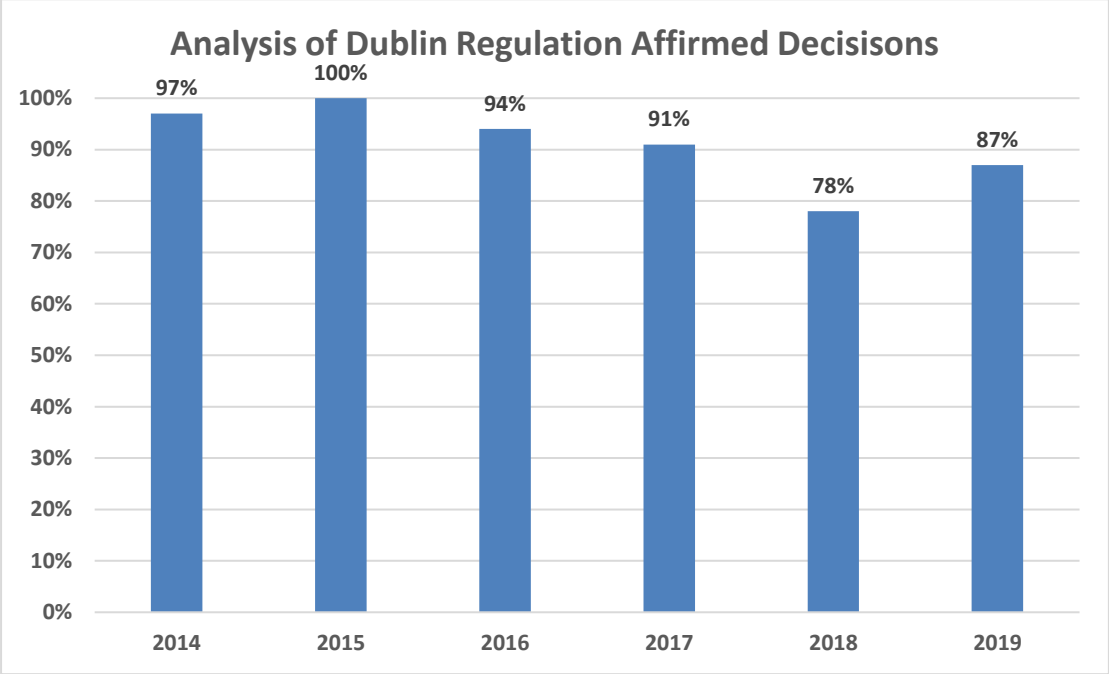
[4.10.3] Summary of International Protection, Subsidiary Protection , Subsequent Appeals and Inadmissibility Appeals accepted in 2019 by country of nationality – affirmed and set aside from 1st January 2019 to 31st December 2019

Nationality	Grand Total	Granted/Set Aside	Refused/Affirmed	Set Aside % of Total Decisions
Albania	**117**	20	97	17%
Pakistan	**106**	21	85	20%
Zimbabwe	**75**	28	47	37%
Georgia	**66**	14	52	21%
Nigeria	**43**	11	32	26%
Bangladesh	**37**	7	30	19%
South Africa	**37**	18	19	49%
Algeria	**27**	1	26	4%
Malawi	**20**	4	16	20%
India	**15**	1	14	7%
*Other**	**113**	42	71	37%
Grand Total	**656**	167	489	25%

[4.10.4] Dublin Regulation Decisions affirmed and set aside in 2019

Appeal Type	Affirmed		Set Aside		Total	
	No of Decisions	%	No of Decisions	%	No of Decisions	%
Dublin III	132	87%	20	13%	152	100%

[4.10.5] Analysis of Dublin Regulation Decisions 2014 to 2019



[4.10.6] Summary of Dublin III Appeals, by country of nationality, affirmed and set aside from 1st January 2019 to 31st December 2019

Nationality	Decisions			
	Affirmed	Set Aside	Grand Total	Set Aside %
Nigeria	36	0	36	0%
Albania	22	7	29	24%
Pakistan	19	0	19	0%
Algeria	9	1	10	10%
Afghanistan	5	2	7	29%
Iraq	6	0	6	0%
DR Congo	1	4	5	80%
South Africa	4	0	4	0%
Somalia	4	0	4	0%
Georgia	2	2	4	50%
Egypt	4	0	4	0%
Morocco	3	1	4	25%
Sudan	3	0	3	0%
India	3	0	3	0%
Libyan Arab Jamahiriya	3	0	3	0%
Ghana	2	0	2	0%
Bangladesh	1	1	2	50%
Kuwait	0	1	1	100%
Stateless	1	0	1	0%
Angola	1	0	1	0%
Eritrea	1	0	1	0%
Niger	1	0	1	0%
Sierra Leone	0	1	1	100%
Myanmar	1	0	1	0%
Grand Total	**132**	**20**	**152**	**13%**

[4.10.7] Inadmissibility decisions affirmed (s.21)

Appeal Type	Refused/Affirmed	% of Affirmed
Inadmissible – Affirmed	5	100%

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

Appeal Type	Refused/Affirmed	% of Affirmed
Subsequent Appeal	27	77.14%

[4.11] Reception Conditions Appeals

In 2019, 21 appeals were received pursuant to Regulation 21 of the European Communities (Reception Conditions) Regulations 2018. Of those appeals:

- 1 was rejected because the Tribunal lacked jurisdiction to accept the appeal;
- 1 decision set aside the decision of the Review Officer made under Regulation 20;
- 5 decisions affirmed the decision of the Review Officer made under Regulation 20;
- 14 decisions were "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.

Preliminary Reference

Under the 2018 Regulations, persons who are subject to transfer decisions pursuant the European Union (Dublin System) Regulations 2018 are not considered to be "applicants" under the Reception Conditions Regulations, and, for that reason, are not entitled under Irish law to apply to access the labour market; rather they are considered to be "recipients". In 2018, when appeals involving this particular issue came before the Tribunal, the Tribunal, as a quasi-judicial body, applied domestic law, and affirmed the decisions of the Review Officer. The Tribunal decisions were subsequently challenged by way of judicial review.

Then, in December 2018, the Court of Justice of the European Union delivered its judgment in *C378/17 Minister for Justice & Equality & Others v Workplace Relations Commission & Others* ECLI:EU:C:2018:979. The import of that judgment was that, when a quasi-judicial body such as the Tribunal, is confronted with domestic law that contradicts EU law, the decision-making body is under an obligation to dis-apply national law in favour of European Law. Therefore in December 2018, the Tribunal dis-applied national law on the issue of 'applicant', and set aside the decision of the Review Officer. The Tribunal also set aside another Review Officer decision in a similar matter in March 2019.

In the meantime, the judicial review applications against the Tribunal's original decisions came before the High Court, and the High Court (Humphreys J) made a preliminary reference to the Court of Justice of the European Union in the joined cases of *KS (Pakistan) & MHK (Bangladesh) v IPAT* [2019] IEHC 176 (C-322/19). When 2 appeals involving this issue came before the Tribunal in April and May 2019, the Tribunal decided, as a court or tribunal pursuant to Article 267 of the Treaty on the Functioning of the European Union, to make a preliminary reference, but asking different questions to those which had been posed by the High Court. The Tribunal made its preliminary reference to the CJEU on 16 May 2019 (C-385/19). While both references remain pending before the Court in Luxembourg, they have in fact now been joined together by the CJEU.

A number of appeals dealing with this issue came before the Tribunal in 2019; however, the Tribunal, relying on the practice and procedure of the Court of Justice of the European Union, has deferred its decisions in those appeals.

5. Other Activities

[5.1] Meetings 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 2019. Meetings were held with each of the following organisations, among others, during the year.

- Department of Justice and Equality
- Office of the Chief State Solicitor
- Office of the Attorney General
- Law Society of Ireland
- Bar Council of Ireland
- Legal Aid Board
- Refugee Documentation Centre
- 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
- ACESA, Association of Chief Executives of State Agencies

[5.2] Training of Tribunal Members

International Protection Appeals Tribunal Training 2019

The Tribunal emphasises the importance of regular, high-level practical training to enable Tribunal Members to carry out their decision-making functions more efficiently and to maintain the high-quality decisions to which

appellants are entitled. There is specific provision for this at High Level Goal 3 of the Tribunal's current Statement of Strategy[4] which provides as follows:

> *to achieve and maintain quality standards through the provision of training and professional development supports to Tribunal Members.*

With that in mind, the Tribunal ensures that training needs that have already been identified as crucial for the majority of Members are addressed at the two compulsory training days which are attended by all Members.

Training Day 7 June 2019

The Training Day on 7 June 2019 was opened by the keynote speaker David Conlon Smyth SC who gave a witty but informative talk on Regulation 604/2013 (the Dublin III Regulation) and the litigation which has developed in that area. He also addressed the Tribunal Members and some of the staff on the "Lawyers for Lesbos Project" which assists asylum seekers who are accommodated on the Greek island of Lesbos.

The focus of the rest of the Training Day was an update on Tribunal Members' current decision making progress. Both Deputy Chairpersons outlined the process whereby Tribunal Decisions are reviewed, firstly for those still in training and secondly in the context of the quarterly Tribunal Quality Audit. While there is no interference in the Members' decision-making independence, common errors in decision-making had been identified, with guidance given for avoiding these errors. John Stanley outlined proposed revisions to the current Single Procedure Template. Cindy Carroll distributed the updated Tribunal Style Guide, and led the Tribunal Members in working in groups on a problem scenario, identifying issues and discussing the legal approach to be taken.

[4] http://www.protectionappeals.ie/website/rat/ratweb.nsf/page/MJOF-AT6C8K8422516-en/$File/IPAT%20Strategy%20Statement%202017-2020%20(FINAL%20November%202017).pdf

After lunch and a brief team-building exercise, the Chairperson, Hilkka Becker, addressed the Members on appeals pursuant to section 22 of the International Protection Act 2015, colloquially known as subsequent appeals. She took them through the Tribunal template and outlined the legal issues to be considered in this process.

The final speaker of the afternoon was D/Sergeant Peter Cullen from the Garda Documents Section of the Garda National Immigration Bureau. He spoke to Members about document awareness. While Tribunal Members cannot authenticate documents themselves, D/Sergeant Cullen gave useful advice on things to look out for.

Both the Registrar, Patrick Murray, and the Chairperson addressed the Tribunal Members on the issue of performance. The Registrar identified a number of areas where delays were occurring in the processing of appeals and informed Members that measures were being taken to alleviate those delays. He did note that numbers were up overall for the Tribunal, and both he and the Chairperson thanked the Members and staff for their continued hard work.

Training Day 6 December 2019

At the December Training Day, the Tribunal was greatly honoured to have Advocate General Hogan of the Court of Justice of the European Union as the keynote speaker to open the Training Day. AG Hogan spoke in general about the supremacy of EU law but more specifically, and of crucial relevance to the Tribunal, about the independence under EU law of quasi-judicial bodies such as the International Protection Appeals Tribunal.

The first item on the agenda for the Training Day was Judicial Writing which was presented by UK Judge Jonathon Holmes Assistant Resident Judge, Deputy Training Judge (IAC) Recorder North Eastern Circuit**.** Judge Holmes' presentation was based on his own experiences as a judicial trainer in the UK.

As a practical exercise, the Tribunal Members were divided into groups and the groups looked at two sample Tribunal Decisions to identify where the decision-makers had fallen into error, and how the Decisions could have been strengthened.

It was fitting that the next presentation was by John Stanley covering the topic of Judicial Review and the Tribunal. Tribunal Members were presented with statistics from litigation taken against the Tribunal. The figures showed a reduction in the number of judicial review proceedings being taken against the Tribunal and a further reduction in the number of Tribunal Decisions being quashed by the High Court. The findings of the Superior Courts on those decisions that were quashed have been identified and will form part of the Tribunal Training Plan 2020.

After lunch, Cindy Carroll gave a presentation on Introduction to Judge-craft. This presentation was based on a conference which she herself had attended, and addressed such matters as bias and communication skills. Again, particular emphasis will be placed on judge-craft in the Tribunal Training Plan 2020.

The final speaker of the afternoon was Dr Jennifer Hayes, Principal Clinical Psychologist with the HSE in the areas of social inclusion and refugee supports. Dr Hayes spoke on the topics of stress, trauma, post-traumatic stress disorder and vicarious trauma. Her presentation resonated with Members, many of whom encounter distressing information when dealing with appeals. Dr Hayes gave the Members some tips for dealing with these issues and building resilience.

It can be seen from the description of the December Training Day that training in the Tribunal is taking a new direction, moving away from dealing solely with legal issues to developing “soft skills” such as judicial writing, judge-craft and resilience.

The Training Day in December concluded with the Annual Statutory Meeting of the Tribunal where both the Chairperson and the Registrar noted the increased production of the Tribunal, even since June 2019.

Lunch and Learn

During the year, a number of Lunch and Learn Sessions were held. These are informal meetings whereby Members give presentations to their colleagues on topics of interest, e.g. the skills of working with an interpreter, or recent developments in EU Asylum Law. While most of the presentations are based on conferences which the Members have attended, one of the most practical presentations was by Chairperson Hilkka Becker on carrying out research on the Tribunal's own Decisions Archive.

Tribunal Members also held some informal discussion fora on issues, which were presenting difficulties for Members, e.g. state protection in safe countries of origin, dealing with vulnerable appellants. These informal meetings provoked lively debate and were a good example of Tribunal Members working together in a collegiate way without infringing their independence as decision-makers.

External Training attended

The Chairperson, both Deputies and the three whole-time Members attended a number of external training events:

<u>Training organised by the European Judicial Training Network</u>

- Training on Human Rights for EU Judicial Trainers (Strasbourg)
- Asylum Law (Thessaloniki),
- Judge-craft (Barcelona)
- Personal Leadership (Prague)

The EJTN also provides judicial exchanges; some members took part in these, and the Tribunal hosted a visit by a Croatian Judge.

Other training

Tribunal Members attended training provided by the International Commission of Jurists (ICJ); the Annual Conference on European Asylum and Migration Law in the Academy of European Law (ERA); a conference organised by FLAC; the inaugural conference of the Immigration, Asylum and Citizenship Bar Association in Dublin (IACBA). Some Tribunal Members are currently studying for the Advanced Diploma in Quasi-Judicial Decision Making in the Kings Inns at their own expense.

Papers given / training given by Tribunal Members

Tribunal Members have presented papers to various bodies and universities – an important point to note is that these presentations did not conflict with their duties as Tribunal Members.

Presentations were given in Trinity College Dublin, NUI Maynooth, University College Cork, and to the Refugee and Immigration Practitioners Network, and Immigration Asylum and Citizenship Bar Association (IACBA) on the Tribunal's Administrative Practice Note, which was published on the Tribunal website in April 2019.

Other news…

- Deputy Chairperson Cindy Carroll finished an MA in Leadership and Strategy, with a dissertation on An Exploration of the Role of Power and Influence on Leadership Styles in the International Protection Appeals Tribunal;
- Deputy Chairperson John Stanley published a Nutshell book on Immigration, Free Movement of Persons and Citizenship Law. He was also involved as lead researcher in the International Association of

Refugee and Migration Judges (IARMJ) Judicial Analysis on Vulnerable Applicants in the Common European Asylum System.

- Tribunal Member Shauna Gillan was appointed as a part-time Immigration Judge in the UK (First Tier Tribunal, Asylum and Immigration Chamber)

[5.3] International Association of Refugee and Migration Judges

The Tribunal Members are members of the International Association of Refugee and **International Association of Refugee and Migration Judges**

The Tribunal Members are members of the International Association of Refugee and Migration Judges (IARMJ), which was founded in 1997 and seeks to foster recognition that protection from persecution on account of race, religion, nationality, membership in a particular social group, or political opinion is an individual right established under international law, and that the determination of refugee status and its cessation should be subject to the rule of law.

More information on the IARMJ and its activities can be accessed here.

[5.4] European Asylum Support Office (EASO)

The Tribunal is very proud of its close association with EASO, which is based in Malta. A number of Members were selected to attend judicial training at EASO in Malta throughout the year 2019 and 8 Tribunal Members were selected to join the pool of Judicial Trainers in EASO. Moreover, the Chairperson of the Tribunal is the National Contact Points for the EASO Network of Courts and Tribunals at EASO and participates on a regular basis in the annual coordination and planning meeting and other activities of the Network.

The Chairperson, Hilkka Becker, and Deputy Chairperson John Stanley contributed to the drafting of judicial analyses produced by IARMJ Europe under contract to EASO on:

- Vulnerability in the context of applications for international protection
- Exclusion: Articles 12 and 17 Qualification Directive (2011/95/EU) (second edition)

Both are due for publication in 2020 and, like the other judicial analyses on topics related to the Common European Asylum System (CEAS) can be accessed here.

[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. The Group met once in 2019.

[5.6] Internships

Interns in the International Protection Appeals Tribunal

During 2019, the Tribunal continued accepting legal interns for placement in the Tribunal. This was a project, which had commenced in 2018 and proved very successful for the interns and for the Tribunal itself. In 2019, the Tribunal had 2 interns from UCD, 1 each from NUI Galway and NUI Maynooth, 3 from UCC, and 1 from St. John's University School of Law, New York.

As in 2018, the work which the interns as a group carried out in 2019 has been very useful to the Tribunal in its functions and has been delivered quickly and professionally. The Chairperson and Deputy Chairpersons have benefitted from the assistance of the legal interns in carrying out more in depth projects.

The legal interns have been able to undertake research on domestic case law, European case law, case law from the European Court of Human Rights, specialised country of origin information.

All of the legal interns who have come to the Tribunal have been of a very high calibre. In order to secure a placement with the Tribunal, the intern must have achieved a minimum level of a 2H1 in all of their exams. It goes without saying that all the interns agree to abide by the rules and regulations of the Department of Justice and Equality, including GDPR and IT policy, and they sign a document to that effect on their arrival in the Tribunal. The undertakings as regards confidentiality extend after the interns have finished their positions with the Tribunal.

The Tribunal is delighted to be associated with these internships. Through them, the Tribunal continues to develop relationships with the universities who are to be commended for the professionalism shown by their students.

6. Tribunal Customer Service

[6.1] Customer Service

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.

In April 2019, the Tribunal published its Administrative Practice Note on its website. This document was prepared in order to assist appellants and their legal representatives in the practices and procedures of the Tribunal in a clear, user-friendly way. The Tribunal Users Group provided helpful observations on the document before its publication, and the fact of its publication was published in the Law Society Gazette in May 2019. Presentations were also given to the Refugee and Immigration Practitioners' Network and to the Immigration, Asylum and Citizenship Bar Association around that time.

[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

It is the policy of the Tribunal, as set out in our Health and Safety Statement, to ensure, in so far as is reasonably practicable, the safety, health and welfare of all its employees and those who have business on its premises. Health and safety issues are a priority for the Tribunal - this is reflected in the training

provided to staff and the security measures at the Tribunal's premises which are continually under review. The Health and Safety Statement is updated as required.

[6.4] Ethics in Public Office Act, 1995

The Chairperson and Principal Officer 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.

Appendix 1

Appeals Process and Tribunal 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 and Equality 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 and Equality 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 INSERT.

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

the Regulations. To date, all the appeals to the Tribunal under the Reception Conditions Regulations have related to access to the labour market.

Procedure

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 Equality, 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.

Furthermore, the Tribunal has jurisdiction to decide appeals against decisions taken by the Minister for Justice and Equality 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.

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.

  The designated member of the International Protection Appeals Tribunal shall determine an appeal under this Regulation within a reasonable time and in any case, within 15 working days from the date on which the appeal is received by the Tribunal, and unless it considers it is not in the interests of justice to do so, make its determination in relation to the appeal without holding an oral hearing.

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 and Equality. 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

Guideline to the Registrar on Assigning and Re-assigning Appeals

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1. Background:

1.1 This guidance is issued pursuant to S. 63(3)(a) of the International Protection Act 2015 to assist the Registrar of the Tribunal in performing their functions of assigning or re-assigning appeals pursuant to S.67(2) or (3).

1.2 The relevant statutory provisions are set out in Appendix 1.

2.2 The following terms have the same meaning as that contained in the International Protection Act 2015: "Business", "Family", "Tribunal", "member", "Registrar" "Unaccompanied child" and "Chairperson".

2. Assignment of Appeals

2.1 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.

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

3. Family Members:

3.1 Where there are several appeals which relate to the same family those appeals may be assigned to the same Member.

3.2 Where a member has previously dealt with an appeal relating to a family member of a current applicant, the appeal of the current applicant may be assigned to the Member who dealt with the previous appeal of the family member.

4. Unaccompanied Minors:

4.1 Were the appeal is made in respect of an unaccompanied minor the Registrar should use their best endeavours to ensure that the appeal is assigned to a Member who has received appropriate training, as specified by the Chairperson, in dealing with such persons.

5. Appeals Involving Particular Sensitivities:

5.1 It is acknowledged that particular appeals may involve certain cultural, gender and/or other sensitivities, e.g. allegations of sexual assault or female genital mutilation.

5.2 Such appeals should be assigned to Members taking such sensitivities into account, insofar as it is practicable to do so.

6. Re-assignment of Appeals

6.1 Where a Member is unable or unwilling to decide an appeal, the Registrar may, in agreement with the Member, re-assign that appeal to another Member.

6.2 Where the Registrar cannot agree with a Member to re-assign an appeal the Registrar shall so inform the Chairperson who shall then decide whether to re-assign the Appeal pursuant to S. 63(4)(a).

7. Other Matters:

7.1 In assigning or re-assigning appeals between the various Members of the Tribunal the following matters should also be taken into account by the Registrar:-

7.1.1 A Member's availability,
7.1.2 A Member's ability to meet such timelines for the efficient dispatch of the business of the Tribunal, as may be determined by the Chairperson,
7.1.3 The grounds of the appeals set out in the notices of appeal,
7.1.4 The country of origin of applicants,
7.1.5 The provision of the International Protection Act 2015, (as amended), pursuant to which the appeals are made,
7.1.6 Whether the Member is disposing of the business of the Tribunal as expeditiously as may be consistent with fairness and natural justice,
7.1.7 Whether the Member has particular knowledge, or training, relevant to the issues raised in the appeal,
7.1.8 Any other matters relevant to the disposal of the business of the Tribunal efficiently and as expeditiously as may be consistent with fairness and natural justice.

Appendix 3

Statutory Provisions
International Protection Act 2015

Functions of chairperson of Tribunal

63. (1) The chairperson shall ensure 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.

(2) The chairperson may issue to the members of the Tribunal guidelines on the practical application and operation of the provisions or any particular provisions of this Part and on developments in the law relating to international protection.

(3) (a) 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 *section 67 (2)* or *(3)*.

(b) In issuing the guidelines referred to in *paragraph (a)*, the chairperson shall have regard to the following matters:

(i) the grounds of the appeals specified in the notices of appeal;

(ii) the country of origin of applicants;

(iii) any family relationship between applicants;

(iv) the ages of the applicants and, in particular, of persons under the age of 18 years in respect of whom applications are made;

(v) the provisions of this Act under which the appeals are made.

(4) The chairperson may —

(a) re-assign business from one member to a different member if, in the opinion of the chairperson, such re-assignment—

(i) is warranted by the inability or unwillingness to transact that business of the member to whom the business was originally assigned, and

(ii) where the business relates to an appeal, cannot be achieved by agreement between the Registrar and that member,

Role of members of Tribunal

65. (1) A member of the Tribunal shall, on behalf of the Tribunal, transact the business assigned to him or her under this Act.

(2) A member shall, in the performance of his or her functions under this Act—

(a) 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,

(b) conduct oral hearings in accordance with this Act and any regulations under *section 41 (4)*,

(c) accord priority to an appeal to which *section 63 (5)* applies that is assigned to him or her,

(d) have regard to any guidelines issued by the chairperson under *section 63 (2)*,

(e) prepare the report referred to in *paragraph (b)* or *(c)* of *section 63 (4)* and provide it to the chairperson when requested to do so,

(f) attend any meetings convened by the chairperson under *subsection (6)* or *(7)* of *section 63* , unless it is impracticable to do so,

(g) provide such assistance to the chairperson in the performance by the chairperson of his or her functions under this Act as the chairperson may reasonably request, and

(h) comply with any direction given by the chairperson relating to training and the continued professional development of members.

Functions of Registrar

67. (1) The Registrar shall, in consultation with the chairperson—

(a) manage and control generally the staff and administration of the Tribunal, and

(b) perform such other functions as may be conferred on him or her by the chairperson.

(2) The Registrar shall assign to each member the appeals to be determined by him or her.

(3) Subject to *section 63 (4)(a)*, the Registrar may re-assign an appeal where the member to whom it was originally assigned is unable or unwilling to determine that appeal.

(4) In assigning or re-assigning an appeal to a member the Registrar shall have regard to—

(a) the need to ensure the efficient management of the work of, and the expeditious performance of its

functions by, the Tribunal, consistent with fairness and natural justice, and

(b) any guidelines issued by the chairperson under *section 63 (3)(a)*.

Appendix 4

Comprehensive summary of judgments of the Superior Courts in 2019 relating to decisions of the International Protection Appeals Tribunal

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Below is a summary of the judgments of the Superior Courts in 2019 regarding Tribunal decisions. The Tribunal incorporates the guidance of the Superior Courts into its training for Members and Members' Resources.

Methodology of the Tribunal

On the facts of ***SN (Ghana) v International Protection Appeals Tribunal*** **[2019] IEHC 19**, High Court, Humphreys J., 11 January 2019 the Tribunal had rejected the applicant's claim, which concerned, inter alia, his devolution to him of a chieftainship, and his claimed unwillingness to participate in pagan rituals. The applicant sought judicial review of the Tribunal's negative decision on the basis, inter alia, that it had applied an unduly Western perspective and failed to take into account the cultural context in Ghana in assessing the claim. In rejecting this claim, the Court made the following comments, including points of direct relevance to the Tribunal (emphases added):

> "8. Neuberger L.J., as he then was, in *H.K. v. Secretary of State for the Home Department* [2006] EWCA Civ. 1037, commented at para. 28 that: *"In many asylum cases, some, even most, of the applicant's story may seem inherently unlikely but that does not mean that it is untrue*." He went on to say that "*The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency … and with other factual evidence …*". […] Neuberger L.J. went on to say at para. 29 that: "*Inherent probability … can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. … customs and circumstances [may be] very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience.*" The reference to inherent probability being dangerous and wholly inappropriate is possibly slightly over-dramatic. The word "*some*" is crucial here - certainly not most. […]
>
> 9. One overall point here is that **judges who, in our system, are by definition generalists and whose exposure to asylum law may in any event be intermittent, are in a weaker position to take a view on what is or is not probable in a given country than members of the IPAT.** The role of the court is a limited one, as set out by Clarke J., as he then was, in *E.D. v. Refugee Appeals Tribunal* [2016] IESC 77 [2017] 1 I.R. 325 at 339: "*So far as the facts are concerned a court's function is to determine whether the facts, as found by the administrative body, can be sustained on judicial review principles*." The

reference made by Neuberger L.J. to individual members of the fact-finding tribunal is not necessarily apposite in a system such as that in Ireland, where, while the members of the IPAT are individually independent in relation to any particular case, the tribunal is organised on a corporate basis and its members are institutional actors. **The tribunal is organised on a basis that ensures that any personal know-how, or lack of know-how, of an individual member is addressed by co-ordinated measures to ensure consistency in the tribunal overall.** Section 63(2) of the 2015 Act provides that "*the chairperson may issue to the members of the Tribunal guidelines on the practical application and operation of the provisions or any particular provisions of [that part of the Act] and on developments in the law relating to international protection*". Sub-section (6) provides that the chairperson may convene meetings with a member or members of the tribunal for the purposes of discussing matters relating to the transaction of the business assigned to the tribunal or such members, "*including, in particular, such matters as the avoidance of undue divergences in the transaction of business by the members*". Sub-section (7) provides for an annual meeting with members of the tribunal "*and, where necessary, to make provision for training programmes for members*". Section 65(2) sets out the obligation of individual members, including at para. (d) having regard to any guidelines issued by the chairperson and at para. (f) attending any meetings convened by the chairperson under s. 63(6) or (7). Standards of international protection are now highly developed, with practical guidance from the European Asylum Support Office (established by Regulation (EU) 439/2010) and the International Association of Refugee and Migration Judges, and a body of caselaw across the EU and from the Court of Justice of the European Union. **It is not the case that Irish protection decision-makers arrive at conclusions by the seat of their pants or on the basis of individual member's hunches or cultural perceptions. There is no reason to consider that the tribunal members in general, or the member in this particular case, are unduly influenced by inappropriately Western notions of what is probable.**"

Consistency of Decision Making – Duty to Provide Reasons for Divergence?

The judgment in ***C v International Protection Appeals Tribunal*** **[2019] IEHC 223**, High Court, Barrett J., 3 April 2019 concerned the applicant's application for leave to appeal the judgment in *C v International Protection Appeals Tribunal* [2018] IEHC 755 (see 2018 Annual Report).

Mr C proposed the following point as one of exceptional public importance:

> 'Whether the obligation on the IPAT to provide reasons why an earlier decision is apparently being departed from, in circumstances where the two decisions are ex facie inconsistent, is engaged having regard to 'all of the evidence in the respective applications or just having regard to the evidence pertaining to the analogous material element of the respective applications?'

The court found that the proposed point did not arise from the decision as it, and the other decision did not feature the same or similar facts.

The applicant in ***ES v International Protection Appeals Tribunal*** **[2019] IEHC 449**, High Court, Keane J., 21 June 2019 contended, in essence, that the tribunal failed to provide a reasoned explanation for coming to a different conclusion in the instant case than in a particular previous decision of the tribunal. In the court's judgment, however, the tribunal did provide a reasoned explanation for coming to a different decision (i.e., that the objective facts of the earlier decision were different because the appellant child in that case was a child born in Ireland) and, the court observed, the tribunal could have made further distinctions.

Hearings

Fair procedures – Joint Hearing

ADN (South Africa) v The International Protection Appeals Tribunal and Anor **[2019] IEHC 627**, unreported, High Court, Humphreys J., 31 July 2019 [2018/1096/JR]

Regulation 8 of the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 allows for joint hearings in certain circumstances, including where members of the same family are involved. The applicants in the instant case were a husband and wife from South Africa. The Tribunal gave the applicants the choice of either back to back hearings, or a joint hearing where each applicant would be excluded from the other's oral evidence. The impugned decision records that the applicants were willing to consent to leave the hearing room for each other's evidence in the context of a joint hearing. The decision made various adverse credibility findings in respect of the applicants.

In seeking judicial review of the Tribunal's decision, the applicants contended that the Tribunal erred in its interpretation or application of Regulation 8 of the 2017 Regulations in allowing a joint hearing to be conducted whereby an applicant was excluded from a portion of the hearing, and/or that in conducting the hearing in this way the Tribunal breached constitutional justice, Article 6 ECHR and Article 47 of the Charter. In rejecting these arguments, the Court held as follows (emphases added):

> *'**It is an overstatement to say that the applicants were excluded. They were personally present for a part of the joint hearing but they were represented by a legal adviser throughout. That is not exclusion in any proper sense. Even if it could be regarded as exclusion, it was not unlawful**. Indeed, in some legal systems it is the default position that witnesses in any proceedings are called in the absence of each other. The fact-finder must have a discretion as to how to conduct the hearing and is perfectly entitled to consider that the evidence of one spouse would be more reliable if not influenced by having heard the evidence of the other spouse. It is true that s. 42(6) of the 2015 Act sets out the*

right of an applicant to "be present at the hearing" but that is a statement of general principle, subject to lawful directions of the tribunal. It is not intended to be an absolute right with no exceptions. … But even if I am wrong about whether s.42(6) should be read literally, the fact that this was a joint hearing meant that the tribunal was within its jurisdiction to consider that one spouse could be excluded from the other's evidence given that the right to be present only applies to one's own case rather than the entirety of the joint hearing.'

The Court also confirmed that, given that joint hearings are allowed in regulation 8 of the 2017 Regulations, it is implied that a joint decision document for multiple applicants is permissible. This was the case in the instant matter, the joint decision of which made clear that the applicants' cases were individually considered.

This judgment provides practical guidance for how to manage a joint hearing, e.g., with family members with interlinked cases.

Members should take care when applying the Tribunal's *Chairperson's Guideline No.1/2019 on Taking Evidence from Appellants and Other Witnesses*

This Guideline permits flexibility in individual cases and states that: 'In a combined hearing each appellant *should be afforded an opportunity to address the Tribunal in private*. For this reason, and *in order to enable best evidence to be given*, appellants in a combined hearing will be asked to give evidence separately. If one or more appellants object to a combined hearing, the Tribunal *may* consider affording them the opportunity to have separate hearings and to call one or more of the appellants as witnesses in each other's hearings'.

Fair procedures – Oral Hearing

VJ v The Minister for Justice and Equality and Ors, unreported, Supreme Court, O'Donnell, MacMenamin, Dunne, Charleton and O'Malley JJ., 31 October 2019

In this judgment, the Supreme Court rejected various challenges to the 'bifurcated' international protection system that applied in the State before the introduction of the International Protection Act 2015. For present purposes it is well to note the Court's comments on when an oral hearing might be required in the context of an application for subsidiary protection, where that application is consequent on a refusal of refugee status and then a refusal of subsidiary protection at first instance, but which comments are instructive generally (emphases added):

'The decision in M.M. makes it clear that ***what is required is that an applicant must have an opportunity of making his or her case. Whether an interview or oral hearing is required depends on the nature of the case made, not whether the particular point was raised in the asylum process****. The type of contention made here was one which by definition was something about which the applicants could have little if any personal knowledge, nor was that suggested*

in their applications. It was an issue particularly suited to determination by reference to the materials relating to country of origin information, since the case made was that the applicants would suffer on return as failed asylum seekers. That depended on a status they shared with many others, rather than any individual characteristic. That feature of the case did not, therefore, require an interview still less an oral hearing.'

Standard and Burden of Proof in Assessing International Protection Claims

Standard of Proof

The applicant in ***WH v International Protection Tribunal*** **[2019] IEHC 297**, High Court, Keane J., 9 May 2019 invited the court to reject *ON v Refugee Appeals Tribunal* [2017] IEHC 13 as wrongly decided, and to adopt instead the approach to the overall assessment of the risk of future persecution set out by the court of Appeal of England and Wales in *Karanakaran v Secretary of State for the Home Department* [2000] 3 All ER 449. The court rejected the invitation (*ON*, and *NN v Minister for Justice and Equality* [2017] IEHC 99 followed).

This case further confirms that the standard of proof in respect of claimed facts is the balance of probabilities coupled with, where appropriate, the benefit of the doubt.

Burden of Proof

The applicant in ***ES v International Protection Appeals Tribunal*** **[2019] IEHC 449,** High Court, Keane J., 21 June 2019 claimed that the Tribunal, having made no adverse credibility finding against, and not disputed, the applicant's claim to have exited Algeria illegally, was obliged to accept that part of her narrative as correct in assessing the substantial harm risk in respect of subsidiary protection. In the court's judgment, however, the applicant, in making such an argument, ignored the applicable principles for the assessment of facts and circumstances of a subsidiary protection claim (per Article 4 of the Qualification Directive and its transposition in Irish law), and the application of those principles to her claim by the tribunal.

Shared Burden – Duty to Investigate Mental Illness?

The judgment in ***AAL (Nigeria) v International Protection Appeals Tribunal (No 2)*** **[2019] IEHC 123**, High Court, Humphreys J., 25 February 2019 concerned the applicant's application for leave to appeal the judgment *in AAL (Nigeria) v International Protection Appeals Tribunal* [2018] IEHC 792 (see the 2018 Annual Report).

The applicant proposed, *inter alia*, the following question as one of exceptional public importance:

> 'Whether in compliance with Article 4 of the Qualification Directive the Tribunal is required to investigate an applicant's repeated assertions of mental illness in circumstances where it would be reasonable to carry out an investigation.'

The court refused leave, *inter alia* because the applicant did not make out any ground for uncertainly as to the law in relation to the shared duty. In that regard, the court noted that applicant claimed the court was in error in its decision in excluding a role for the State in relation to personal factors relevant to an applicant. In the court's judgment, however, paragraph 20(iv) read in context clearly does not exclude a role for the State in relation to personal factors relevant to the applicant. Rather (per paragraphs 11 and 12 of the judgment):

> 'such matters are primarily matters for the applicant [because, firstly,] protection bodies cannot investigate material personal to an applicant in almost any circumstances without disclosing to third parties the applicant's status as a protection seeker contrary to the statutory obligation of confidentiality; and secondly, because protection bodies are unlikely to be better placed than an applicant to substantiate such elements of the claim.

'Nonetheless, the decision-maker may have a role to seek clarification of an applicant's mental state in certain circumstances but a meaningful threshold would need to be surmounted by an applicant before any such duty could realistically or properly arise. That is not met by an applicant simply asserting that he or she is unable to remember matters, is "not that sharp", is mentally confused or is "mentally sick", especially when he or she tries to remember the alleged persecution' *(RAE (Cameroon) v Refugee Appeals Tribunal* [2013] IEHC 538 noted with approval).

Shared Burden – Duty to Elicit Information?

The applicant in ***SHI v International Protection Appeals Tribunal (No 2*) [2019] IEHC 269**, High Court, Keane J., 3 May 2019 argued that the tribunal failed in its shared duty to the applicant by not properly eliciting what the applicant meant when he stated in his first instance interview that his problems in his country of origin, South Africa, were 'all the time', and by not seeking further specific explanations from the applicant before reaching its decision.

The court, in rejecting this argument, did not accept 'that the State's duty to cooperate with the applicant in assembling the elements necessary to substantiate his application extends to an obligation to go behind, or "tease out", the applicant's own voluntary statements, whether provided in the context of a properly conducted interview or in writing through his legal representatives.' (para.35). In the court's judgment, regard also had to be had to the applicant's shared duty of cooperation, and that the applicant is not a passive participant in the process (*AC v Refugee Appeals Tribunal* [2007] IEHC 369 followed).

Shared Burden – Duty to Authenticate Documents?

Duty to Authenticate Documents

The applicant in ***MSR (Pakistan) v International Protection Appeals*** **Tribunal [2019] IEHC 60**, High Court, Humphreys J., 4 February 2019 sought leave to appeal the court's judgment in *MSR (Pakistan) v International Protection Appeals Tribunal (No. 1)* [2018] IEHC 692, Humphreys J., 26 November 2018. The question posed was "what are the 'special circumstances' as set out by the Court of Appeal in *A.O. v Refuge Appeals Tribunal* which would compel an international protection decision maker to engage in an investigation into the authenticity of a document relied on by an applicant for international protection".

The Court rejected the application for several reasons, and in particular on the basis that the proposed question "involves a fundamental misunderstanding of European Convention law. The Court continued, building on its jurisprudence in of *T.T. (Zimbabwe) v. Minister for Justice and Equality* [2017] IEHC 750, and analysing the judgment of the Court of Appeal in *A.O. v. Refugee Appeals Tribunal* [2017] IECA 51:

> "7.[…] The short answer to the question is that there are no circumstances in which a protection decision-maker is "*compel[led]"* to investigate the authenticity of a document in the sense of the question, at least as a matter of ECHR obligation (as applied by the European Convention on Human Rights Act 2003). The *ratio* of *A.O. v. Refugee Appeals Tribunal* [2017] IECA 51 (Unreported, Court of Appeal, 27th February, 2017) is that the protection decision in that case was not invalid by reference to the ECHR […] by reason of the failure of the tribunal to make its own enquiries as to the validity of the documents in that case. Insofar as Hogan J. said that there could be special circumstances where a protection decision-maker was so obliged, that was of course *obiter*.
>
> 8. While I would strike a different note from an *obiter* view of an appellate judge or court only very diffidently and respectfully, it is clear that on further examination that that suggestion does not stand up in the terms in which it was phrased. Those *obiter* views did not factor in that there is no ECHR right to asylum or international protection and that *Singh v. Belgium* (Application no. 33210/11, European Court of Human Rights, 2nd October, 2012) was a deportation case, which is a context that *does* trigger relevant ECHR rights, and not simply a protection case. There can be no ECHR-based obligation to process a protection claim in a particular way for the very simple reason that there is no underlying ECHR right to protection. At para. 45 of Hogan J.'s judgment, the learned judge reads straight across from the ECHR and *Singh* on the one hand, to obligations on international protection decision-makers on the other, without acknowledging the crucial distinction involved between deportation (which engages relevant ECHR rights) and refusal of protection (which does not). To put it another way, a denial of international protection in itself does not infringe rights under arts. 3 and 13 of the ECHR, which were the

rights at issue in *Singh* that were held to give rise exceptionally to a duty of investigation. Only the subsequent deportation of an applicant could do so. Therefore no obligation to investigate at the protection stage could arise under the *Singh* doctrine. Thus, the obiter comment in *A.O.* is best read as being to the effect that it is desirable rather than obligatory to investigate documents in exceptional circumstances (see para. 16 of *T.T. (Zimbabwe) v. Minister for Justice and Equality* [2017] IEHC 750 [2017] 10 JIC 3105 (Unreported, High Court, 31st October, 2017)), provided that doing so can be achieved without revealing the applicant's identity, but failure to so investigate, by definition, does not give grounds for *certiorari*.

9. I should add by way of postscript that, in relation to that final qualification, a further problem with that *obiter* comment in *A.O.* is that, independently of the foregoing, it would not generally be lawful for a protection decision-maker to make inquiries with persons or entities in the country of origin about the documents of an identifiable applicant, as to do so would communicate either expressly or impliedly to third parties that such person was a protection-seeker, contrary to the statutory obligation of confidentiality in s. 26 of the International Protection Act 2015. The implications of the corresponding provision in the Refugee Act 1996 for the suggested "*special circumstances*" obligation were not specifically considered in the judgment of Hogan J. on the grounds that it was "*unnecessary*" to do so (para. 46); that reinforces the view that the comments on special circumstances can only have been *obiter* because otherwise one would have to confront the difficulty that any "special circumstances"-type obligation would in general conflict with those statutory provisions (see *A.A.L. (Nigeria) v. International Protection Appeals Tribunal* [2018] IEHC 795 at para. 20(v))."

The applicant in ***DK (South Africa) v International Protection Appeals Tribunal*** **[2019] IEHC 145**, High Court, Humphreys J., 5 March 2019 alleged that the IPAT was obliged to make further inquiries in respect of the validity of the applicant's alleged Zimbabwean passport in circumstances where its validity was said by the applicant to determine the claim.

The Court reiterated the point made in *TT (Zimbabwe) v IPAT* [2017] IEHC 750 and *MSR v IPAT (No.2)* [2018] IEHC 692 that there is no such duty on the Tribunal for the reason that there is no ECHR right to asylum. The Court elaborated at paras 18 and 19 as follows:

"18. […] *Singh [v Belgium* (Application no. 33210/11, ECtHR, 2 October 2012) was a deportation case, not just a protection case, and that makes all the difference for ECHR purposes because deportation engages art. 3 of the Convention whereas refusal of protection does not, a pivotal issue overlooked in *A.O.* At most, it may be desirable for ECHR purposes for the tribunal to anticipate any such enquiries in exceptional cases, to obviate the necessity for further investigation of such cases at the deportation stage, but only if that can

be done without breaching the confidentiality of the identity of a protection-seeker, which is normally not possible.

"19. Separately from the ECHR and *Singh*, which does not apply here, there may be a duty to investigate in certain limited circumstances as an aspect of the "shared duty" by virtue of the qualification directive 2004/83/EC, as discussed in *A.A.L. (Nigeria) v. International Protection Appeals Tribunal* [2018] IEHC 792 (Unreported, High Court, 21st December, 2018). As I indicated in that decision at para. 20(vi) and (vii), the primary responsibility to describe the facts and events which fall into an applicant's personal sphere is that of the applicant, and if the applicant fails to assemble the elements of his or her claim that are personal to him or her, the State has only a limited role in supplying the deficit as it is unlikely to be in a better position to do so than the applicant (see Case C-277/11 *M.M. v. Minister for Justice and Equality* (22nd November, 2012)), before we even get to the confidentiality problem."

The applicant in ***IL v International Protection Appeals Tribunal*** **[2019] IEHC 443**, High Court, Keane J., 19 June 2019 claimed, *inter alia*, that the tribunal wrongly rejected the authenticity of two police reports (relating to her daughter's alleged kidnapping) that could have been relevant to the consideration of her claim (in particular in relation to a 'compelling reasons' claim).

The court cited with approval the following *dicta* from the UK Immigration Appeal Tribunal in *Tanveer Ahmed* [2002] UKIAT 00439 (20 February 2002), stating that it is consistent with the analysis of the court in *AO v Refugee Appeals Tribunal* [2015] IEHC 382:

'33. It is for the individual claimant to show that a document is reliable in the same way as any other piece of evidence which he puts forward and on which he seeks to rely.

34. It is sometimes argued before Adjudicators or the Tribunal that if the Home Office alleges that a document relied on by an individual claimant is a forgery and the Home Office fails to establish this on the balance of probabilities, or even to the higher criminal standard, then the individual claimant has established the validity and truth of the document and its contents. There is no legal justification for such an argument, which is manifestly incorrect, given that whether the document is a forgery is not the question at issue. [The] only question is whether the document is one upon which reliance should properly be placed.

35. In almost all cases it would be an error to concentrate on whether a document is a forgery. In most cases where forgery is alleged it will be of no great importance whether this is or is not made out to the required higher civil standard. In all cases where there is a material document it should be assessed in the same way as any other piece of evidence. A document should not be

viewed in isolation. The decision maker should look at the evidence as a whole or in the round (which is the same thing).

36. There is no obligation on the Home Office to make detailed enquiries about documents produced by individual claimants. Doubtless there are cost and logistical difficulties in the light of the number of documents submitted by many asylum claimants. In the absence of a particular reason on the facts of an individual case a decision by the Home Office not to make inquiries, produce in-country evidence relating to a particular document or scientific evidence should not give rise to any presumption in favour of an individual claimant or against the Home Office.'

Applying that guidance, and the *AO* judgment, and having regard to *Singh v Belgium* (application No. 33210/11) the court rejected the applicant's claim, *inter alia*, because 'the applicant, as the mother of the kidnapped girl, would have been in a position to make her own inquiries of the Nigerian police force, particularly in circumstances where, as the tribunal noted in its decision, her evidence was that the police had provided her with every reasonable assistance in the past' and, 'unlike *Singh*, this is not a case in which the documents at issue are readily capable of authentication through a simple and obvious line of suggested inquiry.'

Shared Burden – Duty to Translate Documents?

H v International Protection Appeals Tribunal and Ors, unreported, High Court, Barrett J., 12 December 2019

The applicant contended that the Tribunal erred in law in failing to assess Albanian media reports by failing to have them translated into English, or in failing to give reasons for not so doing. The court said that the unconsidered evidence may be on a slight or a central matter, but requires to be considered, and if it was not translated it could not be considered, with good reason offered where it is not (*Stefan v MJELR* [2001] 4 IR 203, at p.17 applied).

Shared Burden – Duty to put Case Law to an Appellant?

In ***X and Y (a minor) v The Minister for Justice and Equality and Ors*** **[2019] IEHC 456**, unreported, High Court, Barrett J., 11 July 2019 the applicants argued that the tribunal breached fair procedures because, in the course of its thorough-going analysis of the material before it, it said that some of that material had been criticised by a judgment of the High Court of England and Wales, which latter judgment was not mentioned during the course of the hearing. While acknowledging that it would have been better had the court mentioned the judgment during the hearing, the court rejected that any failure so to do rendered the decision unsound because:

a. the Tribunal identified the materials submitted, name-checking and discussing some of the more salient authorities and extensively quoting from some of them;
b. the Tribunal acknowledged that there were viewpoints supporting the fear expressed by the Applicants;
c. the Tribunal concluded, by reference to probative and reliable first-hand sources, that the risk presenting was confined to politically active persons; and
d. the Tribunal specifically stated that 'all of the information and documentation provided has been fully considered (and no evidence was adduced to suggest that this was not so).

The court commented that if the tribunal had given a decision in which it said 'There is an English case that went unmentioned at hearing, we agree with everything in that decision and the reasons the English court gives are also the reasons for this decision and those are the only reasons we are giving', then a difficulty would have arisen.

Taking the Oath

AM (Pakistan) v International Protection Appeals Tribunal and Anor **[2019] IEHC 828**, High Court, Humphreys J., 19 November 2019.

The court observed, in obiter comments, that the applicant declined to take the oath before the Tribunal, choosing instead to affirm, but that the applicant had sworn his affidavit in the judicial review proceedings. The court said that it did not seem that the applicant was entitled to affirm for the purposes of the Oaths Act 1888 before the Tribunal because he has a religious belief that does not preclude swearing. The Court indicated this was unsatisfactory and did not enhance the applicant's credibility.

<u>Documents</u>

Listing of Documents

On the facts of ***BC (Zimbabwe) v International Protection Appeals Tribunal*** **[2019] IEHC 488**, High Court, Humphreys J., 2 July 2019, the tribunal decision's list of documents submitted in the appeal omitted reference to documents that the tribunal permitted the appellant to furnish after the hearing, and which the appellant duly furnished.

The Court said that 'the fact that particular documents were omitted [from the Tribunal's list of documents] does not inspire confidence that they were in fact considered.' The Court contextualised the matter in 'the legal obligation that the decision-maker must keep a record of what materials were considered'. Such a record, in the court's judgment, 'whether set out in the decision expressly or not, is essential for judicial review' (*O'Keeffe v An Bord Pleanála* [1993] 1 IR 39, [1992] ILRM 237

followed). In the court's view, 'the best practice is to list the material submitted in the decision itself.'

The court accepted that 'it would be an inappropriate procedure for a quasi-judicial officer to swear an affidavit and thus be liable to cross-examination to […] defend his or her decision. Indeed in the U.K., the counterparts of the IPAT are considered to be judges and a similar position prevails in many other developed countries. While not technically judicial brethren and sisters in Irish law, tribunal members are certainly close cousins; and just as it would be an infringement of the independence of the judiciary for a judge to be cross-examined on his or her judicial work, a similar position pertains in relation to quasi-judicial work.

Nonetheless, an affidavit verifying the statement of opposition had to be sworn by someone, and in the instant matter it was sworn by an official from the Department of Justice and Equality. The Court observed that while such an approach meant that the Department could legitimately negatively deny a plea that a document was not considered, it did not allow for it to positively assert that a specific document as considered. At most, it allowed it be said that a document was on the Member's copy file that was before the decision-maker at the time the decision was taken.

On the fact-specific circumstances of the case, the court found that the presumption that all documents were properly considered was rebutted, and quashed the decision. The court suggested that 'the Department and the tribunal need to work out some clear understanding how questions as to what was or was not considered by a tribunal member can be received by the court in a proper evidential manner. The best possible way of course is for the material to be listed in the decision itself.'

The court also commented that it is 'highly important from a practical point of view that tribunal decisions are coordinated, a point referenced in the 2015 Act, including as to format, and that any guidance from the tribunal chairperson is followed in this respect.'

O*biter*, the court commend the practice whereby applicants' solicitors brief the same counsel for both an appeal before the tribunal and any judicial review of the tribunal decision as being of assistance to the court.

Country Information

S v International Protection Appeals Tribunal and Ors **[2019] IEHC 868**, High Court, Barrett J., 19 December 2019

The applicant claimed that the manner in which the Tribunal had regard to country information was contrary to EASO and ECOI standards of assessment. The court observed however that the Tribunal stated that '[a]ll of the information and documentation provided has been fully considered' and specifically referenced its consideration of relevant COI. In the court's judgment, it was clear from *MN (Malwai)*

v MJE [2019] IEHC 489 that, this being so, it is unnecessary for the Tribunal to consider the country information *in extenso* in its decision (even though COI was extensively referenced in the impugned decision).

EI and Anor v The International Protection Appeals Tribunal, unreported, High Court, Barrett J., 12 December 2019

The court commented that *RA v Refugee Appeals Tribunal* [2017] IECA 297. though not concerned with s.28(4) of the Act of 2015, considers *Imafu v Minister for Justice, Equality and Law Reform* [2005] IEHC 416 and *Minister for Justice, Equality and Law Reform* [2009] IEHC 21, and is concerned with wording very similar to that of s.28(4) that is in the European Communities (Eligibility for Protection) Regulations 2006 (SI No. 518 of 2006), and it seemed to the court that the reasoning in *RA* was eminently transferable to the s.28(4) of the 2015 Act. The court commented further that Hogan J. in *RA* places emphasis, at para.31 of his judgment in *RA*, on the constraining effect of the word 'relevant'. In that regard, the court stated that the word 'relevant' in the instant context meant that 'the IPAT is required under s.28(4)(a) to consider only 'relevant facts as they relate to the country origin', so 'relevance' provides an immediate constraint on the extent to which the IPAT must be in its considerations.

The court commented further that

> 'Although the IPAT might, in the interests of clarity, have expressly referred to (a) the fact that it was relying on the [*Imafu*, *VO*, *RA*] line of authorities and/or (b) saw no need to engage in a narrative consideration/discussion of COI when determining the veracity of Ms I's account of events, any fair-minded reading of the IPAT decision could only yield the conclusion that Ms I's perceived fundamental lack of clarity relieved the IPAT from engaging in such a narrative consideration/discussion'.

Medico-Legal Report

The applicant in ***JUO (Nigeria) v International Protection Appeals Tribunal*** **[2019] IEHC 26**, High Court, Humphreys J., 21 January 2019 sought leave to appeal the judgment of the court in *JUO (Nigeria) v International Protection Appeals Tribunal (No. 1)* [2018] IEHC 710 on the basis, inter alia, of the proposed question of exceptional public importance: "where general adverse credibility findings have been made, is an international protection decision-maker nevertheless required to make an assessment of past harm, and serious risk of future harm, based on medical evidence which is undisputed?"

In refusing leave to appeal, the Court stated that:

> "the decision-maker is required to make an assessment of past harm and risk of future harm insofar as is its function in assessing a protection claim. That applies whether general adverse credibility findings have been made or not, as

impliedly asked by the question formulated. The more disingenuous part of the question is the suggestion that such findings must be "based on medical evidence which is undisputed". The medical evidence here was not rejected but was held to be insufficient to establish the applicant's claim. A decision-maker is not obliged to make a favourable finding simply because some elements of the claim presented are not positively rejected."

N v The International Protection Appeals Tribunal **[2019] IEHC 585**, unreported, High Court, Barrett J., 29 July 2019

In this judgment, the court held that the Tribunal did not properly consider a SPIRASI medico-legal report in its decision because **the Tribunal's reasons for discounting the probative weight of the report were unreasonable and irrational**. In the court's judgment, the difficulties that arose were as follows:

(1) The Tribunal views "the qualified nature of the psychological assessments" (Impugned Decision, para.4.3.15), as touched upon by the author of the Spirasi report, as a factor which reduces the weight that should be assigned to those assessments. However, when the author of the report passes comment on the somewhat surprising results of the psychological assessments, his commentary is intended as an observation in favour of Mr N. So, for example, when the author of the Spirasi report states at p.7 of same that "I would have expected much higher negative scoring", this is because Mr N's discernible mood state suggested that Mr N was in truth in a worse condition than his scoring suggested. However, the IPAT clearly – and, regrettably, mistakenly – construes the author's commentary as working to the detriment of Mr N.

(2) Under para.187 of the *UNHCHR Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)*, a 'consistent/highly consistent' rating relates to physical symptoms only ("lesion[s] and...the overall pattern of lesions"). However, in the Impugned Decision the IPAT discounts the probative value of the Istanbul Protocol-related findings by reference to the qualified psychological assessment (see para.4.3.15), a line of reasoning that is, at best, unreasonable.

(3) **There is now a long line of case-law which points, as one would instinctively expect, to a medico-legal report such as the Spirasi report not being capable of proving the truth of an individual applicant's account of events** (see, e.g., *RS (Ukraine) v. IPAT (No.1)* [2018] IEHC 512, *RS (Ukraine) v. IPAT (No.2)* [2018] IEHC 743, *AMN v. RAT* [2012] IEHC 393 and *MZ (Pakistan) v. IPAT (No.2)* [2019] IEHC 315). Although the wording of the impugned decision is a little unclear in this regard, it does seem, from para.4.3.31 of the Impugned Decision, where criticism is levelled by the IPAT that the Spirasi report " is not definitive of the cause of the Appellant's

presentation", that the IPAT anticipates a degree of determination by the Spirasi report that is not consistent with the above-mentioned case-law.

B v The International Protection Appeals Tribunal and Anor **[2019] IEHC] 587**, unreported, High Court, Barrett J., 29 July 2019

The court in this judgment quashed the Tribunal's decision on subsidiary protection in respect of a national of Bahrain, inter alia, because the Tribunal failed to conduct a rational analysis of a psychiatric report in respect of the applicant. Specifically, **the Tribunal erred by finding difficulties with the report because the report did not use the scale at paragraph 187 of the Istanbul Protocol in circumstances where the scale in question relates to physical symptoms only, whereas the psychiatric report is concerned with psychological symptoms**.

B v International Protection Appeals Tribunal and Anor **[2019] IEHC 767,** High Court, Barrett J., 14 November 2019

On the facts of this case, the applicant's solicitors requested, post appeal hearing, that the IPAT not make its decision until it received and considered a Spirasi medico-legal report concerned with two scars that the appellant had on his head, allegedly due to his being beaten with a chair. The Tribunal gave the appellant until the end of January 2019 to furnish the report. No update having been received, the Tribunal made a decision upholding the decision at first instance. The decision stated, inter alia:

> 'The Tribunal afforded the Appellant a number of weeks to submit this Medico Legal Report but advised the Appellant that it would be of limited probative value, as while the report may confirm the existence of two scars on the Appellant's head, this report could not say and is incapable of saying who caused these injuries and in what circumstances the Appellant sustained these injuries. This Medico Legal Report has not been forthcoming at the date of this decision, some months after the appeal hearing.'

Quashing the Tribunal's decision, the court held that the Tribunal here pre-empted evidence that was proposed to be submitted, and dismissing the potential probative value of that evidence without ever having seen it.

The court observed that the Tribunal's dismissal of the potential evidence was in breach of the Tribunal's own Guideline No. 2017/6: Medico Legal Reports, which states, inter alia:

> '[3.1] The value of expert medical evidence in refugee status determination is recognised internationally. In its case-law, the European Court of Human Rights has ruled that expert medical evidence can be of value in determining both (i) whether past instances of persecution occurred, and (ii) potential risk should an individual be returned to their country of origin…

[3.2] In order for the appeal to be considered in a timely manner, the Appellant should endeavour to obtain a Medico-Legal Report at the earliest possible date…

[4.2] The Medico-Legal Report may report on the consistency of psychological findings with the alleged report of Torture…

[6.3] A finding that the lesions are 'highly consistent' with, 'typical of' or 'diagnostic of' the Appellant's asserted history will usually satisfy the required standard of proof that the lesion was caused by the trauma described.

[6.4] While the primary role of the Medico-Legal Report is to substantiate claims of ill-treatment by reporting on the consistency of injuries presented with the Appellant's asserted history, the Medico-Legal Report may also have a role as part of the credibility assessment.

[6.5] A finding of 'consistency' in accordance with the Istanbul Protocol may have evidential value, and such a finding, as opposed to a finding of 'highly consistency', 'typical of' or 'diagnostic of', should not be rejected as having no evidential value.'

The court commented that a SPIRASI report serves the functions thus described in the Tribunal's Guideline.

Expert Evidence

The court, in its judgment in ***MI (Pakistan) v International Protection Appeals Tribunal*** **[2019] IEHC 539**, High Court, Humphreys J., 25 June 2019, in rejecting the various arguments made by the applicant in the context of the application for judicial review, commented that 'it would be helpful in the future if experts that are writing reports for the purposes of international protection applications and judicial reviews have full regard to the duties of experts as set out helpfully by the U.K. Upper Tribunal in [*M.O.J. and Ors. (Return to Mogadishu)*, Somalia C.G. [2014] U.K.U.T. 00442 I.A.C.]', which the Court also regarded as stating the law in Ireland:

> 'We summarise these duties thus: (i) to provide information and express opinions independently, uninfluenced by the litigation; (ii) to consider all material facts, including those which might detract from the expert witness' opinion ; (iii) to be objective and unbiased; (iv) to avoid trespass into the prohibited territory of advocacy; (v) to be fully informed; (vi) to act within the confines of the witness's area of expertise; and (vii) to modify, or abandon one's view, where appropriate.'

Credibility and Assessment of Facts

Credibility – Clarity of Reasons

EL (Albania) and Ors v The International Protection Appeals Tribunal and Anor, unreported, High Court, Humphreys J., 21 July 2019

The applicant in this case was an Albanian national who claimed she worked as a journalist in Albania and suffered threats as a result of reporting on election corruption. The Tribunal accepted that she worked as a part time employee of a news organisation in 2008 and 2009, when she was a teenager, and that she wrote an article on electoral corruption. The Tribunal in effect categorised the applicant as a minor player because of her youth. In the judgment of the court, classifying the applicant in this way was irrational, and failed to acknowledge that 'different countries may have different cultural contexts and practices' such that 'persons may be given responsible positions at a younger age than would be the case in other countries.'

The impugned decision stated that '[t]he Tribunal does not accept the Appellant faces any fear of persecution as alleged or at all. If the Appellant wishes to pursue a full time career as a journalist in Albania there is no country of origin information setting out the Appellant will be persecuted.' In the judgment of the court, this aspect of the decision was (emphases added):

> *'**unacceptably unclear as to whether the tribunal member meant*** **[there was no country information indicating a risk of persecution to political journalists in Albania]** ***or alternatively meant that there was country information showing that there was such a risk but that did not establish a risk in the case of this particular applicant**. If the latter, then there is a complete lack of articulated or apparent reasoning as to why that is so. This is particularly fatal in a context where the constitutional requirement for reasons is reinforced by s. 46(6) of the 2015 Act which states that "a decision of the Tribunal under subsection (2) or (3) **and the reasons for it** shall be communicated by the Tribunal to the applicant concerned and his or her legal representative (if known), and the Minister".'*

The court observed that it was clearly not the case that there was no country information that political journalists will be persecuted given that there was a wealth of such material before the Tribunal.

Credibility – Rational Analysis

NE (Georgia) v The International Protection Appeals Tribunal and Ors, unreported, High Court, Humphreys J., 21 October 2019

This case concerned a Georgian national who claimed to have worked as a journalist at a Georgian newspaper and that, as a result of that work, attracted the adverse attention of the Georgian authorities, resulting in her being beaten by government agents in or around March 2004, resulting in injuries that continue to persist. She claimed that she left Georgia in 2008 and went to Italy. She applied for international protection in Ireland initially in 2015 (although that claim was deemed withdrawn and she reapplied successfully in 2017). The Tribunal upheld the recommendation of the International Protection Officer rejecting the applicant's claim. In its judgment, the court quashed the Tribunal's decision on the basis of errors in its credibility analysis.

Inter alia, the Tribunal had not accepted the applicant's explanation for her delay in claiming asylum. Paragraph 15 of the judgment of the court provides useful guidance on delay in seeking international protection as a factor in credibility assessment (emphasis added):

> *'**In principle, certainly, a delay in making an asylum claim is a factor, but its weight depends on the context**. The typical case is where there is a long delay in claiming asylum and the claim is prompted by some independent change in the applicant's immigration situation. For example, a situation frequently arising is where a student permission granted in the UK expires, and then and only then does an applicant remember that they have been the victim of persecution. Such a claim is typically not advanced in the UK and only made on moving to Ireland. Delay in such a context could legitimately be held against an applicant. Here, however, there is no acknowledgement by the tribunal member that there was no such extrinsic factor. The applicant simply decided to come forward herself with her true identity. In such a context, delay is considerably less damning than where it is coupled with an extrinsic development. This is a distinction which the tribunal member fails to understand, or even acknowledge; and failure to do so is a departure from the correct reasoning process.'*

In its judgment in ***OP v Minister for Justice and Equality*** **[2019] IEHC 298**, High Court, Keane J., 8 May 2019 the court held that the Tribunal failed to reach any clear conclusion on credibility and/or did not provide any reasons that would allow the applicant, or the court, to understand the basis for its conclusions.

The court said it was a matter of concern that neither in the section of the Tribunal's decision headed 'Analysis of Credibility' nor anywhere else in it were the requirements of reg.5(3) of the 2006 Regulations addressed.

Further, instead of accepting those aspects of the applicant's unsupported statements that had not been confirmed, the tribunal's decision rejected various aspects of those statements as lacking credibility, with the result that the applicant, and court, had to attempt to infer which of the necessary conditions for the acceptance of the applicant's statements without confirmation under reg.5(3) the tribunal concluded had not been met. (para.26)

Three of the tribunal's credibility findings bore particular consideration:

1. The appellant claimed that in 2002, when she was 15, she was raped in her country of origin, Zimbabwe, by persons who, during the attack, made certain comments that indicated they were connected with the ruling party. The tribunal, relying on the appellant's evidence, and where there was no evidence to the contrary, gave the appellant the benefit of the doubt in respect of her

claim that she was raped, but found that it was not clear, based on the evidence, who the perpetrators of the rape were.

The court failed to see the logic of these conclusions. The court questioned why, if the applicant's unsupported asserted that she was raped was to be given the benefit of the doubt, her unsupported assertion about the contemporaneous statements made by the perpetrators was ineligible for the same treatment. The court queried how the applicant's statements could be given the benefit of the doubt only in part, particularly in the absence of any identified implausibility, innate contradiction or countervailing evidence in respect of the parts being rejected. (para.33)

2. The appellant also claimed that in 2014 her flatmate was attacked by persons who, she understood from her flatmate, during the attack made certain comments that indicated that they intended to target the appellant. The tribunal did not accept that the applicant was the intended target of the attack. The court could not see the logic of this finding in circumstances where the tribunal had accepted the appellant's general credibility:

   'If the general credibility of the first applicant is accepted, then each of those statements should be accepted without the need for confirmation, unless at least one of the other necessary conditions under Reg. 5(3) is absent, which – if that is so – should be clearly stated. If the general credibility of the first applicant was not accepted [...] then on what basis was [one statement accepted]? How is one of the unsupported statements of the first applicant more credible than the other, in the absence of the identification of any innate implausibility, apparent internal contradiction or countervailing evidence in respect of either?' (para.42)

   The court warned against, in lieu of a proper credibility analysis, merely setting out 'purported findings of fact, accepting some of [an] applicant's unsupported statements and rejecting others without reason or analysis'. (para.45). In the court's judgment, the tribunal's 'Analysis of Credibility' was rather a 'bare recital of those unsupported statements of the first applicant that the tribunal accepts and those that it does not, devoid of any significant reasoning or analysis'. (para.56)

3. The appellant claimed that, having fled to South Africa, she returned to Zimbabwe for work purposes, explaining that while she was scared to return, she did not have a choice because her South African employer sent the whole team on the trip, and it was too late for her to confess to her employer that she was not really South African, and had secured employment under false pretences.

   The tribunal did not accept that the appellant would have returned to Zimbabwe if she earnestly believed that she would be persecuted on return, and that this undermined her credibility.

In the judgment of the court, the tribunal's decision failed to address, much less reject in a reasoned way, the appellant's explanation for returning to Zimbabwe, particularly in circumstances where the appellant had voluntarily disclosed the facts in question in her initial interview.

General Guidance re Credibility Assessment

The court, having applied and approved *IR v Minister* for Justice, Equality and Law Reform [2009] IEHC 353, and *NM (DRC) v Minister for Justice and Equality* [2016] IECA 217, [2016] ILRM 369, said that the relevant principles governing the manner in which the tribunal was obliged to assess the applicant's credibility were the following (per paras 50-55):

i. First, the obligation on the tribunal was to assess credibility by reference to the full picture that emerged from the available evidence and information taken as a whole, when rationally analysed and fairly weighed.
ii. Second, that assessment was not to be based on a perceived, correct instinct or gut feeling as to whether the truth was being told or not.
iii. Third, any finding by the tribunal of lack of credibility had to be based on correct facts, untainted by conjecture or speculation, and the reasons drawn from those facts had to be cogent and bear a legitimate connection to the adverse finding.
iv. Fourth, the reasons given for a finding on credibility had to relate to the substantive basis of the claim made and not to minor matters or to facts which were merely incidental in the account given.
v. Fifth, where an adverse finding involved discounting or rejecting documentary evidence or information relied upon in support of a claim and which was prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated.
vi. And sixth, while there is no general obligation to refer to every item of evidence and to every argument advanced, the reasons stated must enable the applicant as addressee, and the court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached.

This judgment provides useful guidance on how to carry out a **reasoned analysis** of an appellant's credibility, one of the more difficult tasks for the international protection decision-maker.

Credibility Analysis – LGBT Self-Identification

The court in ***WH v International Protection Tribunal*** **[2019] IEHC 297**, High Court, Keane J., 9 May 2019 rejected the argument that the CJEU judgment in Cases C-148/13 to C-150/13, *A, B, and C,* ECLI:EU:C:2014:2406 was authority for the proposition that it was an error of law for the tribunal to consider the appellant's inability to answer the questions that were put to him about this knowledge of gay rights groups, organisations and personalities in [a] neighbouring country as part of the assessment of the credibility of [the appellant's] declared sexual orientation, in circumstances where the questions put by the tribunal were not based on stereotypes, but on the specific statement by the applicant that he had engaged in various campaigns and seminars to advocate for an identified gay rights activist in the country in question.

In this context, the court also observed that LGBT self-identification is part of, rather than distinct from, the assessment of facts and circumstances in a case:

> '[A]n applicant's self-identification as LGBT is not a given in any assessment, distinct from other statements or evidence the credibility of which will have to be assessed, but is instead a specific aspect of an applicant's evidence, the credibility of which must also be assessed in the absence of other supporting material.'

Credibility – Plausibility

O v Minister for Justice and Equality and Ors **[2019] IEHC 761**, High Court, Barrett J., 14 November 2019

The applicant, a national of Nigeria, claimed persecution of him and his housemates by homophobic neighbours who perceived him and his housemates to be gay, though he is heterosexual. The Tribunal, in its decision, concluded inter alia that (a) one's long-time neighbours with whom one exchanges pleasantries would not attack one; (b) as the applicant's housemates occasionally had girlfriends call to see him, they would have been seeing entering his apartment, leaving the impression that the applicant and his housemates were heterosexual; (c) the applicant's landlord would not have reported the applicant to the police as a 'suspected homosexual' because the apartment rent was always paid on time; and (d) the fact that the applicant could not identify the alleged assailants rendered it doubtful that he was attacked by persons from his neighbourhood.

In quashing the decision, the court held that the Tribunal, in making these findings, engaged in conjecture or speculation in evaluating the applicant's evidence as the Tribunal had no evidence to support these conclusions. In the opinion of the court, '[a]n adverse credibility finding must be founded on the evidence; conjecture (as opposed to inference) is of no legal value; there must be a logical nexus between findings of fact and the ensuing decision; and inferences too must reasonably be

drawn' (*Memishi v RAT*, unreported, High Court, Peart J., 25 June 2003; *IR v MJELR* [2009] IEHC 353 cited with approval).

The court also found that the Tribunal erred in the manner in which it drew inferences from the country information. The Tribunal stated that 'all the COI submitted relates to issues that homosexuals have in Nigeria'. This, in the judgment of the court, was wrong as the country information also detailed the risks posed to men and women in Nigeria who are *perceived* to be gay.

B v International Protection Appeals Tribunal and Anor **[2019] IEHC** 767, High Court, Barrett J., 14 November 2019,

On the facts of this case the Tribunal held that it was not credible that a person being subjected to extortion by known criminals would give money to those criminals when he had not known them long and they had no legal hold over him. The court commented that this likely was unreasonable and may even be irrational. In the view of the court, there is no waiting time for extortion to commence, and criminals extorting money may well have no legal hold over a victim.

Credibility – General Credibility and Non-Core Matters

FB (Algeria) v The International Protection Appeals Tribunal **[2019] IEHC 582**, unreported, High Court, Humphreys J., 23 July 2019

In this case the applicant contended that the Tribunal's decision was irrational in its findings with respect to the Algerian applicant's affiliation with his brother and the reasons his brother was granted international protection. In rejecting this claim, the court observed that the Tribunal Member, who saw and heard the applicant, was better placed that the court to assess his credibility. In this context, '[w]hen it was put to the applicant by the [IPO] that his family lived safely in Algeria, *"he stated that his family lived in private and nobody knew their name was [B]".*

In the court's judgment (emphasis added), ***'the tribunal was entitled to rely on the fact that the family lived there safely and that the brother went to Algeria regularly, albeit on an Irish passport, a fact which the tribunal expressly acknowledged. Perhaps that was not the most favourable view possible but it was a view the tribunal was entitled to take.'***

AM (Pakistan) v International Protection Appeals Tribunal and Anor **[2019] IEHC 828**, High Court, Humphreys J., 19 November 2019.

The court reaffirmed that there is no obligation on a decision-maker to focus only on so-called core aspects of an applicant's account. In the judgment of the court, a credibility assessment must take into account all of the evidence. *IR v MJE* [2009] 353, in so far as it states that reasons must not relate to 'minor matters or to facts which

are merely incidental in the account given', is not to be read as meaning that matters that are minor from an applicant's point of view cannot be a basis for an adverse credibility finding. Rather, 'the credibility of an individual in relation to matters that are difficult to verify may be ascertained by reference to his or her credibility in relation to matters that can be verified, such as travel arrangements, even if you mightn't call them the "core" story.' (para.17). In the judgment of the court, 'Credibility is indivisible'. (ibid.)

Credibility – Duty to Put Concerns to an Appellant

The judgment in ***DS (Nepal) v International Protection Appeals Tribunal*** **[2019] IEHC 212**, High Court, Humphreys J., 2 April 2019, which rejected the applicant's challenge to the decision of the tribunal, restates some of the key case law relating to credibility, including *Idiakheua v Minister for Justice, Equality and Law Reform* [2005] IEHC 150, High Court, Clarke J., 10 May 2005*; IE v Minister for Justice and Equality* [2016] IEHC 85, High Court, 15 February 2016; and *RA v Refugee Appeals Tribunal* [2017] IECA 297, Court of Appeal, 15 November 2017.

The judgment also noted, approvingly, that the procedure set out in *Carciu v Minister for Justice, Equality and Law Reform* [2003] IEHC 41, High Court, Finlay Geoghegan J., 4 July 2003 (a leave judgment), and *Bujari v Minister for Justice, Equality and Law Reform* [2003] IEHC 18, High Court, Finlay Geoghegan J., 7 May 2003, was applied in the instant case, i.e.:

(i) The inconsistencies and problems were identified.
(ii) Those issues were specifically put to the applicant.
(iii) The applicant was given an opportunity to give explanations or answers. Indeed, as far as country material was concerned the applicant was also given ten days following the hearing to provide further submissions, an opportunity which he did not take up.
(iv) The explanations and answers were considered by the decision-maker.
(v) All other relevant material, including country information, was also considered.
(vi) Following that process, it is primarily a matter for the decision-maker to attribute weight to the various elements before him or her. As put by Birmingham J. in *M.E. v. Refugee Appeals Tribunal* [2008] IEHC 192 (Unreported, High Court 27th June, 2008) at para. 27: "The assessment of whether a particular piece of evidence is of probative value, is quintessentially a matter for the Tribunal Member."

The applicant in *SHI v International Protection Appeals Tribunal (No 2*) [2019] IEHC 269, High Court, Keane J., 3 May 2019 claimed that the tribunal failed to put matters to the applicant before reaching a conclusion on credibility, in particular concerns the tribunal had with the applicant's claim, advanced for the first time to the tribunal, that he suffered multiple racially motivated attacks in South Africa.

The court concluded that the applicant must have been aware that the credibility of these claims was a matter likely to affect the judgment of the tribunal since the applicant had made the claims for the first time to the Tribunal (para.44).

The court accepted that if the applicant's general credibility had been expressly accepted at first instance in respect of the same claims he raised on appeal, then a failure by the Tribunal to give the applicant an opportunity to deal with any credibility issue on those claims could be a breach of fair procedures on a papers only appeal (para.46)

The court in ***WH v International Protection Tribunal*** **[2019] IEHC 297**, High Court, Keane J., 9 May 2019 rejected the argument that it was not sufficient for the tribunal to put alleged discrepancies to the applicant, but was obliged, as a matter of fair procedures, to go on to put to the applicant that a material aspect of the credibility of his claim was at stake as a necessary consequence of the alleged discrepancy.

Credibility Assessment – Papers-Only Appeals

M v International Protection Appeals Tribunal and Ors **[2019] IEHC 867**, High Court, Barrett J., 19 December 2019

The applicant, a national of Albania, claimed to be related to a person murdered in Greece by a criminal gang with an international reach. The applicant claimed that the IPAT erred in law or in breach of natural and constitutional justice in making fresh findings in respect of his credibility without prior notice to him in the context of a papers-only appeal.

The significance of the issue of credibility was expressly brought to the applicant's attention by a letter from the Tribunal that stated 'the Tribunal has noted the generic nature of your grounds of appeal. Please feel free to engage with the specific credibility findings made by the IPO should you make any further submission to assist the Tribunal in determining this appeal.' The appellant did not reply to this letter.

In these circumstances, the court rejected the claim, mindful of the following, useful, points:

(a) It is only when a decision-maker, here the IPAT, contemplates making a finding based on an issue on which the applicant has not had an opportunity to comment, that an obligation presents to notify the applicant of the nature of its concern (*SUN v RAC* [2013] 2 IR 555; *MA v RAT* [2015] IEHC 528, *CNK v MJE* [2016] IEHC 424 and *BW v RAT* [2017] IECA 296 cited with approval).
(b) The 'extreme care' that falls to be brought to bear when a court engaged in a judicial review application in considering a documents-only appeal (*VM (Kenya) v RAT* [2013] IEHC 24), does not offer a basis for finding error where there has been none.

(c) The observation in *MARA (Nigeria) v MJE* [2015] 1 IR 561, that the RAT 'examine[s] afresh' the initial decision 'does not mean, nor does it fall properly to be read as meaning, that an appellate body cannot consider something entirely 'afresh', come to the same conclusion as the previous decision-maker, and thus make no 'fresh' finding'.

Credibility Analysis – Dealing with First Instance Credibility Findings

The applicant in ***SHI v International Protection Appeals Tribunal (No 2*) [2019] IEHC 269**, High Court, Keane J., 3 May 2019 contended that the tribunal's decision was unfair in finding him to be lacking in credibility in the context of a papers-only appeal in circumstances where he claimed the first instance decision maker accepted his general credibility.

The court disagreed with the premise to the applicant's argument that the first instance decision maker accepted the applicant's credibility. The first instance decision had accepted that no credibility issues relevant to any of the findings contemplated by s.13(6) of the Refugee Act 1996 arose during the assessment of the claim and this, in the court's view, was not the same thing as a finding that the claim was credible overall.

The court commented, *obiter*, that it is important to remember that 'credibility is not necessarily a single indivisible quality that attaches to an individual. While broad formulations such as 'X was [or 'was not'] a credible witness' are frequently used by adjudicators, what is really meant is that particular statements or claims made by that witness have been broadly or entirely accepted or rejected, as the case may be. It is perfectly possible to find some statements or claims of a witness credible and others not so – indeed, that is what often occurs.' The court further observed that 'credible' and 'credibility' 'are used in at least two different senses. Most obviously, a finding of lack of credibility can imply, in one sense, that the testimony of a witness was deliberately untruthful or, in another sense, that it was merely honestly mistaken' (*MM v Minister for Justice and Equality* [2018] IESC applied).

Credibility – Duty to put concerns to an applicant

***B v The International Protection Appeals Tribunal and Anor* [2019] IEHC] 587,** unreported, High Court, Barrett J., 29 July 2019

In this judgment, the court quashed the Tribunal's decision on subsidiary protection in respect of a national of Bahrain, inter alia, because the Tribunal breached fair procedures in failing to put to the applicant its view that his account of arrest and release from detention in 2011 was unsupported by country information. Per paragraph 6 of the court's judgment (emphases added):

'Here what was not put to Mr B was that a US State Department Country Report of 2017 would be used by the IPAT to gauge the credibility of Mr B's account of arrest and release from detention in 2011. As US State Department country reports are fairly contemporary reports on the position pertaining in a particular country, a 2017 Report, in truth, would have a quite loose connection to what was happening 'on the ground' in Bahrain in 2011. This disconnect between the report consulted and the period in issue can only have been exacerbated by the fact that 2011 was a particularly unsettled year in the recent history of Bahrain as 2011 was the year of its 'Pearl Uprising', inspired in part by the 'Arab Spring' of that year. ***Gauging the 2011 position by reference to a 2017 Report, especially in the particular context of the unsettled state of Bahrain in 2011, was a sufficiently unorthodox approach for the IPAT to adopt as to afford something of a classic example of the type of instance in which****, pursuant to [Moyosola v Refugee Applications Commissioner [2005] IEHC 218],* ***Mr B's express attention ought to have been drawn to how the IPAT intended to proceed in this regard and submissions invited****. For the IPAT not to have proceeded so regrettably yielded a* ***breach of the principles of constitutional justice*** *with which the IPAT is required to comply.'*

H v International Protection Appeals Tribunal and Ors*,* unreported, High Court, Barrett J., 12 December 2019

The applicant, an Albanian national who claimed to be the subject of a blood feud, contended that the Tribunal erred in the manner in which it deal with 'Vertetiem' documents. These documents, if authentic, confirmed his involvement in a blood feud. The Tribunal concluded that 'on the balance of probabilities the Police Certificates cannot be accepted as genuine and authentic official police documents'. The court equated this with a finding that they were fake. The court observed that the Tribunal had not put to the applicant the possibility that the documents were fake. In the judgment of the court, the Tribunal thus denied the applicant an opportunity to make submissions on the matter (*Ideakhuea v MJELR* [2005] IEHC 150, at p.9 applied).

Well-Founded Fear of Future Risk

Standard of proof for future risk

EL (Albania) and Ors v The International Protection Appeals Tribunal and Anor, unreported, High Court, Humphreys J., 21 July 2019

The Tribunal in the impugned decision in this case stated that there was no country information setting out that the applicant 'will be persecuted'. The court observed that the standard of proof regarding future persecution or risk of serious harm is whether there is a reasonable chance of persecution or sufficient reasons for believing that the person concerned would face a real risk of serious harm (*MEO (Nigeria) v IPAT* [2018] IEHC 782 [2018] 12 JIC 0714 cited with approval]. Thus the standard of proof

as phrased and conceptualised by the Tribunal pitched the test at an unduly high level (para 22).

This judgment provides a useful reminder of the importance of stating the various standards of proof with clarity:

The standards of proof regarding in respect of future persecution is whether there is a **reasonable chance** of persecution.

The standards of proof regarding in respect of risk of serious harm is whether the person concerned would face a **real risk** of serious harm.

Forward-Looking Test for Well-Founded Fear

On the facts of ***Y v The International Protection Appeals Tribunal and Anor*** **[2019] IEHC 548**, unreported, Barrett J., 17 July 2019, two children were born in Ireland to the applicant, a single mother, since she arrived in Ireland to seek asylum. Her initial asylum application was based on her sexuality. Subsequently, the applicant claimed, *sur place* and *inter alia*, that if returned to Pakistan she would be treated as an outcast for having children outside marriage. The tribunal rejected this latter claim because there was no evidence of past persecution or discrimination. Noting that these reasons may have made sense in respect of the appellant's initial claim, but no sense in respect of the sur place claim, the court quashed the tribunal's decision.

This is a useful reminder that adverse credibility findings in respect of past facts do not always dispose of a forward-looking fear. This is quintessentially so in *sur place* claims.

Persecution

Persecution – Destitution

In ***OA and FK (a minor) v International Protection Appeals*** **Tribunal [2019] IESCDET 87**, Supreme Court, 17 April 2019, the applicants sought leave of the Supreme Court to appeal the decision of the High Court ([2018] IEHC 661), having been refused leave of the High Court to appeal the matter ([2018] IEHC 753) (see the 2018 Annual Report).

The High Court had held, *inter alia*, that destitution per se, in the absence of any policy targeting persons such as the applicants, could not amount to persecution.

The application for leave focused on the 'best interests of the child' concept. The applicants argued that the child's right to protection encompasses the right to a standard of living adequate for the child's development and that the shared burden of proof in claims for international protection meant that the Tribunal should have

considered the issue of membership of a particular social group, i.e., homeless and destitute children in Nigeria.

Refusing the application, the court considered that the application did not engage with the finding that there was no indication of persecution such as would be capable of grounding a claim for international protection.

Persecution – 'Compelling Reasons'

The key contention in ***PAF (Nigeria) v International Protection Appeals Tribunal*** **[2019] IEHC 204**, High Court, Humphreys J., 15 March 2019 was whether the Tribunal erred in law in applying the wrong test when considering whether there were 'compelling reasons' arising out of past persecution alone which would warrant a determination that the applicant was eligible for protection as a refugee. The applicant contended that the tribunal erroneously applied a 'very high threshold of atrocity' test rather than an 'atrocity' test.

The applicant, a national of Nigeria, claimed, *inter alia*, that his family were attacked by Boko Harem, resulting in his father's death, and his kidnapping and torture, giving rise to PTSD, which he vouched.

The relevant part of the tribunal's decision stated as follows:

> 'The Tribunal considers what the appellant experienced to be utterly abhorrent. Nonetheless the Tribunal does not consider the return of the appellant to Nigeria within and of itself to be so traumatic as to expose the appellant to inhuman and degrading treatment. It is clear from the case law that 'compelling reasons' is a doctrine reserved for situations of past persecution reaching a very high threshold of atrocity, some of the (non-exhaustive) examples being given including witnessing mass murder, genocide and ethnic cleansing. The relevant threshold of atrociousness for establishing compelling reasons is not reached on the facts of this case.'

Summary of the legal developments re 'compelling reasons'

The Court usefully summarised the development of Irish law on 'compelling reasons' as follows:

1. The origin of the 'compelling reasons arising out of past persecution' standard lies in Article 1 of the 1951 Refugee Convention, under which the question of compelling reasons is not a ground for refugee status, but an exception to the application of the cessation clause in respect of historical (i.e., pre-1951) refugees per Article 1A of the Convention.

2. Section 21(2) of the Refugee Act 1996 provided that '[t]he Minister shall not revoke a declaration on the grounds specified in *paragraph (e)* or *(f)* where the

Minister is satisfied that the person concerned is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of his or her nationality or for refusing to return to the country of his or her former habitual residence, as the case may be.' This went well beyond the Refugee Convention in applying the concept to all refugees, not just historical refugees.

3. Regulation 5(2) of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) provided that the fact that a protection applicant has already been subject to previous persecution or serious harm or threats in that regard shall be regarded as a serious indication of having a well-founded fear of persecution or harm, 'but compelling reasons arising out of previous persecution or serious harm alone may nevertheless warrant a determination that the applicant is eligible for protection'' Regulation 5(2) of the 2006 Regulations included an applicant for either asylum or subsidiary protection. Clearly, it went further again beyond what was in the 1951 Refugee Convention, beyond the cessation context, in substantively extending the scope of entitlement to refugee status or subsidiary protection.

4. The Court commented, obiter, that as the 2006 Regulations were made under the European Communities Act 1972, there must be a question mark over whether the provision in question was lawful (*SI v Minister for Justice and Equality* [2016] IEHC 112, and *BA v International Protection Appeals Tribunal* [2017] IEHC 36 noted).

5. Regulation 32(2) of the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013) amended the 2006 Regulations to confine the scope of the compelling reasons arising from past persecution clause to applications for refugee status.

6. The International Protection Act 2015 repealed the 1996 Act and revoked the 2006 Regulations, thereby in effect revoking 'compelling reasons' as a factor in the definition of refugee status. (Section 9(3) of the 2015 Act however retained the concept as a factor in cessation of refugee status).

7. Chairperson of the International Protection Appeals Tribunal Guideline no. 1/2018, issued under the 2015 Act, indicated that 'the transitional provisions of s. 70(2) of the [2015 Act] should be interpreted so as to allow consideration of compelling reasons by the Tribunal in the limited number of cases where an appeal against a recommendation from the [RAC] that a person not be granted refugee status was pending before the Tribunal at the time of the commencement of the 2015 Act'.

8. The Chairperson's Guideline may be seen as a consequence of the need for necessary modifications recognised in s.70(2) of the 2015 Act, or as a consequence of s.27(2) of the Interpretation Act 2005. The logic of the latter is

in favour of the statutory intention being that an appeal would be decided on the basis of the substantive law in existence at the time of the appeal.

The Court's judgment

The upshot of the development of the law as summarised above is that the instant case fell to be determined by reference to the 'old' definition for qualification for refugee status as applied under the 1996 Act and 2006 Regulations as amended by the 2013 Regulations (i.e., including the 'compelling reasons' aspect) rather than that arising under the 2015 Act.
In the judgment of the court, the tribunal's decision had the following problematic features:

(i) The decision is dominated by reference to inhuman and degrading treatment which is a subsidiary protection and refoulement concept, not one that should be read as cutting down the broader definition of qualification for refugee status.

(ii) The decision placed undue reliance on the extreme cases that happened to have been mentioned by Cooke J. in *MST v Minister for Justice and Equality* [2009] IEHC 529, High Court, Cooke J., 4 December 2009, which were inspired by the concept of inhuman and degrading treatment.

In this regard, the Court observed that the Tribunal, in its decision, and its Guideline, referred to the *MST* judgment, which focussed on examples relating to inhuman and degrading treatment/subsidiary protection, whereas the legal context had changed in that the 2013 Regulations confined the scope of 'compelling reasons' to applications for refugee status.

(iii) The Tribunal failed to consider the broader issues of international and EU law that illuminate the concept of 'compelling reasons'.

In this regard, the Court observed that relevant international and EU law included:

- UNHCR Handbook, para.136.
- UNHCR Guidelines on Cessation, para.20.
- Qualification Directive (recast), Art.11(3).
- Hailbronner and Thym, *EU Immigration and Asylum Law*, 2nd Ed., (CH Beck/Hart/Nomos, 2016), p.1198.
- Hathaway and Foster, *The Law of Refugee Status*, 2nd ed,. (Cambridge, 2014).
- *Lal v Immigration and Naturalisation Service* (2001) 255 F. 3d 998 (Jul. 3, 2001).
- *Suleiman v Canada (Minister of Citizenship and Immigration) (F.C.)* 2004 FC 1125; [2005] 2 F.C.R. 26, para.19.

(iv) The wording 'very high threshold of atrocity' is not sufficiently clear, and means that it cannot be excluded that the Tribunal had in mind something different from atrocity simpliciter (*BA v International Protection Appeals Tribunal* [2017] IEHC 36, High Court, Keane J., 27 January 2017 applied)

Having regard to the combined effect of those factors, the court concluded that the tribunal asked an incorrect question, the correct question being 'whether past persecution was atrocious to the extent that compelling reasons to afford the applicant refugee status exist because the applicant could not reasonably be expected to return notwithstanding regime change or an internal relocation option.'

The court quashed the parts of the decision containing the legal error. In that regard, the court said that '[i]f the part of the decision that is impugned is legitimately severable from the remainder three is no reason why an applicant cannot seek to quash a decision in part only, or indeed why a court cannot fashion that as an appropriate remedy' (see para.4).

Compelling reasons', though no longer a ground for refugee status or subsidiary protection status in new applications brought under the International Protection Act 2015, must still be considered in respect of appeals arising from applications made before the 2015 Act came into operation. This judgment provides useful guidance on what to do in such cases.

Nexus

Nexus – Membership of a Particular Social Group – Family

C v International Protection Appeals Tribunal and Anor **[2019] IEHC 762**, High Court, Barrett J., 14 November 2019

The applicant, Mr C, was the husband of the first applicant in *B and Ors v International Protection Appeals Tribunal and Anor* [2019] IEHC 763, High Court, Barrett J., 14 November 2019. The court quashed the decision in Mr C's case for the same reasons as those give in the other judgment, and also because the Tribunal, in rejecting the appeal for want of a Convention nexus, failure to consider whether the persecution feared was based on Mr C's membership of a particular social group composed of the family (*K v Secretary of State for the Home Department* [2006] 3 WLR 733 cited with approval).

The court observed that Mr C feared persecution due to his being the husband of Ms B, and that any persecution suffered by him would be because of his membership of Ms B's family. In the court's judgment, it was not necessary that the primary subject of persecution (Ms B) should herself suffer persecution for a Convention reason.

State Protection

State protection – Applicable Test

The applicant in ***CG v International Protection Appeals Tribunal*** **[2019] IEHC 300**, High Court, Keane J., 10 May 2019 claimed that the tribunal erred in stating that 'local failures of state protection do not amount to a failure by the state as a whole.' The court found however that the applicant's argument was based on an over literal reading of that sentence to the effect that local failures of state protection do not in any circumstances amount to a failure of state protection. The court was satisfied that the tribunal's intended meaning was that local failures of state protection do not necessarily amount to a failure of state protection (and did not on the instant facts).

The applicant claimed that the tribunal erred in applying an incorrect test re state protection in stating that 'Violence against the Hindu population cannot be said to be carried out with the tacit consent of the [s]tate.'

The court rejected this contention, finding that the tribunal was not applying an incorrect test, but addressing the contention that the widespread localised failures to protect members of the Hindu community evident from the country information, amounted to a failure to meet the requirements for effective state protection under reg.16(1) of the 2013 Regulations. The court accepted that 'the applicant bears the burden of establishing an inability (or unwillingness) to provide effective state protection [and] the standard of proof that the applicant must meet is one of clear and convincing evidence' (*OAA v Minister for Justice* [2007] IEHC 169 applied) (para.39).

B and Ors v International Protection Appeals Tribunal and Anor **[2019] IEHC 763**, High Court, Barrett J., 14 November 2019

Ms B, an Albanian national, claimed a well founded fear of persecution from a onetime co-worker who stalked her, and threatened her and her family, including by firing shots at her husband, and leaving a cat's head on her doorstep. The Tribunal accepted almost all the elements of Ms B's account. It found that there were substantial grounds for believing that if Ms B were returned to Albania, she and her children would face a real risk of serious harm. However, the Tribunal ruled against Ms B's application for both asylum and subsidiary protection on the bases that her claim had no nexus to a Convention reason, and that she had not shown that she would not enjoy state protection.

The applicant had claimed that her stalker enjoyed political influence and protection in Albania. Information before the Tribunal from the UK Home Office stated that 'Police did not always enforce the law equitably. Personal associations, political or criminal connections … often influenced law enforcement.'

The court quashed the Tribunal's decision for several reasons. First, the court held that the Tribunal failed to give adequate reasons for its finding that state protection would be available. The court said that was clear from case law that a person affected by a decision is at least entitled to know in general terms why a decision was made. Ms B, however, had been left by the Tribunal with no reason why her stalker's political connections are perceived by the Tribunal not to affect the availability of state protection.

Secondly, the court held that the Tribunal had failed to pose the correct questions in respect of state protection arising from s.31 of the International Protection Act. Section 31 states as follows:

(1) For the purposes of this Act, protection against persecution or serious harm can only be provided by – (a) a state, or (b) parties of organisations … controlling a state or a substantial part of the territory of a state, provided they are willing and able to offer protection in accordance with subsection (2).
(2) Protection against persecution or serious harm – (a) must be effective and of a non-temporary nature, and (b) shall be regarded as being generally provided where – (i) the actors referred to in paragraphs (a) and (b) of subsection (1) take reasonable steps to prevent the persecution or suffering of serious harm, and (ii) the applicant has access to such protection.
(3) …
(4) Ste steps referred to in subsection 2(b)(i) shall include the operating of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm.

In the view of the court, these provisions yielded the following questions that the Tribunal ought to ask when determining if state protection is available:

(1) Does the State in question take reasonable steps to prevent the persecution or suffering of the serious harm feared by the particular applicant?
(2) Do such steps include the operating of an effective legal system for the detention, 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 Tribunal had not posed the correct questions in the instant case. In particular, it did not enquire into (a) the steps taken by Albania to subject a man such as the stalker of Ms B, who is claimed to have political connections, to criminal sanction, (b) whether Ms B would receive protection of an effective and non-temporary nature; and (c) whether Ms B would have access to such protection where her stalker is alleged to have political connections.

The court held that the Tribunal failed to consider relevant matters. In the judgment of the court, and although a decision-maker is not required to engage in a narrative consideration of country information, where (a) an applicant's evidence is accepted

as generally credible, (b) the applicant has raised the issue of political connections, (c) country information supports the claim in that regard, and (d) the Tribunal proposes to find that the applicant did not give the relevant state authorities sufficient opportunity to provide protection, the Tribunal is obliged to point to such country information as indicates that state protection might reasonably have been forthcoming had such opportunity been provided.

Safe country of origin

The court commented, obiter, that while designation of a safe country of origin (as applied to Albania) is a matter of practical and legal significance, a designated safe country of origin shall be considered to be a safe country of origin 'only where … (b) the applicant has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her eligibility for international protection.' In the court's opinion, it was apparent from the evidence that Ms B submitted such 'serious grounds'.

State protection – Meaning of 'Unwilling'

The applicant in ***IL v International Protection Appeals Tribunal*** **[2019] IEHC 443**, High Court, Keane J., 19 June 2019 claimed, *inter alia*, that as she was 'unwilling' to avail of the protection of her country of origin, Nigeria (whether or not Nigeria was able to protect her). The Court disposed of this argument swiftly, observing that '[u]nder the refugee definition, the 'unwillingness' concerned must be based upon a 'well-founded fear', and that '[a]s LaForest J pointed out with irrefutable logic in *Canada (Attorney General) v Ward* [1993] 2 S.C.R. 689, 'if a state is able to protect the [applicant], then his or her fear is not, objectively speaking, well-founded.' In the court's judgment, '[i]t follows that the tribunal's conclusion that adequate state protection is available to the applicant in Nigeria, renders her subjective unwillingness to avail of it insufficient to make out her claim.' (para.31)

Internal Protection Alternative

IPA – Applicable Test and 'Even If' Findings

In ***RJ v Minister for Justice and Equality*** **[2019] IEHC 448**, High Court, Keane J., 21 June 2019, the applicant argued, *inter alia*, that the tribunal failed to properly address or apply the internal protection alternative.

The applicant asserted that there was a conflict between *KD (Nigeria) v Refugee Appeals Tribunal* [2013] 1 IR 448, and *EI (a minor) v Minister for Justice, Equality and Law Reform* [2014] IEHC 27 on the proper interpretation of Article 8 of the Qualification Directive such that the Court should make a preliminary reference to the CJEU.

In *KD (Nigeria),* Clark J. acknowledged that tribunal decisions sometimes consider the internal relocation alternative, notwithstanding a prior finding on adverse credibility grounds that an applicant does not have a well-founded fear of persecution. Clark J. expressed the view that such '"even if" findings are not internal relocation alternative findings requiring adherence to [reg.7 of the 2006 Regulations] but are part of a general examination of whether an applicant has a well-founded fear of persecution.'

In *EI (a minor)*, Mac Eochaidh J. stated that '[a] clearly expressed credibility finding without equivocation leading to a rejection of the applicant's claim is self-evidently a desirable outcome when justified by the evidence. However, it is understandable that decision makers often make equivocal findings in respect of credibility. In such cases, it is not surprising that such findings are then followed by an internal relocation assessment. […] With the greatest respect to [Clark J. in *KD (Nigeria)*] I am not convinced that any assessment of internal relocation should escape full-blooded scrutiny in judicial review'.

The court in the instant matter, rejecting a need for a preliminary reference, held that '[insofar] as there is a conflict between the two decisions, it is one that is of no relevance to the resolution of the present case because it is not one in which the tribunal participated in [..] the commonplace approach of making "negative credibility comments" or "equivocal findings in respect of credibility", followed by an internal relocation alternative.'

The court commented, *obiter*, that it agreed with Mac Eochaidh J. in *EI (a minor*) that in such circumstances 'the internal relocation alternative should not escape full-blooded scrutiny in judicial review'.

IPA – Importance of Not Including an Incomplete IPA Analysis when Analysing the Objective Basis of the Forward-Looking Fear

The key issue in ***S v The International Protection Appeals Tribunal and Anor*** **[2019] IEHC 564**, unreported, High Court, Barrett J., 24 July 2019 was whether the tribunal erred in law by relying on an internal relocation alternative finding without applying the correct test on the matter per s.32 of the International Protection Act 2015.

The relevant part of the decision stated as follows:

> 'While the injuries to the Appellant were clearly serious, and were followed up by a death threat, the Tribunal has not seen any persuasive evidence that this violence would be continued or repeated if the Appellant were to be returned to Albania. As the dispute is about land, which is by definition local, there is no objective basis for finding that the Appellant would be in continuing danger if he were to move to and live in a different part of the country. No doubt that may make it difficult for him to pursue any claim [against Named Persons] but it is difficult to see how his position in this respect would be any more difficult that if he were to reside as a refugee in Ireland. Having determined that there

is no credible evidence of an actual threat to the Appellant's life or safety, the Tribunal finds that there is no objective basis for the Appellant's claimed fear of persecution.'

In quashing the decision, the court observed that there was a degree of circularity in the reasoning: while the issue of internal relocation does not arise if there is no well-founded fear of persecution, the IPAT relies on an internal relocation finding to conclude that there was no well-founded fear of persecution, and held that the tribunal erred in law and acted ultra vires in relying on an IPA finding without applying the requisite test per *AA (Pakistan) v IPAT* [2018] IEHC 497.

Any issues relating to whether an appellant can avoid persecution or harm by moving outside his or her locality in his or her country of origin should be dealt with specifically in the context of a full and robust IPA analysis, and not prematurely in the context of analysing whether there is an objective basis to the claim.

IPA – 'Settle' and 'Stay'

O v International Protection Appeals Tribunal and Ors **[2019] IEHC 869**, High Court, Barrett J., 19 December 2019

The applicant contended that s.32(1)(b) of the International Protection Act 2015 is incompatible with Article 8(1) of the Qualification Directive in that it uses the phrase 'to settle' in the context of the internal protection alternative test, rather than 'to stay', which is the phrase in the Directive. The court rejected this argument, observing that Ireland has provided for more favourable standards in using 'to settle', as permitted by Article 3 of the Directive. Further, to the extent that there is any potential for divergence, the duty of consistent interpretation provided a 'cure all' in this regard such that the terms must be interpreted consistently with each other. The court commented that the task of the Tribunal is to comply with the law, not to interpret it.

S v International Protection Appeals Tribunal and Ors **[2019] IEHC 868**, High Court, Barrett J., 19 December 2019

The applicant in this judgment complained that the s.32(1)(b) of the International Protection Act 2015 was not compliant with Article 8(1) QD in that the concept of 'settle' in the 2015 Act was at odds with the concept of 'stay' in the Directive. The court however saw no practical difference, and that the duty of consistent interpretation in any event provided a 'cure all' if there was any potential divergence.

<u>Subsidiary protection</u>

Subsidiary Protection – Serious Harm

The judgment in ***MZ (Pakistan) v International Protection Appeals Tribunal (No 2)*** **[2019] IEHC 315**, High Court, Humphreys J., 29 April 2019 concerned the applicant's application for leave to appeal the judgment in *MZ (Pakistan) v International Protection Appeals Tribunal* [2018] IEHC 125 (see 2018 Annual Report).

The applicant proposed, *inter alia*, the following question as one of exceptional public importance:

> "Where a finding has been made by an international protection decision-maker that an applicant has been subject to an 'act of persecution' is this sufficient to establish that the applicant has also been subject to 'an act of serious harm' for the purposes of subsidiary protection?"

The court's answer was a definitive 'no'. First, the Court observed that the relevant definition of subsidiary protection overlaps with Article 3 ECHR, and that the matter has already been subject to clarification by the Supreme Court in *PO v Minister for Justice and Equality* [2015] IESC 64, [3015] 3 IR 164, wherein Charleton J. opined at para.39 that 'particular and quite extreme, circumstances will be required before the prohibition against torture and inhuman and degrading treatment as guaranteed by Article 3 of the Convention can be invoked.' Secondly, Article 4(4) of the Qualification Directive treats 'persecution' and 'serious harm' together linguistically, but is meant to be read disjunctively.

In the court's judgment, it is a matter for the tribunal to determine whether acts that constituted persecution also constitute serious harm.

Subsidiary Protection – Article 15(c) QD

In its judgment in ***MZ (Pakistan) v International Protection Appeals*** **Tribunal [2019] IEHC 125**, High Court, Humphreys J., 15 February 2019 the Court provided the following guidance on the Article 15(b) ground for subsidiary protection at para.10:

> "As regards inhuman or degrading treatment, it must be emphasised that this involves a significant threshold and is notably more demanding as a test than that for persecution. Speaking of the analogous test in art. 3 of the ECHR, as applied by the European Convention on Human Rights Act 2003, Charleton J. said in *P.O. v. Minister for Justice and Equality* [2015] IESC 64 [2015] 3 I.R. 164 at para. 90 that "*particular, and quite extreme, circumstances will be required before the prohibition against torture and inhuman and degrading treatment as guaranteed by Article 3 of the Convention can be invoked*". Having considered country material, the tribunal member found that the acts of MQM in demanding wages were infrequent and that there was only one occasion when a fight happened, followed by one subsequent visit to the home. That did not meet the minimum level of severity amounting to inhuman or degrading treatment. Such an approach is perfectly reasonable. Insofar as *Saadi v. Italy* (Application No. 37201/06, European Court of Human Rights,

> 28th February, 2008) (2009) 49 E.H.R.R. 30 is concerned, as relevant to the question of inhuman and degrading treatment, the *Saadi* approach was complied with here. The tribunal carried out a rigorous assessment of both the country situation and the applicant's personal circumstances. It is certainly not the law that if a decision-maker accepts any element of the applicant's story that he or she must make a finding that the applicant is entitled to protection."

The applicant alleged that the Tribunal improperly rejected a medico-legal report. In rejecting this claim, the Court provided at para.14 the following guidance for the weighing of evidence by the Tribunal:

> "Overall it is a matter for the tribunal to weigh the evidence. The applicant's submission alleges that there was an "*improper rejection*" of the medico-legal report […], but this conflates failure to find for the applicant with impropriety. A tribunal member is not obliged to find for an applicant simply because the applicant presents a medical report. That would delegate decision-making to the applicant's doctor. It is, of course, different if the injury is diagnostic of the applicant's account; but if the medical report indicates that the applicant's account is merely probable or that the injury is merely consistent with it, then that only provides some support, and the tribunal is entitled to consider that any such support is outweighed by other evidence in particular circumstances, having considered all matters fairly in the round. Indeed, the point was made in *H.E. (DRC)* [2004] UKIAT 00321 (see also *H.H. (Ethiopia)* [2005] UKIAT 00164, 25th November, 2005) by Ouseley J. 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 applicant ***ES v International Protection Appeals Tribunal*** **[2019] IEHC 449**, High Court, Keane J., 21 June 2019 contended that the tribunal erred in finding that she failed to establish substantial grounds for believing there was a real risk of a serious and individual threat to her life in Algeria because of indiscriminate violence in a situation of internal armed conflict there. In rejecting this claim, the court commented that '[i]t is the function of the tribunal and not this court on an application for judicial review to determine the weight to be attributed to country of origin information on the degree of indiscriminate violence represented by the level of terrorist activity there'.

WAL (Nigeria) v The International Protection Appeals Tribunal and Ors **[2019] IEHC 581**, unreported, High Court, Humphreys J., 26 July 2019

In this application the applicant argued that the Tribunal's decision was invalid in that the Tribunal failed to find that the applicant's evidence led to a determination of risk contrary to Article 15(c) QD. The Tribunal had found that there was an internal armed conflict in Borno state in Nigeria, but did not find that the country information led to a determination that the level of indiscriminate violence in Borno state rose to an Article 15(c) risk of serious harm.

In the court's judgment, this was a **challenge to the factual finding of the Tribunal and the applicant's ground of challenge thus misunderstood the process of judicial review**. Alternatively, insofar as the applicant contended that the Tribunal had failed to consider his personal circumstances (a physical injury and PTSD), the court rejected this given that the applicant had made a case to the tribunal based on the level of violence in itself rather than on his personal circumstances, and that if the court was incorrect on this, the Tribunal had in any event rejected that his injuries were caused in the manner alleged, and, furthermore, in effect, that the merits of the case did not qualify him for the exceptional provisions of Article 15(c) QD. The court provided the following **useful commentary on Article 15(c)** (emphases added):

> *'It is worth noting that [the provisions of Article 15(c) QD] are exceptional provisions. I noted in* MZ (Pakistan) v International Protection Appeals Tribunal *[2019] IEHC 125 [2019] 2 JIC 1510 (unreported, High Court, 15th February 2019 at para. 19 that there was* ***only one country, Syria, which was recognised by a majority of EU member states as being one where art. 15(c) applies throughout its territory****.* ***In respect of only two other countries, Iraq and Somalia, did a majority of EU member states recognise indiscriminate violence in at least a part of the country****. So in relation to other countries there was no recognition of the applicability of the provision by a majority of member states: see European Asylum Support Office, "The Implementation of Article 15(c) QD in EU Member States" (July, 2015). The EASO report has an illuminating table at p. 7 showing a* ***list of countries which are recognised by any member state as falling under art. 15(c)****, and that shows that* ***not even a single EU member state recognises art. 15(c) as applying in Nigeria, even to a part of that country****,* ***let alone to the whole of it****. The Tribunal here came to the same conclusion, namely that the level of violence was not so extreme as to engage art 15(c) merely by the applicant's presence.'*

The Court commented that **'tribunal members are not novices and have experience of evidence in relation to different country conditions'** (*AJA (Nigeria) v IPAT*; *JUO (Nigeria) v IPAT* [2018] IEHC 710 [2018] 12 JIC 0406; *GOB v MJELR* [2008] IEHC 229 cited with approval).

Inadmissibility Appeal Decisions

Inadmissibility – Subsidiary Protection in another Member State

The applicants in ***MS (Afghanistan), MW (Afghanistan, and GS (Georgia) v Minister for Justice and Equality*** **[2019] IEHC 477**, High Court, Humphreys J., 2 July 2019 were all the subjects of decisions by the Tribunal upholding decisions of an IPO that there applications for international be deemed inadmissible on the ground, at s.21(2)(a) of the International Protection Act 2015, that another Member State had granted them refugee status or subsidiary protection status. In each case, Italy had granted the applicant subsidiary protection status.

However, Article 25 of Directive 2005/85 (the Asylum Procedures Directive), to which section 21 of the 2015 Act gives effect, provides, *inter alia*, that Member States may consider an application for asylum as inadmissible if another Member State has granted refugee status. I.e., it does not mention subsidiary protection status, in contrast to the relevant Article in the Asylum Procedures Directive (recast), which does, but in which Ireland does not participate.

The Court observed, in effect, that the CJEU, in Joined Cases C-297/17, C-318/17, C-319/17, and C-438/17 *Ibrahim*, noted that the relevant part of Article 25 of the Asylum Procedures Directive related solely to asylum.

In the Court's judgment, an anomaly arises in the limited category of Member States that are bound by Dublin III but not the Asylum Procedures Directive (recast) (i.e., Ireland and the UK) such that three questions of EU arose requiring a preliminary reference under Article 267 TFEU:

1. Does the reference to 'the Member State concerned' in Article 25(2)(d) and (e) of Directive 2005/85 mean (a) a first Member State which has granted protection equivalent to asylum to an applicant for international protection or (b) a second Member State to which a subsequent application for international protection is made or (c) either of those Member States?

   The Court's proposed answer is that the reference to 'the Member State concerned' in article 25(2)(d) and (e) makes most sense as meaning either Member State, which interpretation avoids the aforesaid anomaly.

2. Where a third country national has been granted international protection in the form of subsidiary protection in a first Member State and moves to the territory of a second Member State, does the making of a further application for international protection in the second Member State constitute an abuse of rights such that the second Member State is permitted to adopt a measure providing that such a subsequent application is inadmissible?

   The Court's proposed answer is that the making of a second or subsequent application where a person already has been granted subsidiary protection amounts to an abuse of rights.
3. Is Article 25 of Directive 2005/85 to be interpreted so as to preclude a Member State which Is not bound by Directive 2011/95 but is bound by Regulation 604/2013, from adopting legislation such as that at issue in the present case which deems inadmissible an application for asylum by a third country national who has previously been granted subsidiary protection by another Member State?

   The Court's proposed answer is that to read the Asylum Procedures Directive in a literal manner in this context would create an anomaly to no purpose and would be inconsistent with Dublin III because the logic of the legislation, taken

together, is that a Member State does not have to determine an asylum application by someone who already has subsidiary protection or its equivalent elsewhere.

Subsequent Application Appeal Decisions

The applicant in ***PNS (Cameroon) v The International Protection Appeals*** **Tribunal [2019] IEHC 179**, High Court, Humphreys J., 22 March 2019, having been refused asylum and subsidiary protection previously, sought to re-enter the international protection process on the basis that he faced a risk of being compulsorily returned as a failed asylum seeker, and if he were to be present in Cameroon, his country of origin, as a person who originally left without permission.

The Court rejected the application, inter alia, because, insofar as the claim related to forced return to Cameroon as a failed asylum seeker, that matter was moot in circumstances where the applicant otherwise had residency in the State on the basis of his parentage of an Irish child.

Furthermore, in respect of the case now sought to be made in respect of criminalised unauthorised departure, the Court observed that either the applicant's failure to suggest to the Tribunal that the point could not have been made earlier, or the Tribunal's finding that there was nothing to suggest that this was the case, would have been determinative because the test under s.22 requires that "the person was, through no fault of the person, incapable of presenting [the new] elements or findings for the purposes of his previous application, in circumstances where the applicant had been refused asylum prior to his subsidiary protection application, and where the country of origin laws in issue were in place since 1990.

Dublin Transfer Appeal Decisions

Dublin III – Article 34 Request for Information

BS & RS v Refugee Appeals Tribunal **[2019] IESC 32**, Supreme Court, Dunne J., 22 May 2019.

The State sent a request for information pursuant to Article 34 of Dublin III to the UK authorities. Enclosed with the Annex V (of the Dublin Implementing Regulation (EC) 1560/2003) forms were the applicants' fingerprints. The forms gave the applicants' date and place of birth, their names, details of the nature of the request for information, a statement that the person named in the form had claimed asylum in Ireland, and, under the heading 'indicative evidence', the word 'fingerprints'. Matches were made by the UK authorities, albeit relating to individuals with different names to those provided by the Irish authorities, who had obtained UK visas. In these circumstances, decisions were made by the Refugee Applications Commissioner (RAC) to transfer the applicants to the UK, which decision was appealed to, and refused by, the Refugee Appeals Tribunal, whose decision was the subject of the instant review.

The applicants argued that the Annex V form did not comply with Article 34 of the Dublin III because the information on the form was devoid of any grounds or evidence justifying the making of the request, the word 'fingerprints' being said to be inadequate in this regard, and that, consequently, the RAC was not entitled to rely on the information obtained from the UK in response to the 'unlawful' request.

The court rejected this argument, finding that the information provided by the RAC was not so deficient as to amount to a breach of Article 34(4), it not being necessary to set out the ground any more clearly.

The court commented that, ideally, the grounds for the information request should have gone further, e.g., by setting out the fact that the appellants had stated that they had transited through the UK, but, the court said, it is hardly necessary to state the obvious. In any event, the court said that there was no breach of Article 34 despite the Minister's concession that there was not strict compliance with its requirements.

Basis for sharing fingerprints

The applicants suggested that as the UK had not requested fingerprints, there was no legal basis for the RAC to send them to the UK authorities. The court disagreed. In its judgment, Ireland is entitled to take the fingerprints having regard to s.9A of the Refugee Act 1996, s.9A(8) of the 1996 Act allowing information to be communicated to a Convention country, the UK being such a country. Therefore, Ireland was entitled to provide fingerprints to the UK with the Annex V form, and there was nothing in Article 34 of Dublin III to prohibit that.

Obligation to make the 'take charge' request as quickly as possible

Article 21(1) of Dublin III states that:

> 'Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any event within three months of the date on which the application was lodged within the meaning of Article 20(2), request that other Member State to take charge of the applicant.'

On the facts of the case, the take charge request was made three months from when the applications were made by the applicant.

The applicant contended that the tribunal erred in finding that the request was not excessively long and in breach of the 'as quickly as possible' requirement of Article 21(1) in the circumstances of the case, notwithstanding that it was within the outer limit of three months.

In the judgment of the court, the exhortation in Article 21(1) to act expeditiously does not detract from the fact that there is an outer time limit of three months, and the request in the case was thus made within time.

See also the concurring judgment of Charlton J: *BS & RS v Refugee Appeals Tribunal* [2019] IESC 32.

Dublin III Regulation – Article 17(1) Sovereign Discretion

NVU v Refugee Appeals Tribunal **[2019] IECA 183**, Court of Appeal, 26 June 2019.

Article 17(1) sovereign discretion

Baker J. stated, at para.79, that in the light of the CJEU judgments in *CK v Republika Slovenija* (Case C-578/16 PPU), EU:C:2017:127 and *MA v International Protection Appeals Tribunal* (Case C-661/17), Dublin III leaves little choice for how the principles and policies in respect of the discretion at Article 17(1) are to be implemented, and that:

> 'The policies to be exercised by a Member States in the exercise of the discretion under article 17 of Dublin III are apparent, and the text of article 17 of Dublin III itself envisages the discretion as having a role when consideration of humanitarian or compassionate nature, *inter alia*, in the interests of family unity, are to be engaged. The discretion is to be exercised within that principle and in the light of the principles and policies in Dublin III taken as a whole. It is a jurisdiction existing by way of derogation from the first principle of the Regulation and the Member States are not, as a result, to be at large in the factors, principles, and policies to be engaged in the discretionary exercise.'

Inter alia, but especially, for this reason Baker J. was not persuaded that O'Regan J. was correct in concluding that the vesting of the article 17 discretion in the Refugee Applications Commissioner could not withstand the test in *Meagher v Minister for Agriculture* [1994] 1 IR 329 (para.82). Rather, in the judgment of Baker J., Article 17 is integral to the process (para.101) and vests discretion in the Member States that to be exercised at any stage (paras 85, 101).

Furthermore:

- The decision to assume jurisdiction for article 17 is procedural in nature, in light of humanitarian and compassionate principles, and does not engage the control of entry, residence and exit of non-Irish nationals (paras.92-98).
- A decision maker is entitled, but not obliged, to exercise the Article 17 discretion. The discretion is an overarching right in the decision maker, as the occasion requires, to refuse to make or implement a decision to transfer (para.99).

- Article 17 entitles a decision maker to engage with humanitarian and compassionate considerations in the context of family unity insofar as they may arise on a case by case basis (para.100).
- The purpose of permitting a decision maker to exercise discretion is to prevent hardship in an individual case (para.102).
- The plain reading of the 2014 Regulations, from which there is no justification to depart, is that jurisdiction to exercise discretion to assume jurisdiction for the Article 17 discretion in a suitable case may be exercised by the Refugee Applications Commissioner / international protection officers and the tribunal (para.107).

Publication of Policy

The court held that the article 17(1) discretion is fact sensitive. There is an overriding restriction of the discretion to compassionate and humanitarian considerations (para.113). It is not, however, constrained by policies or criteria (para.114). Typical issues include (para.113):

- Complex family relationships
- Receipt of counselling, medication, therapy for depression and PTSD.
- Domestic violence
- Children's schooling.
- Legal aid.

Effective Remedy

Baker J. held, at para.111, that the effective remedy in respect of Article 17(1) discretion
'is a matter for domestic law and the appropriate governing procedure in the Irish context is that provided by O. 84 RSC, but the interpretation by the CJEU of Dublin III seems to avoid this risk of administrative unworkability, and envisages that a challenge to a decision under article 17 Dublin III, or a refusal to engage the power thereby vested in a Member State, is not to be made before an appeal against a transfer decision has been determined.

ECHR/EU Charter

The court held that fundamental rights, whether from the EU Charter or ECHR, are to be engaged wherever circumstances demand, and the implementation of Dublin III must be done in a manner compliant with the principles in both instruments (para.144).
This judgment would mean that the Tribunal, contrary to the State's position, has jurisdiction to exercise the 'sovereign discretion' set out in Article 17(1) of the Dublin III Regulation.

However, the Court of Appeal granted a stay on all of its orders in the matter, including the declaratory relief, to allow the State to make an application for leave to appeal to the Supreme Court, and thereafter until a determination by the Supreme Court.

PF v The International Protection Appeals Tribunal **[2019] IEHC 624**, unreported, High Court, Keane J., 21 August 2019

The applicant in this case contended that Article 17(1) of Dublin III is to be interpreted to mean that there is no impediment to a decision by Ireland to reassume responsibility for the examination of an application for international protection that an applicant lodged with it even if that examination is no longer its responsibility by operation of the time limits under Article 29 of the Dublin III Regulation. On the facts of the case, the UK was fixed with responsibility after defaulting on the six-month deadline under Article 29.

In the court's judgment:

> *"[T]he sovereign clause of Art. 17(1) of the Dublin III Regulation applies as a derogation from Art. 3(1), which requires an application for international protection to be examined by the Member State that the criteria set out in Chapter III indicate is responsible. It does not apply as a derogation from the express attribution of responsibility to a requesting Member State under Art. 29(2) where the transfer of the person concerned has not taken place within the time-limit of sex months from the acceptance of a transfer request under that provision."*

Reception Conditions Appeal Decisions

Reception Conditions – Access to the Labour Market for Persons with Transfer Orders

In ***KS (Pakistan) and MHK (Bangladesh) v International Protection Appeals Tribunal*** **[2019] IEHC 176**, High Court, Humphreys J., 25 March 2019, the court heard that the Labour Market Access Unit of the Department of Justice and Equality refused to give the applicants labour market access provision under reg.11(3) of the European Communities (Reception Conditions) Regulations 2018 (S.I. No. 230 of 2018). The International Protection Appeals Tribunal upheld these refusals on appeal, and the applicants sought judicial review of those appeal decisions.
The Law

Article 2(b) of the Reception Conditions Directive (recast) defines 'applicant' as 'a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken'.
Article 15 of the RCD (recast) envisages a right to work after a nine-month period, unless delays can be attributed to the applicant.

The CJEU in Case C-179/11 *Cimade* held, *inter alia*, that the benefit of such conditions applies to all applicants, including those subject to the Dublin system.

Regulation 2(2) of the Irish 2018 Regulations provides that on the making of a transfer decision a person subject to such a decision ceases to be an 'applicant' for the purposes of those Regulations, and instead is a 'recipient' for the purposes of those Regulations. Regulation 11(2) of the Irish 2018 Regulations provides that a 'recipient' for the purposes of those Regulations 'shall not seek, enter or be in employment or self-employment'.

In order to determine the application for judicial review, the court ordered that a preliminary reference to the CJEU pursuant to Article 267 TFEU be made, on the following questions:

(a) Where in interpreting one instrument of EU law that applies in a particular member state an instrument not applying to that member state is adopted at the same time, may regard be had to the latter instrument in interpreting the former instrument?

The Court's proposed answer is that if a non-applicable instrument is in particular circumstances relevant to the interpretation of an applicable instrument then it must be relevant to the interpretation of national law which implements the applicable instrument.

(b) Does art. 15 of the Reception Conditions Directive (Recast) 2013/33/EU apply to a person in respect of whom a transfer decision under the Dublin III regulation, Regulation (EU) No. 604/2013, has been made?

The Court's proposed answer is that the provisions of Article 15 are predicated on the assumption that there has been some delay by the competent authority in failing to make a decision within nine months, and that that presupposes that the competent authority is in a position to make such a decision, which cannot apply in the Dublin III context until the actual transfer of the person.

The Court commented in this context, obiter, (a) that *Cimade* 'should not be unduly extended', and possibly 'needs to be limited', and (b) that there is a significant abuse of rights issue in the Dublin system in that a person who is the subject of a Dublin transfer decision is by definition someone who has abused the process envisaged by the CEAS.

(c) Is a member state in implementing art. 15 of the Reception Conditions Directive (Recast) 2013/33/EU entitled to adopt a general measure that in effect attributes to applicants liable for transfer under the Dublin III regulation, Regulation (EU) No. 604/2013, any delays on or after the making of a transfer decision?

The Court's proposed answer is that an applicant who fails to apply for asylum in the first Member State on whose territory he or she is present, and who then leaves that Member State and applies in another Member State, is entirely responsible for the need to invoke the Dublin system such that it could not be the case that the consequent delays are not attributable to him or her.

(d) Where an applicant leaves a member state having failed to seek international protection there and travels to another member state where he or she makes an application for international protection and becomes subject to a decision under the Dublin III regulation, Regulation (EU) No. 604/2013, transferring him or her back to the first member state, can the consequent delay in dealing with the application for protection be attributed to the applicant for the purposes of art. 15 of the Reception Conditions Directive (Recast) 2013/33/EU?

The Court's proposed answer is that the applicant in such a situation must be capable of having such delays attributable to him or her because it is his or her failure to seek protection in the first Member State and the voluntary travelling to another Member State and the making of an application there, contrary to the system envisaged by the CEAS, that causes the delay in question.

(e) Where an applicant is liable to transfer to another member state under the Dublin III regulation, Regulation (EU) No. 604/2013, but that transfer is delayed due to judicial review proceedings taken by the applicant which have the consequence of suspending the transfer pursuant to a stay ordered by the court, can the consequent delay in dealing with the application for international protection be attributed to the applicant for the purposes of art. 15 of the Reception Conditions Directive (Recast) 2013/33/EU, either generally or, in particular, where it may be determined in those proceedings that the judicial review is unfounded, manifestly or otherwise, or is an abuse of process.

The Court's proposed answer is that the taking of judicial review proceedings, while lawful, is nonetheless a voluntary act of an applicant and, therefore, any consequential delay can be attributable to the applicant.

The Court requested the expedited procedure pursuant to r.105 of the Rules of Procedure of the CJEU on the basis that delay in resolution of the matter would result in (a) potential difficulties for the Tribunal's decision-making, and (b) compounded ongoing uncertainty for persons subject to transfer decisions in respect of their right of access to the labour market under the RCD (recast).

Appendix 5

Judicial Review Knowledge Management Project Report

During 2019 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 below, first in respect of the Tribunal's decisions generally, including specifically with regard to 2019 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.

All Tribunal Decisions

TABLE X1: All Tribunal Decisions since 2017

	Total	Set Aside	Affirm	JRs	Concluded JRs	Rejected /Struck Out	Quashed	Ongoing
Single P	2650	765	1885	134	91	47	44	43
Subsidiary	102	26	76	21	20	17	7	1
Inadm.	19	0	19	4	0	0	0	4
Subseq.	92	27	65	5	5	3	2	0
Dublin	152	45	360	128	8	5	3	120
Reception	26	4	22	14	1	0	1	13
Total	3041	867	2427	306	125	72	57	181

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:

- Total cases affirming IPO decisions is 67.8%.
- Total cases affirming IPO decisions that were the subject of litigation: 14.8%.
- Total concluded JRs rejected/struck out: 54.4%.
- Total concluded JRs resulting in quashing orders: 45.6%.

TABLE X2: All 2019 Tribunal Decisions

	Total	Set Aside	Affirm	JRs	Concluded JRs	Refused/Struck Out	Quashed	Ongoing
Single P	2650	765	1885	63	24	9	15	39
Subsidiary	41	8	33	2	1	1	0	1
Inadm.	5	0	5	1	0	0	0	1
Subseq.	35	9	26	0	0	0	0	0
Dublin	152	20	132	31	1	1	0	30
Reception	6	1	5	0	0	0	0	0
Total	2889	803	2086	97	26	11	15	71

This table shows the picture in respect of judicial reviews against all decisions of the Tribunal made during 2019 in particular. Some key statistics arising from this table are:

- 2019 appeal decisions affirming IPO decisions: 72.2%.
- 2019 appeal decisions affirming IPO decisions that were the subject of JR: 4.65%.
- Concluded judicial reviews re 2019 decisions resulting in the applicant's claim being rejected/struck out: 42.3%.
- Concluded JRs re 2019 decisions resulting in quashing orders: 57.7%.

Tribunal Decisions by Jurisdiction

Below are separate 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, there are also separate tables in respect of judicial reviews challenging decisions made by the Tribunal since 2017 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 brought challenging decisions in each year and in total affirming the decision of the IPO;
(e) the number of those judicial reviews that have concluded;
(f) the number of the concluded judicial reviews that resulted in the JR being rejected or struck out;
(g) the number of the concluded judicial reviews that resulted in the impugned decision of the Tribunal being quashed (including partial quashing orders, and quashing 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 IPO decisions;
(b) the percentage of Tribunal decisions affirming IPO decisions that were the subject of judicial review;
(c) the percentage of concluded JRs against those decisions that were rejected/struck out; and
(d) the percentage of concluded JRs against those decisions that resulted in quashing orders (including partial quashing orders, and quashing on consent by way of settlement).

Litigation and Single Procedure Decisions

Table X3: Litigation and Single Procedure Decisions A

Year	Total	Set Aside	Affirmed	JRs	Conclu-ded JRs	Refused	Quashed	On-going
2017	90	15	75	15	14	10	4	1
2018	855	267	588	56	53	28	25	3
2019	1705	483	1222	63	24	9	15	39
Total	2650	765	1885	134	91	47	44	43

Table X4: Litigation and Single Procedure Decisions B

	% affirming IPO decision	% affirmations subject of JR	% concluded JRs rejected	% concluded JRs resulting in quashing
2017	82.22%	20%	71.4%	28.6%
2018	68.77%	9.5%	52.8%	47.2%
2019	71.7%	5.15%	37.5%	62.5%
Total	71.1%	7.1%	52%	48%

It is notable that the number of single procedure appeal decisions made by Tribunal that have been the subject of judicial review is relatively low, with just over 7% of such decisions of the Tribunal being subject of JR, and indeed only a little over 5% of the Tribunal's 2019 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 include:

- fair procedures in the context of refusing to accept a late appeal;
- fair procedures in the context of refusing to grant oral hearing;
- fair procedures in the context of interpretation;
- the standard of proof in respect of assessment of facts and circumstances;
- application of the benefit of the doubt;
- credibility;
- credibility and LGBTI claims in particular;
- credibility and medico legal reports;
- irrelevant considerations / material errors of fact in the credibility assessment;
- failure to consider material facts in the credibility assessment;
- failure to consider relevant documents in credibility analysis;
- failure to put concerns in respect of credibility to an appellant;
- the concept of 'compelling reasons', in respect of cases considered under the transitional provisions of the 2015 Act;

- the concept of persecution, and its application to the facts of cases;
- failure to properly analyse objective basis;
- state protection; and
- application of the internal protection alternative.

Litigation and Inadmissible Appeal Decisions

Table X5: Litigation and Inadmissible Appeal Decisions A

Year	Total	Set aside	Affirm	JRs	Concluded JRs	Refused	Quashed	Ongoing
2017	5	0	5	0	0	0	0	0
2018	9	0	9	3	0	0	0	3
2019	5	0	5	1	0	0	0	1
Total	19	0	19	4	0	0	0	4

Table X6: Litigation and Inadmissible Appeal Decisions B

	% affirming IPO decision	% affirmations subject of JR	% concluded JRs rejected	% concluded JRs resulting in quashing
2017	100%	0%	NA	NA
2018	100%	33.33%	NA	NA
2019	100%	20%	NA	NA
Total	100%	21%	NA	NA

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. The Court of Justice of the European Union is expected soon to make a ruling on this matter.

Litigation and Subsequent Application Appeal Decisions

Table X7: Litigation and Subsequent Application Appeal Decisions A

Year	Total	Set aside	Affirm	JRs	Concluded JRs	Refused	Quashed	Ongoing
2017	10	7	3	0	0	0	0	0
2018	47	11	36	5	5	3	2	0
2019	35	9	26	0	0	0	0	0
Total	92	27	65	5	5	3	2	0

Table X8: Litigation and Subsequent Application Appeal Decisions B

	% affirming IPO decision	% affirmations subject of JR	% concluded JRs rejected	% concluded JRs resulting in quashing
2017	30%	0%	NA	NA
2018	76.6%	13.88%	60%	40%
2019	74.3%	0%	NA	NA
Total	70.65%	7.7%	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 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 X9: Litigation and Dublin Transfer Appeal Decisions A

Year	Total	Set Aside	Affirm	JRs	Concluded JRs	Refused	Quashed	Ongoing
2017	233	20	210	92	7	4	3	85
2018	23	5	18	5	0	0	0	5
2019	152	20	132	31	1	1	0	30
Total	408	45	360	128	8	5	3	120

Table X10: Litigation and Dublin Transfer Appeal Decisions B

	% affirming IPO decision	% affirmations subject of JR	% concluded JRs rejected	% concluded JRs resulting in quashing
2017	90.1%	43.8%	57.1%	42.9%
2018	78.26%	27.77%	NA	NA
2019	86.8%	23.5%	100%	0%
Total	88.2%	35.55%	62.5%	37.5%

Most of the ongoing litigation in respect of Dublin transfer appeal decisions are in the 'Article 17 holding list' before the High Court, awaiting the outcome of the Supreme Court decision on the matter of 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 the Tribunal 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,

Litigation and Reception Conditions Appeal Decisions

Table X11: Litigation and Reception Conditions Appeal Decisions A

Year	Total	Set aside	Affirm	JRs	Concluded JRs	Refused	Quashed	Ongoing
2017	0	0	0	0	0	0	0	0
2018	20	3	17	14	1	0	1	13
2019	6	1	5	0	0	0	0	0
Total	26	4	22	14	1	0	1	13

Table X12: Litigation and Reception Conditions Appeal Decisions B

	% affirming IPO decision	% affirmations subject of JR	% concluded JRs rejected	% concluded JRs resulting in quashing
2017	NA	NA	NA	NA
2018	85%	82.35%	0%	100%
2019	83.33%	0%	NA	NA
Total	84.6%	63.6%	0%	100%

The judicial reviews that have arisen in the context of reception conditions cases tend to relate to the issue of whether a person who is the subject of a transfer order under the Dublin III Regulation is 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)) have made preliminary references to the Court of justice of the European Union on the matter, and it is expected that that Court will make a ruling soon, clarifying the issue.

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

Table X13: Litigation and Transitional Cases/Subsidiary Protection Only Appeal Decisions A

Year	Total	Set aside	Affirm	JRs	Concluded JRs	Refused	Quashed	Ongoing
2017	14	7	7	14	14	9	5	0
2018	47	11	36	5	5	3	2	0
2019	41	8	33	2	1	1	0	1
Total	102	26	76	21	20	13	7	1

Table X14: Litigation and Transitional Cases/Subsidiary Protection Only Appeal Decisions B

	% affirming IPO decision	% affirmations subject of JR	% JRs rejected	% resulting in quashing
2017	50%	100%	64.3%	35.1
2018	76.6%	13.88%	60%	40%
2019	80.5%	6%	100%	0%
Total	74.5%	29%	**65%**	**35**

The judicial reviews that have arisen in the context of subsidiary protection decisions tend to relate to those cases in which appellant had already obtained a decision of the Refugee Appeals Tribunal in respect of refugee status, and then subsequently required

a decision of the Tribunal in respect of subsidiary protection after the IPO recommended refusal of that status also.

Tribunal Members Training (6th December 2019)