

THE HIGH COURT
Judicial Review

[2022] IEHC 440

Record No. 2021/465JR

IN THE MATTER OF SECTION 5 OF
THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT, 2000
(AS AMENDED)

BETWEEN

G.A. AND N.G.

APPLICANTS

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL
AND THE MINISTER FOR JUSTICE AND EQUALITY,
IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Heslin delivered on the 23rd day of June, 2022

Introduction

1. The applicants are husband and wife and are both nationals of Georgia. They came to Ireland in August 2019 and claimed asylum. Georgia is a country which the second named respondent (“the Minister”) has designated as a safe country of origin. The applicants were legally represented throughout their applications for international protection. They attended at the International Protection Office (“IPO”) on 26 August 2019 and completed application forms for international protection. They were provided with international protection Questionnaires and completed them in the Georgian language. These were signed on 2 October 2019. The applicants were interviewed by the IPO on 9 March 2020.

2. In a decision of 6 August 2020, the IPO determined that neither of the applicants had established a well-founded fear of persecution and the IPO made adverse credibility findings. On 14 August 2020, a Notice of Appeal was sent to the first named respondent, the International Protection Appeals Tribunal (“the IPAT”). The applicants’ solicitors requested an oral hearing. In circumstances where Georgia has been designated as a safe country of origin, the ‘default’ position, having regard to s. 43 of the International Protection Act, 2015 (“the 2015 Act”) is that IPAT shall decide an appeal without holding an oral hearing, unless it considers that it is not in the interests of justice to do so. The request for an oral hearing was refused.

3. On 13 November 2020 legal submissions were made to IPAT. On 14 April 2021, IPAT furnished their decision in respect of both appeals, dated 9 April 2021, determining that the applicants should be given neither refugee declarations, nor subsidiary protection declarations. Adverse credibility findings were made by IPAT.

4. In the present proceedings, a central contention advanced on behalf of the applicants is that they should have received an oral hearing of their appeal to IPAT. It is also contended that IPAT made “new” credibility findings, which were adverse to the applicants. It is contended that the failure on the part of IPAT to provide an oral hearing resulted in the IPAT falling into error by making “new” adverse credibility findings which were not put to the applicants. It is also contended that the designation of Georgia as a safe country of origin was unwarranted or unlawful. In addition, the applicants make what was described as “a residual argument” to

the effect that, insofar as s. 43 of the 2015 Act allowed IPAT to make “new” credibility findings which were not put to the applicants at an oral hearing or by some other means, the section is unconstitutional.

5. It is acknowledged that the application for protection made by the second named applicant is dependent on that made by her husband, the first named applicant. This is in circumstances where the second named applicant did not advance a claim on an individual basis, but sought to rely on the alleged facts underlying the claim made by her husband. The second named applicant confirmed that she had not experienced any issues personally.

6. By order made on 17 May 2021 (Ms. Justice Burns) the applicants were granted leave to apply by way of an application for judicial review in respect of the reliefs set out at para. D, on the grounds set out at para. E in the applicants’ Statement of Grounds dated 12 May 2021. The said order specified that leave was granted:

“Without prejudice to the determination at the substantive stage of any point which could have been contended for by the respondents at the leave stage including any point in relation to time limits for the bringing of this application.”

7. As is clear from para. D of the Statement of Grounds, the applicants seek to quash both the 2 November 2020 decision (to refuse an oral hearing) and the 9 April 2021 decision by IPAT (affirming the IPO’s earlier recommendation). The applicants also seek declarations to the effect that the Minister erred in designating Georgia as a safe country; that s. 43 of the 2015 Act is unconstitutional; and that s. 43 is incompatible with the European Convention on Human Rights.

“Factual grounds”

8. Paragraphs 11 to 23, inclusive, of the applicants’ Statement of Grounds, comprise a setting out of the “Factual grounds” relied on. The following is the applicant’s account which reflects the summary pleaded in the applicants’ statement of Grounds and additional detail set out in his international protection application.

9. Mr. A. is a Georgian national and an Orthodox Christian, born the 2nd September, 1971. Mr. A. worked as a car dealer in Georgia and travelled internationally as part of that role. N.G. is a Georgian national, and an Orthodox Christian, born the 2nd October, 1973. The applicants are married to one another and the couple have two children together: M. who was born on the 16th August, 1993 and D. who was born on the 8th February, 2000.

10. Mr. A. met a woman named Z. in late November 2018. He began an affair with her and in January 2019. He was assaulted, and kidnapped by two men, one of whom claimed to be her husband. Two more men joined them. With respect to events of 20 January 2018, the applicant claimed that someone hit him hard in the head and he lost consciousness. When he regained consciousness, his hands were tied and he was lying on a wet floor. Two men with guns physically and verbally abused him. He was beaten severely by men with guns and bats. He lost consciousness several times. They told him they would leave him alone if he gave them \$50,000. They drove him elsewhere and beat him again. He could not endure the pain anymore and agreed to do everything they wanted. They got him in the car again, unchained the handcuffs and told him to get the money or they would send his head to his wife and take care of her too. They warned him not to do anything stupid if he wanted to live. They left him near a metro station. It was very late so he caught a taxi home. He told his wife that he had lost some jewellery and had a fight. He did not tell her the truth as he did not wish to ruin his family. His sons saw him the next morning and he told them the same.

11. He subsequently met them, and indicated he could only pay \$10,000, but the men refused to accept this. He was hit on the head and shoulder and released.

12. Mr. A. then met up with the men bringing \$20,000, on or about the 27th January 2019. They were unhappy that he had not brought the full sum and knocked him unconscious and kidnapped him detaining him in a basement for a few days. He was violently assaulted and beaten during that time. He was hit in the head and lost consciousness. After regaining consciousness, he found himself in a basement chained with handcuffs and his legs were tied. The assailants poured water into his face and beat him. He lost and regained consciousness several times. He did not know how many days had passed.

13. After his release, Mr. A. went to the police and gave a statement and explained what had happened to him. The following day he was to attend again at the police station. He flagged a taxi, a Toyota Prius silver car to get a lift. However, the driver was in fact one of his assailants and was aware that he had made a complaint to the police. The driver stopped the car and men came out of a Vito car that stopped behind it, dragged him out of the taxi, pulled him into the Vito car and threatened him with a gun and then hit him over the head, leading him to lose consciousness.

14. When he regained consciousness, he found himself in the same basement where he had been detained previously. He was again beaten and his assailants showed him a copy of the statement which he had given to the police. They again demanded money. Mr. A. explained he did not have the whole sum but offered them \$10,000. He was released on the condition that he would bring that sum to them the next day, which he did.

15. Mr. A. did not attend hospital or seek medical treatment, his wife cared for his injuries.

16. His teeth were broken by his assailants and he got them fixed.

17. On the 25th April 2019, one of the men who had attacked him, was travelling in a Vito car with three other men, came to Mr. A.'s home and asked him to bring a package from Turkey to Georgia and to pay a fine. He refused to tell Mr. A. what was in the package. Mr. A. did not know what to do and received numerous phone calls from these men from the Vito car demanding that he comply with his request.

18. Mr. A. travelled to Lithuania to purchase a car as part of his business. When he returned from Lithuania, he travelled straight to his son's home and confessed to his wife and family that he had become involved with criminals as a result of an affair. He sought the advice of a friend who was working with the police, and it was suggested that he go into hiding. Mr. A. and his wife went into hiding then in Rkoni village.

19. After a month and a half in hiding, his friend contacted him and advised him that the trouble they were in was serious and that they would need to leave Georgia.

20. Mr. A. and his wife fled Georgia, departing on the 10th August 2019, and went to France before coming to Ireland. They sought asylum on the 24th January 2019, when they arrived in Dublin Airport.

21. The summary of the incidents was set out in the following terms and confirmed by the first named applicant as being correct, at q.31 of the s. 35 (12) report (see internal p. 7 thereof):

"Q. 31 -To summarise the incidents:

You were confronted at Z's home on the 24/01/2019. You were released the same day, beaten and robbed.

About three days later you were called, met them at the house of one of the men, were assaulted and let go.

About three or four days later on 24/01/2019 you paid 20,000, were abducted and kept for several days. You were released and helped by the police.

The next day you were kidnapped trying to go back to the police station. You were kept for two days approximately. You brought 10,000 to them the next day.

The next time you saw them was on the street in April when they told you to deliver a package. After that your contacts with them were by phone.

A - Yes."

22. In the applicants' Statement of Grounds, the following, *inter alia*, is pleaded with regard to alleged failures on the part of the IPO and, subsequently, IPAT:

"27. At interview, the IPO did not suggest or request that the applicant get documents from the facility where he received treatment on his teeth.

28. At interview, the IPO did not ask for or suggest or request documentation or evidence that the applicant was a car dealer/had his own business.

...

30. The IPO did not in its decision pursuant to s. 39 make adverse findings in relation to the absence of medical documents to support the applicant's account of having his teeth fixed. The IPO did not in its decision complain that the applicant had not evidenced the existence of his business.

...

32. On the 13th November 2020, legal submissions and country reports were sent to IPAT. No further responses were received from IPAT, no request for further information. The applicant was not requested to get medical letters confirming he had his teeth fixed."

Submissions

23. Before proceeding further, I want to acknowledge the assistance given to the court by counsel on both sides and their instructing solicitors. Both parties provided detailed written submissions and made oral submissions with great clarity during the hearing – Mr. Power S.C. and Ms. McKeogh B.L. making submissions on behalf of the applicants, with Ms. Brett S.C. doing so on behalf of the respondents. The great commitment of counsel to their respective clients' cases was wholly apparent and during this judgment I will refer to the principal submissions made. Helpfully, the applicants identified five legal issues for determination by this court and I now turn to the first of these, insofar as it arises in the chronology of relevant events.

Did the respondent unlawfully decide the applicants' international protection application misinterpreting or misapplying section 28(7) of the 2015 Act and/or applying the incorrect standard of proof?

24. It is not in dispute that, *per s. 15(2)* of the 2015 Act, an application for international protection "*shall be made to the Minister*". In the present case the Minister has not yet made any determination concerning the applicant's applications. Part 4 of the 2015 Act is entitled "*Assessment of Applications for International Protection*" and it begins by setting out the following obligation on an applicant to cooperate:

"Duty of Applicant to Cooperate

27.(1) It shall be the duty of an applicant –

*(a) **to submit** as soon as reasonably practicable **all the information needed to substantiate his or her application,***

(b) to co-operate in the examination of his or her application and in the determination of his or her appeal in relation to that application, if any, and

(c) to comply with all of the other obligations under parts 3 to 6 of an applicant in relation to his or her application.

(2) **The information** referred to in subsection (1) **consists of** statements by the applicant, and **all documentation at his or her disposal, regarding the elements, referred to in section 28(3), of his or her application.**” (emphasis added).

25. It will be recalled that a key element of the factual grounds relied upon by the applicants is that they were not asked for documentation relevant to their application. It is uncontroversial to say that a core element of the claim made is that the first named applicant paid substantial sums of money to criminals who kidnapped and beat him. As to the source of this money, the first named applicant claimed that he worked as a car dealer in Georgia, travelling internationally as part of his business. Another core aspect is that he was beaten so seriously, his teeth were broken and he had to get these fixed. Earlier, I set out, *verbatim*, the pleas made by the applicants to the effect that the IPO did not suggest or request that the first named applicant get documents from the facility where he received treatment on his teeth, or documentation or evidence regarding his car dealer business. The applicants also complained that IPAT did not request him to obtain medical letters confirming that he had his teeth fixed.

26. The foregoing pleas need to be seen in the context of a statutory obligation which imposed a duty on the applicants to submit all information needed to substantiate their applications. From a common-sense perspective, it could not seriously be said that documentation concerning the first named applicant’s international car dealership business was not of relevance to his claim to have paid tens of thousands of dollars to a criminal gang who kidnapped him, beat him unconscious, extorted very large sums of money from him and required him to travel internationally with a package.

27. Given that the applicant claims that his teeth were broken as a result of beatings by criminals, it is self-evident that documents from the facility where he received dental treatment was information highly relevant to the substantiation of the core claim made.

28. In circumstances where, at all material times, the applicants had legal advice and assistance, there is no question of the applicants being unaware of the statutory duty imposed on them *per s.* 27 of Part 4 of the 2015 Act. That is by no means the end of the analysis, however.

29. It is not in dispute that the applicants were furnished with a Questionnaire in their native language of Georgian. This was completed in Georgian and signed on 2 October 2019. A copy of this Questionnaire, translated into English, comprises part of exhibit “GA1” to the first named applicant’s affidavit sworn on 11 May 2021. Bearing in mind that the following instructions to the applicants were given in Georgian, coupled with the availability to them of legal advice, there can be absolutely no doubt that both applicants understood what was required of them, including as regards the supply of all information and documentation. The very first paragraph of the Questionnaire begins as follows:

“INTRODUCTION

1. **This questionnaire is a central part of your application for international protection in the State (Ireland) which you have made to the Minister for Justice and Equality (the Minister) and should be completed truthfully and comprehensively.** While this introductory section provides some general information by way of assistance to you in completing the Questionnaire, you are advised that before completing this questionnaire:

(i) you should read the accompanying information booklet for applicants for international protection, and

(ii) seek legal advice. Contact details for the Legal Aid Board (LAB), which assists applicants for international protection, are contained in the Annex to the information booklet for applicants for

international protection. You may also use the services of another legal representative at your own expense..." (emphasis added)

30. Paragraph 11 of the Questionnaire states the following:

*"11. Please **make sure that you provide all information relevant to your application** in this questionnaire. **Give as much detail as possible, and provide any personal papers, identification documents, photographs or other documents which support your statements.** ..."* (emphasis added)

31. Two comments seem appropriate in relation to the foregoing. First, this comprises an explicit request that an applicant provide all information relevant to their application. Secondly, it is clear from the non-exhaustive list set out at para. 11 that the request for all information includes a request for any documents capable of giving independent support to the account proffered by an applicant. In other words, the request is not simply directed at eliciting a narrative account of what is said to have occurred. Rather, the non-exhaustive list comprises documents with an independent existence, separate to a narrative account. To put it another way, "*identification documents*" or "*photographs*" are plainly of an entirely different order to, say, a first-person narrative of what is said to have occurred. The former have an *objective* aspect, as opposed to a *subjective* account created for the purposes of making a claim.

32. The foregoing proposition seems to be, at least tacitly, accepted by the applicants in the present case. I say this, having regard to the averments made by the first named applicant at paras. 7 and 8 of his 11 May 2021 affidavit grounding the present proceedings:

"7. On receiving the decision of the International Protection Appeals Tribunal, I consulted with my legal advisors and was advised of the adverse credibility findings made therein. I say that I worked selling and purchasing cars when I was living in Georgia. After consulting my solicitor I contacted my son D.A., on or about the 30th April 2021 and he went to my old home and obtained some of my files and records and scanned them to me, sending them to me by email, including documents used in my tax declaration, my tax registration and the certificates of sale from the purchase and sale vehicles (sic). The documents I have are mainly in Georgian. Due to the time constraints and also financial constraints I have not yet had them translated. I beg to refer to true copies of my tax registration, my tax declaration, translations of same, and true copies of the certificates of sale and purchase for cars I sold and purchased upon which pinned together and marked with the letters and number "GA 5" I have signed my name prior to the swearing hereof.

8. I say I attended dentist Leila Botchorischvili in order to repair my teeth after I was beaten by the thugs who are the source of my problems in Georgia. The dentist's office is Building 8, Mukhiani Md 4a, Tblisi. I was never asked by the IPO or IPAT about the name and address of my dentist. My son D.A. has tried to contact the dentist's office, however he advised me it is closed until the 12th May due to the Georgian Easter celebrations and I have been unable to obtain any letter confirming my attendance at that office or the treatment I received to date."

33. Several comments seem appropriate to make in light of the foregoing averments, particularly when contrasted with the contents of the International Protection Questionnaire which was furnished to the applicant. First, he was, without doubt, asked in the said questionnaire to provide all information relevant to his application, including documents capable of giving it independent support. It seems clear from the averments made by the first named applicant in May 2021 that when he submitted his Questionnaire in October

2019 he could have obtained, but chose not to obtain, documents which he now claims to be supportive of his international protection claim.

34. I say the foregoing, in circumstances where the first named applicant has not averred to any impediment which prevented him from contacting his son, D., and asking him to obtain and scan to the applicant his "*files and records*" which the applicant describes as "*including documents used in my tax declaration, my tax registration and the certificates of sale from the purchase and sale [of] vehicles*". Similarly, no averment is made to the effect that there was anything which prevented the first named applicant from contacting his son in August, or September, or October 2019 and asking him to contact the applicant's dentist.

35. The temporary closure of a dentist's office due to a particular celebration in May 2021 provides no conceivable impediment concerning the making of a request in August, or September, or October 2019. Furthermore, the applicant, in an affidavit sworn on 11 May 2021, identifies his dentist, by name and with reference to the office of a dental practice. This information was not previously provided by the applicant, be that (a) on the International Protection Questionnaire; (b) orally, at interview; or (c) in written submissions to IPAT in the context of the appeal.

36. It also seems fair to say that, had the applicant sought the documentation which comprises his exhibit "GA 5" either (i) between his arrival in this State on 24 August 2019 and the submission of his International Protection Questionnaire on 2 October 2019; or (ii) between 2 October 2019 and 3 January 2020, when his solicitor furnished the IPO with legal submissions on his behalf; or (iii) between 6 August 2020, when the applicant received a refusal of his international protection application, and 13 November 2020, when his solicitor submitted legal submissions to IPAT in the context of his appeal, there would have been ample time for the documents, which the applicant plainly regards as relevant to his claim, to be translated from the Georgian language into English.

37. It also seems fair to say that the averments made by the first named applicant in his affidavit of 11 May 2021 and the documents which he exhibits at "GA 5" recognised the fundamental distinction between, on the one hand, a first-person narrative of what is said to have occurred and, on the other, documents capable of providing independent support to first-person statements, of the type sought by the IPO at para. 11 of the Questionnaire. It is a matter of fact that, when submitting his Questionnaire, the applicant did not provide any documentation which, in objective terms, concerned his business, such as (a) his tax registration; (b) his tax declarations; and/or (c) certificates of sale and purchase in respect of cars sold and purchased in the context of his business, all being documentation which was referred to, for the first time, in his 11 May 2021 affidavit. By contrast, the only documentation said to relate to his business, which was furnished with the Questionnaire, comprised a photocopy of the applicant's passport containing numerous visas and the applicant's assertion that: "*I was an individual entrepreneur, auto dealer. I took cars from Europe and sold them in Georgia and other countries on re-export*" (see Questionnaire part 6, q. 43a)

38. Counsel for the applicant submits that the foregoing sentence "connects" the various dates on the applicant's passport with his international car business. That is, of course, an assertion the applicant makes but, in objective terms the sentence does not do so. In other words, there is no objective relationship between (i) a list of travel dates and (ii) the assertion made by the applicant in his IPO Questionnaire of his involvement in a specific business of a particular type. Things would be otherwise if the applicant furnished, along with his Questionnaire, documentation concerning, say, registration with Revenue and proof of car purchases and sales in Georgia and internationally (being the very information he says he got his son to obtain in May 2021). No

such evidence was, however, before either the IPO or IPAT. This is notwithstanding the fact that it was, without doubt, asked for. I say this having regard to the contents of the Questionnaire to which I now return.

39. The importance of (i) providing all relevant information, including all documentation which might assist an applicant's claim and (ii) the specific requests for same can also be seen from the following paragraphs in the Questionnaire which was provided to the applicants: -

"12. Please do not leave any questions blank or unanswered in this Questionnaire.

Instead, say "none" or "not applicable" where appropriate.

It is important that you fully complete all the sections in the Questionnaire.

13. Providing all relevant information at this stage will greatly assist the IPO and the Minister in considering your application for international protection. **If you do not mention something relating to the claim in the Questionnaire but seek to rely on it later, it may damage the credibility of your claim.**

. . .

17. Following your interview, the IPO will make a recommendation to the Minister on your application for international protection. The recommendation will be based on a factual and individual assessment of all information relevant to your case. This information includes the statements and documents provided by you as well as general information on conditions in your country of origin or country of former habitual residence. If you are a citizen of more than one country your claim in relation to each country will be considered.

18. You must be truthful and accurate in the information you provide. Inconsistencies between the information that you provide in this Questionnaire and your answers at interview, or other information or representations that you provide, may raise questions about the credibility of your claim. This may result in the refusal of your application or any dependant(s) claim(s). Equally, **if you do not mention information relating to your claim and any dependent's claim of which you are aware at this stage, but you seek to rely on that information later, there is a possibility that the credibility of your claim may be affected.**

. . . .

20. It is important that you fully understand the instructions for completing the Questionnaire and the questions contained in it. If you do not understand something, please seek legal advice.

21. In summary, when you have read the Questionnaire carefully: -

(i) **It is important that you answer all of the questions in this Questionnaire fully and truthfully.** If necessary, please use additional pages to detail further relevant information. Do not forget to include your Person ID number and ensure that you number, date and sign any additional pages submitted.

(ii) This is an important legal document. If you provide false or misleading information or withhold information in the Questionnaire (or at any other stage), this may have a negative effect on the credibility of your application and lead to it being refused.

(iii) **If you wish to lodge documents in support of your application, they should be obtained and submitted as soon as practicable** but in line with the time scales outlined by the International Protection Office or in the information booklet for applicants for international protection. **If you intend to seek documents from your country of origin, you should do so immediately.**

(iv) Any medical evidence in support of your application should be submitted without delay.

(v) All documents that you intend to rely on for your application should, if possible, be submitted before your interview.

(vi) All your travel/identity documents and any other documents relevant to your application that you have in your possession, or have the power to procure, should be submitted with this Questionnaire". (emphasis added)

40. It is useful to pause at this juncture to observe that, in the foregoing manner, the applicants were asked, in the clearest of terms, to submit *all* relevant information and documentation and, with regard to documents from their country of origin, this should be sought *immediately*. Furthermore, each applicant was told that any medical evidence in support of their application should be submitted without delay; and that any documents relevant to their application within the applicants' power to procure should be submitted with the Questionnaire.

41. Despite the foregoing, the applicant submitted no medical evidence despite, it seems, knowing his dentist's identity and workplace and making, only in May 2021, a single attempt via the applicant's son in Georgia, to contact the dentist's office to obtain a letter confirming attendance at the dental practice and the treatment received. That single attempt was apparently unsuccessful but no averment is made in relation to any further attempt.

42. In addition, and despite the numerous exhortations in the Questionnaire, the applicant submitted no commercial, tax or other documents concerning his international car business, despite the fact that no difficulty with obtaining same appears to have been encountered by his son who attended the applicant's home in Georgia on 30 April 2021, obtained some of the first named applicants "*files and records*", scanned them and forwarded same to the applicant by email.

43. It is uncontroversial to say that, wholly unlike a judicial process - where two sides to a dispute proffer evidence which is tested, resulting in a determination having regard to the applicable legal provisions and principles - there is only one 'side' who proffers evidence where an applicant seeks international protection. Hence, the emphasis laid in the Questionnaire on the importance of all information including all documentation being provided which might corroborate or support the application in question.

44. As a matter of first principles, a narrative account provided by a family member which, to a material extent, relies on what the applicant for international protections says occurred, is of an entirely different order to documents which might provide objective support for statements made by an applicant. In the present case, the first named applicant's Questionnaire was accompanied by statements made by his two sons. Neither witnessed any of the events comprising the first named applicant's narrative. The same is true in relation to the second named applicant, his wife.

45. It is not in dispute that the IPO Questionnaire, and the attachments to it, was before IPAT and was considered by the first named respondents in the context of the appeal which IPAT determined. That such an appeal, although 'paper - based' constituted a *de novo* hearing is not in doubt. As to the information given by the first named applicant in the Questionnaire, it included *inter alia* the following.

46. As regards his education history, the first named applicant indicated in response to "Q. 15" that, having left secondary school in June 1988, he qualified as a "*lawyer - economist*" in 1996, having attended "*Tbilisi Institute of Law and Economy*".

47. With regard to his work history, the first named applicant indicated, *inter alia*, in response to "Q. 20", that for a seven – year period, i.e. 1996 – 2003, he was "Chief Inspector of Criminal Investigation" in the "Ministry of Internal Affairs of Tbilisi", following which he worked as an "Entrepreneur Auto – dealer", from 2003 to 2019.

48. Part 5 of the Questionnaire is entitled "Documentation" and it begins in the following terms: -

*"You should submit with this Questionnaire **all available documents** potentially relevant to your application for international protection and permission to remain in the State. Original documents should be submitted if available.*

Examples of documents that you should submit with your application include: -

- *Your passport, national identity card, travel documents, driver's licence.*
- *Birth, death, marriage/civil partnership certificates, school records, any educational certificates.*
- *Correspondence or membership cards for organisations such as political parties/groups/unions/clubs or other groups.*
- *Correspondence/warrants from the police/authorities.*
- *Correspondence from your doctor or medical reports from Ireland and your country of origin/country of former habitual residence.*
- *Any other documents relevant to your application such as phone or **bank records** or any documentation relating to your past immigration history.*

*You should obtain any documents on which you will rely for your application and **forward such documentation immediately** to the International Protection Office upon receipt.*

If you intend to rely on medical evidence, obtain it without delay and submit it to this Office immediately upon receipt. Withholding documents at this stage may have a negative effect on your credibility and disadvantage your claim (potentially leading to the refusal of your application).

This Office should receive any documents at least three working days before your interview date. Please list all the documents you are submitting below. Remember to include your Person ID and your name with any documents you submit". (emphasis added)

49. Despite the applicant claiming to have been severely beaten, hit in his head and rendered unconscious several times, the first named applicant submitted no medical records or reports, his claim being that his wife cared for his injuries. An aspect of his claim is that he did receive dental treatment to fix teeth which had been broken by his assailants. Despite the fact that Part 5 of the Questionnaire makes it explicit that the type of documents an applicant *should* submit includes medical evidence, and that same should be obtained and submitted *immediately*, the first named applicant neither obtained nor submitted anything from his dentist.

50. Furthermore, the non – exhaustive list of examples of documents an applicant *should* submit included *inter alia* "bank records". It is hardly controversial to say that bank records, just like tax records and records of purchases and sales, speak to the generation of and quantum of monetary funds. In the manner explained, the first named applicant chose not to provide any bank or other records which speak to the question of income, despite a core aspect of his claim being that he was in a position to pay extremely large sums of money extorted from him by violent criminals.

51. In the manner averred by the first named applicant, it appears that he asked a son who was resident in Georgia to obtain *both* evidence concerning his dental treatment and evidence concerning his business. This was, however, sought for the first time, in 2021, in the context of the present proceedings. Given the contents

of the Questionnaire and how clearly it was brought to the applicant's attention that all potentially corroborative information and documentation should be submitted at the earliest stage, it is impossible to understand why the applicant did not do so 2 years earlier, in 2019, in the context of his international protection application and only sought to do so for the first time, in 2021.

52. Part 5 of the Questionnaire which I have quoted, verbatim, above, is followed, immediately, by "Q. 40" which asks the applicant whether they have any documents to submit in support of their application. The first named applicant 'ticked' the box marked 'yes' and indicated that these documents comprised the following: -

"1.4 additional pages of the Questionnaire.

2. 2 pages of my sons' statements.

3. Driving licence.

4. Marriage certificates.

5. Certificate of church wedding ceremony.

6. Certificate of passing exams.

7. MIAD card.

8. Visas 33 pages.

9. Visas 23 pages".

53. The additional pages of the applicant's questionnaire comprised the setting out of his account, a summary of which is pleaded from paras. 11 – 23, inclusive, of the applicant's Statement of Grounds and which I have already quoted *verbatim*. It is entirely fair to say that his sons' statements are based on what their mother and father, respectively, had told the sons. It is not in dispute that their mother's account of events is based exclusively on what her husband informed her. The only first-hand information in the statements provided by the applicants' sons is as follows. In a statement dated 2 October 2019, the applicant's son MA states *inter alia* that his father had some bruises on his head and body and his face was very swollen. Similarly, in a statement of the same date, the applicant's son DA stated *inter alia* that his father had bruises.

54. It is fair to say that documents 3 to 7, inclusive, as furnished by the first named applicant in response to "Q 40" do not have any direct relationship to the core claim made. Earlier in this judgment, I made reference to visas on the first named applicant's passport. Documents 8 and 9, as submitted by the first named applicant, comprise a photocopy of numerous pages from his passport. Other than comprising dates (the earliest of which appears to be 03.07.04 and the latest of which appears to be 07.01.19) the copy passport visas, in objective terms, evidence nothing other than travel, or permission to travel on the relevant dates, and are entirely silent as to the *purpose* of such travel.

55. Having provided only the foregoing documents, despite being repeatedly called on, in the Questionnaire itself, to provide all relevant information and documentation, "Q. 42" in the Questionnaire appears in the following terms: "42. If you do not have documents, or cannot obtain documents, please explain why."

56. The first named applicant gave no information whatsoever in response to Q. 42. The answer was left 'blank', despite the Questionnaire having called upon the applicant, in the clearest of terms, to answer "every" question. It is entirely fair to say that Q. 42 explicitly called upon the applicant to explain why he did not have or could not obtain any other documents of potential relevance to his application. It is a statement of the obvious that if there was an explanation as to why the first named applicant did not have or could not obtain documents (be they related to his business or to his dental treatment, or otherwise) that explanation could and should have been given in response to Q. 42. It was not.

57. The context was, of course, a claim made by the first named applicant that, in response to a demand for US \$50,000 by men who kidnapped and beat him in January 2019, he paid them US \$20,000 on 27 January 2019 and later paid a further US \$10,000. Common sense suggests that any business capable of generating income which enabled the applicant to make these payments was both a successful business and one in respect of which some records existed. No records were produced. No explanation was given as to why. No effort seems to have been gone to with a view to sourcing records until after these proceedings were brought.

58. Part 6 of the Questionnaire is entitled "*Visa, residency and other travel information*" and, in response to "Q. 43(a)", the first named applicant set out numerous dates reflecting the visas in the copy passport furnished. In the manner discussed earlier, the list of travel dates is followed by: "*I was an individual entrepreneur, auto dealer. I took cars from Europe and sold them in Georgia and other countries on re-export*".

59. I reject the submission that the foregoing sentences which purportedly "connect" travel dates with the applicant's business, comprise "documentary or other evidence" supporting aspects of the first named applicant's claim. Similar comments apply in relation to statements made by the second named applicant and by their sons. Earlier in this judgment, I commented on the very obvious distinction between, on the one hand, documentary or other evidence which provides objective support for an application as opposed to a narrative account by an applicant of what is said by them to have occurred. Similarly, a narrative account provided by a close family member, particularly where such an account relies largely on what an applicant told them, does not amount to documentary or other evidence capable of supporting the first named applicant's claim.

S. 28 (7) of the 2015 Act – documentary or other evidence

60. In my view, what the applicants contend to be "documentary or other evidence" is not at all what s. 28(7) contemplated. For the sake of clarity, it is appropriate at this juncture to set out what s. 28(7) provides:-

"[28] (7) Where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation where the international protection officer or, as the case may be, the Tribunal, is satisfied that—

- (a) the applicant has made a genuine effort to substantiate his or her application,*
- (b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given,*
- (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case,*
- (d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so, and*
- (e) the general credibility of the applicant has been established".*

61. As regards s. 28(7) the Tribunal found that it could not assist the first named applicant in circumstances where his general credibility had not been established. In my view, that decision was made lawfully. Without for a moment purporting to act as decision-maker, it can also be said that the evidence before this court indicates that s. 28(7)(b) was not satisfied. That subsection states: "*all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given*". In the manner examined, there was no explanation given in respect of the absence of documentary evidence. An explanation was certainly called for at "Q. 42" of the Questionnaire, but the first named applicant chose to leave it 'blank' (as regards *documents*). Similarly, the applicant chose to leave

'blank' the response to "Q. 67" of the Questionnaire (concerning *medical treatment and medical evidence*). Furthermore, despite the IPO flagging "*lack of evidence*", in particular, lack of documentary evidence, in the first of its four headings in setting-out reasons for rejecting the first named applicant's credibility, neither documentation, nor any explanation, was put before the IPAT.

62. At para. 11 of the applicant's written submissions it is contended that the first named applicant provided an account which to some material extent was "*supported by the documents submitted by him and by his wife's account of matters she witnessed.*" Based on the foregoing, the applicants go on to submit that s. 28(7) does not apply if statements are supported by documentary or other evidence. In the present case, other than saying that she witnessed injuries, the second named applicant's account depends entirely on what she was told by the first named applicant. She witnessed neither the cause of the injuries nor any of the events which are said by the first named applicant to have occurred and to give rise to his fear. There was a difference between material which (i) *supports* a version of events and (ii) material which is *relied on* by an applicant. The former speaks to independent and objective consistency, corroboration or the possibility thereof. The latter speaks to an applicant's subjective dependence on the material in furtherance of a claim.

63. To take a concrete example, had the applicant submitted a report by his dentist confirming that he received dental treatment to fix broken teeth, this would give objective support to his assertion that his teeth were broken and had to be fixed. The foregoing seems to me to be the type of documentary or other evidence capable of *supporting* aspects of the first named applicant's statements (in the sense used in s. 28(7) of the 2015 Act). By contrast, visas on a passport do not objectively evidence or support the reason why someone travelled. Still less do they support, in objective terms, an assertion that the traveller was engaged in a *particular* business, or *type* of business or, for that matter, the *profitability* of such a business and the extent to which such a business would provide the *source* of tens of thousands of Euro which an applicant claimed to have available, but not held in a bank.

64. A bald assertion that an applicant is engaged in the business of selling cars internationally does not convert the passport visas to objective evidence supportive of the applicant's account. Plainly they are relied upon in *subjective* terms by the applicant, but they are not *objectively* supportive of aspects of the applicant's statements.

65. As provided for in s. 35 of the 2015 Act, the first named applicant was interviewed in person with the assistance of a named interpreter and a copy of the report pursuant to s. 35(12) of the 2015 Act comprised part of the exhibits before the court in these proceedings. Among other things, the first named applicant confirmed, in response to "Q. 2" in the said report that he was satisfied that the content of his Questionnaire was true and accurate. Q. 4 to Q. 6 and the answers thereto were as follows (see internal page 2 of the s. 35 report):

"Q. 4 – Do you have any documents with you today which would establish your identity or which you feel would support your claim for international protection?

A. – No. I do not have a passport, I left it in France and I got it sent to Georgia from France. I came here with a Slovakian ID. I have my driving licence in my room at home.

Q.5 – Do you understand the importance of supplying all the relevant information and documentation at this time to allow the authorised person investigating your claim for international protection to make a fair assessment on your international protection claim?

A. – Yes.

Q.6 – *It's important that you answer my questions directly and if you don't understand please let me know and I can rephrase, do you understand?*

A. – Yes.”

S. 39 Report

66. Section 39 of the 2015 Act requires that a report be prepared following the examination of an applicant for international protection and an 18 – page, s. 39 report concerning the first named applicant, comprises one of the exhibits to his affidavit. Internal pages 3 and 4 list the “*Documentation*” submitted by the applicant and there is no question of the applicants or either of them having submitted any documents which were not referred to in the s. 39 report which states, at the top of page 4, that “*All of the documentation provided by the applicant (including the documentation listed above) has been fully considered.*”

67. Part 5 of the s. 39 report is entitled “*CREDIBILITY*” and it is made clear, at the outset, that all documentation and representations furnished by or on behalf of the applicant were considered. The International Protection Officer also stated that the applicant’s credibility was assessed in accordance with s. 28 of the 2015 Act. The first named applicant’s Georgian nationality, Orthodox Christian religion, marital and paternal status were accepted for the purposes of the report. Section 5 then proceeded as follows:

“The Applicant was assaulted and harassed by a gang in Georgia.

The Applicant’s lack of evidence.

68. The applicant stated at interview that his problems started in January 2019. He stated that he was assaulted violently a number of times. He stated that he was kidnapped and held for multiple days twice. He stated that after being released for the final time in or around early February 2019, he spent several months recuperating from his injuries. He stated that his belongings were stolen, and he was forced to hand over \$30,000 in two payments (S 35 Q 14 p 3-5).

69. The applicant was asked if he had obtained any form of medical treatment following his kidnappings and beatings. He responded: “*No. my wife helped me. My teeth were broken and I got them fixed*”. (S 35 Q 36 p 7). It is not considered credible that following multiple instances of being rendered unconscious, having his teeth knocked out, being tied up in a cellar and detained for days and beaten, the applicant required no medical treatment of note. The applicant was asked if he had any evidence of the matters he had discussed at interview. He responded: “*how?*” (S 35 Q 43 p8). It was put to him that he had stated that he had made substantial payments to these men and it would be expected that he had records of payments that large. He responded; “*I had money. From my business. We did not put it in the bank. My grandchild was born and I had to leave. My wife had elderly parents and she left. Her mother passed away after she left. My wife did not leave me*” (S 35 Q 44 p 8). This does not effectively answer the question asked. It is not considered credible that the applicant would retain no evidence of such substantial sums of money.”

70. It is perfectly clear from the foregoing that “*lack of evidence*” was not a new issue raised by IPAT in its decision on appeal. It is equally clear that, of the two issues which the s. 39 report raised under the “*lack of evidence*” heading were the self-same issues of concern to IPAT as will become clear when I look at the appeal decision, namely, lack of evidence in relation to dental treatment which the applicant claims he underwent after receiving beatings where his teeth were broken; and lack of evidence in respect of the applicant’s business which, on his account, enabled him to pay very large sums of money to the criminals who kidnapped him, beat him and extorted this money from him.

71. Section 5 of the s. 39 report proceeded to analyse the applicant’s claim under three further headings namely “*The Applicant’s lack of knowledge about his persecutors*”; “*The Applicant’s failure to seek assistance*”;

and “*The Applicant’s decision to return to Georgia*”. Having conducted this analysis, the s. 39 report stated that the applicant’s account of being assaulted and harassed by a gang in Georgia was not accepted as a material fact.

72. It is common case that, despite appealing the IPO’s recommendation and making submissions to IPAT, no additional documentation was provided by or on behalf of the applicants with regard to either (i) the first named applicant’s business which, on his account, was the source of the \$30,000 paid by him; or (ii) the dental treatment needed to fix his teeth which the criminals broke when beating him.

IPAT’s 9 April 2021 decision

73. IPAT’s decision dated 9 April 2021 records *inter alia* the documents relied upon by the appellant, and these are listed at para [2.10] of the decision. This list includes, *inter alia*, the copy of the first named applicant’s Georgian passport (including the Visa stamps thereon) as well as the copy statements made by his two sons, in addition to the legal submissions made, both to the IPO and to IPAT. The decision records that “*All of the documentation provided has been fully considered*”.

74. At para. [4.10], country of origin information is considered and the Tribunal concluded, at para. [4.11] that the first named applicant’s claim did not run counter to available general country of origin information, going on to state that there are criminal gangs active in Georgia who engage in violence. It is appropriate to set out *verbatim* and in full paras. [4.12] to [4.32] inclusive of the decision which is challenged in the present proceedings:

“[4.12] *Whether the appellant has made a genuine effort to substantiate his or her application and all relevant elements at the applicant’s disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given.*

At the s. 35 interview, the appellant was asked whether he had any evidence of these events. It was noted that the appellant made two payments to the men in the amounts of \$10,000 and \$20,000. The appellant replied:

‘I had money. from my business. We did not put it in the bank. My grandchild was born and I had to leave. My wife had elderly parents and she left. Her mother passed away after she left. My wife did not leave me.’ (Q 44, s. 35)

[4.13] At the s. 35 interview the appellant was asked whether he received any medical treatment in respect of the beatings and abductions he suffered. The appellant replied:

“No. My wife helped me. My teeth were broken and I got them fixed”. (Q. 36, s.35)

[4.14] The IPO found that it was not credible that following multiple instances of being rendered unconscious, having his teeth knocked out, being tied up in a cellar and detained and beaten for days that the appellant required no medical treatment of note (pg 7, s 39). The IPO also found that it was not credible that the appellant would retain no evidence of such substantial sums of money (pg 7, s 39).

[4.15] In submissions, counsel for the appellant has submitted that the appellant stated that the money was from his business and the IPO conclusion that all victims would document and record evidence of their blackmail payments is unreasonable conjecture. Counsel also submitted that the IPO failed to put the negative credibility finding in respect of medical treatment to the appellant and that the finding is speculative. It was contended that the lack of medical treatment is consistent with the shame felt by the appellant.

[4.16] *The Tribunal does not accept that a satisfactory explanation has been provided as to the absence of any documentation to support the appellant's claim. It is entirely reasonable to expect that if the appellant were able to source \$30,000 to make blackmail payments that there would be no (sic) evidence of the fact or source of this money. This is a very significant amount of money and the Tribunal would expect some documentation demonstrating that the appellant had such sums available to him. The appellant has submitted that it was from his business however there is no evidence before the Tribunal as to the existence of the appellant's business whatsoever.*

[4.17] *Counsel for the appellant has submitted that the IPO breached the principle of audi alteram partem by failing to put questions in respect of the appellant's medical treatment to him. This appeal is a de novo hearing where the appellant was provided with an opportunity to provide any further supporting submissions or evidence he chose to furnish. No medical documentation has been provided to the Tribunal. The appellant is on notice since the s. 39 report of the negative credibility findings made by IPO in respect of this issue. It is reasonable to expect that if an individual received beatings such that their teeth were broken that there would be some supportive documentation to show how this event occurred. The appellant stated that he had his teeth fixed but no such evidence has been submitted to the Tribunal and no explanation for its absence has been provided."*

75. It is appropriate to pause at this juncture to say that the foregoing findings by IPAT represent, on any common-sense analysis, reasonable and rational findings which legitimately flow from the evidence which was before the Tribunal in the context of the process conducted. There was no question of IPAT criticising the first named applicant for failing to keep a record of money handed over to blackmailers. Rather, the entirely reasonable observation was made that someone in a position to source \$30,000 to pay to criminals could be expected to have evidence for, *inter alia*, the source of that money. I reject the submission that a collection of travel dates in the form of visas on a passport constitutes documentary evidence of the first named applicant's business. On any common-sense view, visas on a passport go no further than evidencing *travel* or permission to travel, not the *purpose* of such travel. They are very far away from evidencing, say, (i) the particular *business* engaged in by the traveller; (ii) how *profitable* that business might be; or (iii) the ability of the business owner to accumulate large *cash* sums. The assertion made by the first named applicant that he buys and sells cars internationally does not convert either the visa travel dates, or his assertion, into evidence as to the existence of his business or the profitability thereof or the source of the substantial sums which he maintains were extorted from him.

76. It is also perfectly clear that, in circumstances where the IPO reached negative credibility findings under four separate headings, the first of which was "*the applicant's lack of evidence*", that there was no breach of the *audi alteram partem* principle. This is in circumstances where, in the manner examined earlier, the first two aspects of the applicant's lack of credibility addressed in the s. 39 report concerned lack of medical treatment, in particular, lack of evidence of dental treatment, as well as the lack of records concerning the first named applicant's business, in particular, regarding substantial sums of money. It will also be recalled that Q. 2 in the applicant's Questionnaire made it crystal clear that if he did not have documents, or could not obtain documents, he should provide an explanation as to why this was the case. He provided none. Thus, the findings by the first named respondent were not irrational, unfair or unlawful. The applicant had every opportunity to provide such documentary or other evidence supportive of his claim. The reality is that there was not "documentary or other evidence" to "support" the first applicant's claim. Plainly, there was documentation which *he* relied upon but, on any common sense analysis, none of the documentation or

evidence relied upon by the applicant provided objective support in respect of any core aspect of the first named applicant's claim.

77. The first named respondent did not apply s. 28(7) to mean, in the absence of any element thereof, that the applicant's applications axiomatically failed. The evidence before the court does not establish anything like this. The findings made by the first named respondent, including at para. [4.16], were lawfully reached. With respect to s. 28(7) it is appropriate at this juncture to refer to a relatively recent decision by Ferriter J. in his 23 November 2021 judgment in *Morchiladze v IPAT & Ors* [2021] IEHC 732.

78. It is fair to say that there are a number of similarities insofar as the facts in *Morchiladze* and the present case are concerned. Just as in this case, the applicant in *Morchiladze* was a Georgian national who sought international protection and who claimed to be in fear of attack and serious harm from non-State actors. The applicant in *Morchiladze* also appealed an adverse decision by the IPO and, in refusing the appeal, IPAT noted that the applicant had not furnished any documentation to vouch any aspect of a number of claims made including, *inter alia*, that he had established business ventures and that he had authority from the Georgian authorities to import vehicles.

79. At para. 16 of his judgment, Ferriter J. noted that matters in respect of which no documentation was provided were matters which went to the core contention made by the applicant in support of his application for protection. Although the core contention in the *Morchiladze* claim was that the applicant feared for his life because of threats made by creditors arising from his failed business ventures, the issues in the present case, in respect of which no documentation was provided, are no less central to the first named applicant's claim. Having quoted s. 28(7), Ferriter J. stated the following, at para. 26:

"26. This provision was described by counsel for the respondents as a 'lifeboat provision' for an applicant in circumstances where it permits the acceptance by the IPO or Tribunal of an applicant's statements not supported by documentary or other evidence if the various statutory conditions in s. 28(7) are satisfied, i.e. it provides for an exemption from the normal rule to the effect that statements of the applicant may not be accepted if they are not supported by documentary or other evidence."

80. Any fair and objective reading of the entire of the Tribunal's decision reveals that there was no misapplication of s. 28(7). What Ferriter J. said of the applicant in *Morchiladze* at para. 27 of his judgment can also be said of the first named applicant in the present proceedings, namely:

"27. At each relevant stage of the process (AIPQ, IPO section 35 interview, notice of appeal, appeal submission stage) opportunity was given to the applicant to provide documentation in support of his claims. The applicant had the benefit of legal advice at appeal stage. However, the applicant never at any stage in the process submitted any documentation to substantiate his claim, notwithstanding that it might be expected that core elements of his claim would be readily capable of documentary substantiation..."

81. In the present case, it seems clear that the first named applicant took the view, but only as of May 2021, that core elements of his claim are capable of documentary substantiation (in the form of his tax declaration; tax registration; certificates of sale concerning the purchase and sale of vehicles; and a letter confirming his attendance at or treatment received from a dentist identified as Leila Botchorischvili). However, the applicant chose not to provide any such documentation to IPAT, notwithstanding the fact that he was very clearly on notice that the absence of such evidence was a material element in adverse credibility findings reached by the IPO. It also seems to me appropriate to quote *verbatim* para. 34 from the court's decision in *Morchiladze*: -

"34. Finally, I do not accept the applicant's submission that the tribunal should have stopped its deliberations and invited submissions from the applicant on the question of its proposed finding that it was not credible that the applicant would not be in a position to furnish some proofs so as to help him support his claims. Such an approach would fly in the face of the obligation on the applicant, which was clearly highlighted at every stage of the process, that he should furnish any documentation he wishes to rely on to support his claim."

The foregoing statements apply equally to the applicants in the present case. Regardless of the differences in the underlying facts as between *Morchiladze* and those in the present proceedings, the fundamental principle is equally applicable. Moreover, the views expressed by Ferriter J. in *Morchiladze* clearly support the approach taken by IPAT in the present case. Regardless of the fact that the appeal to IPAT was a papers – based appeal, the principle is the same. In the present case IPAT had no obligation to halt its deliberations and to invite submissions with respect to the adverse credibility findings it proposed to make. For the reasons explained in this judgment, the applicants were very well-aware of their obligations insofar as proffering information including documentary evidence. They were also aware of the issues upon which adverse credibility findings had been made by the IPO. In short, there was nothing new raised or relied upon by IPAT. All arose from information given, or not given, by the applicants, in particular the first named applicant, throughout the international protection process leading up to the appeal conducted by IPAT.

82. Why the applicant chose not to furnish documentary or other evidence substantiating his claim is not explained, but it is a fact. It also seems entirely fair to say that, insofar as the first named applicant avers to having a tax registration in the context of purchasing and selling cars, it is reasonable to expect that documents such as bank accounts would also exist, at all material times, to substantiate his claim to be in the business of selling cars internationally (which business, according to the applicant, produced the cash used to pay the criminals who kidnapped him, beat him unconscious and extorted money from him).

83. That the applicant had not provided any documentation to support core aspects of his claim and that he had not provided a satisfactory explanation for the absence of such documentation were entirely reasonable, rational and fair findings which flowed from the evidence before the Tribunal. There was nothing unlawful in the process by which the first named respondent reached its findings, including adverse credibility findings.

84. The decision by IPAT continued from para. [4.18] as follows:

"[4.18] Coherency of the Appellant's claim.

The appellant was asked what he feared would happen to him if he returned to Georgia. The appellant replied:

'He threatened me 1000 ways. He said he would cut my head off and send it to my wife. He will kill me and my wife.' (Q. 15, s.35).

[4.19] The appellant was asked who and replied:

"Them. They were Chechens, Kists. I think they were playing, pretending he was that woman's husband. She disappeared after. It was a scam, a big scam." (Q. 16, s.35)

[4.20] The appellant was asked what information he gave to his friend in the police about the people. The appellant stated:

"I do not know their names. I told him I did not know their names but what had happened exactly. I told him the colour of the car and van. I said they had beards". (Q. 20, s. 35).

[4.21] When asked for further details as to what he told his friend, the appellant stated:

"I said they were Chechen or Kist people. He was still working and knew a few people. He said he did not want to tell me too much information as he did not want problems himself and did not want more problems for me". (Q. 22, s. 35).

[4.22] It was put to the appellant that he had provided very little information to his friend to enable him to identify them and advised the Appellant that they were so powerful he needed to leave Georgia. The appellant replied:

"I will explain. It is because when I reported the first time they were there and that is where he found out from. They were tight with the police where they brought me. These people, thought when they left me there they had not, I think they followed me to the police station. I did not know their names". (Q. 23, s. 35).

[4.23] The IPO found that the appellant's lack of knowledge about his persecutors undermined the credibility of the appellant's claim. It was further found that it was not credible that the appellant's police friend could identify this group given the lack of information he provided.

[4.24] Counsel for the appellant submitted that the IPO failed to ask the appellant for the name of his attackers. This submission is rejected by the Tribunal. The appellant was asked on a number of occasions to provide information in respect of the men, including their identities (Q. 16, 20, 22, s. 35). The appellant stated he did not know their names. The appellant was able to say that they had beards and were in their thirties (Q. 35, s. 35) and they took the appellant to an unknown place (Q. 33, s. 35).

[4.25] The Tribunal is not satisfied that the appellant has provided a level of detail consistent with a lived event. The appellant has submitted that he was assaulted and kidnapped by unnamed people who took him to an unknown place. This is a vague account which undermines the appellant's credibility. The Tribunal would expect to (sic) be able to provide more detail in respect of the identities of the individuals who assaulted him in Georgia in the event that these events occurred. The appellant's claim that his friend in the police force was able to identify the men from the scant information given by the appellant is not credible.

[4.26] The Appellant's return to Georgia

The appellant stated at his s.35 interview that he left Georgia in May 2019 and travelled to Lithuania but returned later that month. When asked why he returned, the appellant replied:

"At that time I was not sure if I would take the package. What would I tell my wife"? (Q. 48, s. 35).

[4.27] The IPO found that the appellant's decision to return to Georgia undermined his claim of suffering harm in Georgia and that he was facing further harm (p.g. 9, s. 39).

[4.28] No submission in respect of this point is made in the legal submissions.

[4.29] According to the appellant's account by the time he travelled to Lithuania in May 2019, he had been repeatedly beaten, extorted and asked to engage in criminal trafficking of some sort. The appellant had decided that there was no point reporting matters to the police (Q. 37 and 42, s.35). Yet after leaving Georgia, the appellant elected to return there in May 2019. The Tribunal is not satisfied that the appellant provided a reasonable explanation for his decision to return to Georgia when this issue was put to him at the s. 35 interview and no satisfactory explanation has been provided to the Tribunal. The Tribunal is not satisfied that the appellant's return to Georgia in My 2019 is consistent with the appellant's claim of suffering harm in Georgia or consistent with a subjective belief that he would suffer further harm in Georgia.

[4.30] Conclusion on whether the Appellant was subject to repeated beatings and acts of extortion in Georgia.

The appellant's claim does not run counter to available general country of origin information. The Tribunal is not satisfied that the appellant has provided a satisfactory explanation for the absence of any medical documentation or financial documentation that would tend to support his claims concerning the events in Georgia. The Tribunal is satisfied that the coherency of the appellant's account is undermined by its vague nature especially given the very limited detail the appellant was able to provide in respect of who carried out the assaults and who he is in fear of if he returns to Georgia. The credibility that any of these events occurred is undermined by the appellant's decision to return to Georgia in May 2019. Given the negative credibility findings made and the vague nature of the appellant's claim, the Tribunal is not satisfied that the appellant is generally credible or that he should be afforded the benefit of the doubt. The Tribunal is not satisfied that s.28 (7) of the Act applies to the appellant's claim in the circumstances.

[4.31] The Tribunal is not satisfied on the balance of probabilities that the appellant was subject to repeated beatings and acts of extortion in Georgia given the negative credibility findings made above. This material element of the appellant's claim is rejected by the Tribunal.

[4.32] Conclusion

The Tribunal finds that the following core facts of the appellant's claim have been accepted:

The appellant is an Orthodox Christian Georgian man from Tbilisi, Georgia."

85. Any fair and objective reading of the first named respondent's decision reveals that the entire of the evidence put before it was considered with care and, although the absence of any documentation proffered by the first named applicant such as might provide objective support in respect of core elements of his claim was a material factor in adverse credibility findings, this was by no means the sole basis for adverse credibility findings. As the decision makes clear, other factors included (i) that it was not credible that the applicant's friend in the police could identify the criminals having regard to the scant information provided; (ii) the vagueness in the first named applicant's account; (iii) the applicant's decision to return from Lithuania to Georgia in May 2019, despite his claim that he had suffered harm in Georgia in January 2019 and feared suffering further harm in Georgia.

86. The Tribunal's finding of a lack of general credibility was reached in a lawful manner after very careful analysis. This was an analysis conducted outside of s. 28 (7). Furthermore, for reasons which were reasonable and rational, the Tribunal formed the view that s. 28 (7) of the Act did not apply to the first named applicant's claim. In other words, there was no "lifeboat provision" which could aid the applicant. There was neither an error in fact, nor in law in the application of s.28 (7), in circumstances where the first named applicant's statements were not supported by documentary or other evidence.

87. Although in the Georgian language, the documentation comprising exhibit "5" to the first named applicant's 11 May, 2021 affidavit appears to contain dates including: 29/03/2016; 02/01/2016; 30/03/2016; 29.03.2017; 06.03.2017; 04.01.16; 05.03.16; 23.04.16; 16.05.16; 23.07.16; 07.09.16; 26.12.16; 19.03.2018; 04.03.,2017; 18.03.2017; 26.03.2017; 20.04.2017; 20.05.2017; 16.06.2017; 27.03.2019; 18/01/2019; 15/04/18; 05/08/2019; 05.08.2019; 20.07.2019; 30/08/2010; 2019-08-07; 20.07.2018; 17.11.2018; 09/12/2016; 11/06/2014; 12/06/2014; 12/12/2014; 12/06/2014; 11/09; and 06/16.

88. All of the foregoing pre-date the submission by the first named applicant of his Questionnaire. Furthermore, although these documents appear from the dates on the face of same, that they were in

existence at the relevant time, none were put either to the IPO or, on appeal to IPAT, notwithstanding the fact that the applicant was very clearly 'on notice' of the potential adverse consequences. It is a statement of the very obvious that the documentation which the first named applicant now exhibits cannot assist the applicants in challenging a decision in which these documents played absolutely no part. They played no part because of the choices made by the first named applicant, not because of any error by the first named respondent.

89. It is now appropriate to return briefly to the Questionnaire. Part 7 of the Questionnaire is entitled "*Basis of your application for international protection*", and in response to "Q. 62" therein, the first named applicant has set out an account, a summary of which appears in his statement of grounds. Q. 67 of the Questionnaire and the answer given, is as follows:

"Q. 67 – Have you received any medical or psychological treatments or assessments in Ireland or elsewhere relating to your claim? All medical evidence should be provided as soon as practicable, and preferably before your interview.

90. It is without doubt that this question captured or encompassed any dental treatment undergone in Georgia to fix the first named applicant's teeth which, on his account, were broken as a result of repeated beatings by criminals. Despite the foregoing, the first named applicant left the answer 'blank'. Why this was so is unexplained, but this court is satisfied that it was a deliberate decision on the first named applicant's part. It could not have been otherwise, given the combination of: (i) the statutory duty on the first named applicant pursuant to s. 27 of the 2015 Act to provide all information including documentation; (ii) the very specific terms of the question asked at Q. 67; (iii) the numerous instructions and requests contained throughout the Questionnaire as to the importance of providing full information and all available documentation potentially relevant to the application; (iv) the fact that the Questionnaire provided to the applicant was in the Georgian language; (v) the first named applicant is someone with third-level education who qualified as a lawyer-economist and who also worked as Chief Inspector of Criminal Investigation; and (vi) at all material times the applicants availed of legal advice. Similar comments apply, of course, in relation to what must have been a deliberate decision on the part of the first named applicant not to provide, in response to "Q. 42" of the Questionnaire, any explanation whatsoever with regard to such other documents as he did not have, or could not obtain.

91. A principal submission made on behalf of the applicants was that the relevant International Protection officer could have asked the first named applicant whether or not he was registered for VAT; and to provide the name of his dentist. At the heart of this submission is that the onus lay on someone other than the first named applicant to 'winkle out' information which they, themselves, must have known, but did not provide, notwithstanding (a) their statutory duty to submit all information needed to substantiate their claim (*per s. 27 of the 2015 Act*); and the numerous requests in the Questionnaire to do so.

92. Furthermore, this submission ignores the fact that the first named applicant chose to leave 'blank' the answers to questions 42 and 67 in their Questionnaire. Had they completed, in a fulsome manner, the answers to both of these questions, it would have ensured that information of this nature was given, and I say that particularly in light of the fact that the first named applicant's May 2021 affidavit refers to that very information which, at all material times, appears to have been available but was, inexplicably, not furnished.

93. A related submission was made on behalf of the applicants, with reliance on s.28 of the 2015 Act, which begins in the following terms:

"Assessment of Facts and Circumstances

28.(1) *An international protection officer shall, in co-operation with the applicant, assess the relevant elements of the application.*

(2) *The Tribunal shall, for the purposes of an appeal under section 41 in co-operation with the applicant, assess the relevant elements of the application. ..."*

94. On behalf of the applicants, it is was contended that "*to cooperate is to work jointly towards the same end*" and that "*if the duty to cooperate involved the applicant doing something alone, the term cooperate would not be used*". Implicit in that submission is that the International Protection Officer and the Tribunal, respectively, owe a positive obligation to 'extract' information and documentation from an applicant who (i) had every opportunity to provide same; and who (ii) was fully on notice of their obligation to do so, but (iii) did not take that opportunity. I reject that submission.

95. The facts in the present case are that the applicants were afforded every reasonable opportunity to put to IPAT (and, previously, to the IPO) any and all information and documentation which they wished to proffer. They were exhorted to do so and the importance of doing so could not have been made clearer. It seems to me to offend both the statutory obligation created by s. 27 of the 2015 Act, as well as first principles, to suggest that any duty on the IPO and/or IPAT to co-operate extends further than the taking of the steps which were, in fact taken by them in the present case.

96. Nor should it be lost sight of that an appeal to IPAT is a *de novo* hearing. Although in this case 'papers-based', there was no limitation whatsoever on what the applicant might wish to submit (be that by way of narrative statement; documentary evidence; or anything else) in the context of their appeal. In short, an applicant making an appeal to IPAT is entirely 'at large' to adduce any and all evidence they wish to rely upon. This is of course in the context of the appellants knowing what adverse findings had been made in the decision appealed against and, thus, fully on notice of what 'gaps' information and or documentation could 'fill'. Looking at matters from a common-sense perspective, this included, in the present case, the opportunity either (i) to provide documentation in response to concerns raised by IPAT or (ii) to explain why there was no such documentation or, (iii) alternatively, why there was such documentation, but same was at that point inaccessible or unavailable. Nor is there any question in this case of any documentation not having been considered by IPAT.

97. Having regard to the foregoing, I feel obliged to reject the submission that (i) the applicant should have been told *what* documents to obtain; and (ii) should have been instructed to *obtain* them, with any greater clarity than was, in fact given, to the applicants. I say this for two reasons. First, co-operation *per* s. 28 of the 2015 Act, imposes no such duty on either an International Protection Officer or IPAT. Secondly, the statutory obligation *per* s. 27 of the 2015 Act, coupled with the repeated instructions in the Questionnaire, made it more than clear to the applicant *what* documents he should obtain and the fundamental importance of obtaining them *immediately*.

Standard of proof

98. There is no dispute between the parties as to the fact that the civil standard of proof applies. As O'Regan J. made clear in *M.G. v Refugee Appeals Tribunal* [2017] IEHC 94:

"the correct standard of proof to be applied to past events was the balance of probabilities coupled, in appropriate circumstances, with the benefit of the doubt. The appropriate circumstances to attract the benefit of the doubt would be where the overall credibility of the applicant is accepted."

99. This is plainly the standard of proof which was, in fact, applied by the first named respondent. Indeed, the IPAT decision is replete with explicit references to the civil standard of proof applying. This is clear from the following *verbatim* extracts:

"... The Tribunal is satisfied **on the balance of probabilities** that the appellant is a national of Georgia' [3.1];

On the balance of probabilities given the above, it is accepted that the appellant is from Tbilisi, Georgia and that he is an Orthodox Christian' [4.4];

The Tribunal is not satisfied **on the balance of probabilities** that the appellant was subject to repeated beatings and acts of extortion in Georgia given the negative credibility findings made above. This material element of the appellant's claim is rejected by the Tribunal' [4.31]"

Higher standard

100. There is simply no evidence before this court that IPAT applied what the applicants describe as a "*higher standard of proof*". Nor does the evidence before this court support in any way the proposition advanced by the applicants that the standard of proof applied in this case was one which "*would be near impossible for many legitimate asylum seekers*" to attain.

101. Despite the submissions made on behalf of the applicants, this was not a case where the first named respondent rejected the applications as a result of a failure on the applicant's part to satisfy one criteria of section 28(7). Rather, the core claim was considered with care by IPAT and, applying the civil standard, it was rejected, in circumstances where the first named applicant's credibility was rejected on a range of findings which were clear, cogent and open to the Tribunal to reach, having regard to the evidence before it.

102. As noted earlier in this judgment, quite apart from the absence of documentary support for two key aspects of the first named applicant's claim (i.e. relating to dental treatment to fix teeth broken as a consequence of beatings; and a business which produced income sufficient to enable the first named applicant to pay \$30,000 in cash to criminals) the Tribunal assessed the credibility of the first named applicant's claim and for other reasons rejected it. As explained earlier, these reasons concerned, first the vagueness of an account which undermined the first named applicant's credibility in the context of what was claimed to have been a lived experience and, secondly, the first named applicant's decision to return to Georgia in May 2019 which the Tribunal considered to be inconsistent with his claim of having suffered very serious harm in Georgia and a belief that he would suffer further harm in Georgia.

103. The conclusion reached by IPAT in respect of credibility could neither be considered irrational or unreasonable having regard to the material which was before the Tribunal. Nor have the applicants established that the incorrect standard of proof was applied by the first named respondent. I now turn to look at a second of the issues flagged by the applicants as being for this court to determine, namely:

Did the respondent err in law and/or breach principles of natural and constitutional justice in making adverse findings against the applicants without given the applicants an opportunity to respond?

104. I have no hesitation in saying that the evidence before this court entirely undermines the proposition at the heart of the foregoing question. In short, and in the manner examined earlier in this judgment, the relevant issues of concern were flagged very clearly in the s. 39 report of the IPO. At para. 46 of the applicant's written submissions, the applicants accept that (a) "*they had received a decision from the IPO*"; and (b) "*a report pursuant to s. 39 where findings were made against them, and which they were able to address in notice of appeal and through legal submissions*".

105. Earlier in this judgment I quoted, *verbatim*, para. [4.17] of the first named respondent's decision. It pointed out, entirely correctly that "*this appeal is a de novo hearing where the appellant was provided with an opportunity to provide any further supporting submissions or evidence he chose to furnish*". The Tribunal also pointed out *inter alia* that: "*the appellant is on notice since the s. 39 report of the negative credibility findings made by IPO...*". I have looked at the negative credibility findings made in the IPO's s. 39 report. It will be recalled that negative credibility findings were made under four separate headings, the first of which was "*the applicant's lack of evidence*". In the manner previously explained, two specific issues were flagged insofar as lack of evidence was concerned. The first concerned the absence of evidence in respect of medical treatment. The second concerned the absence of evidence in respect of substantial sums of money. Thus, the applicants were squarely on notice, in advance of the appeal that a significant issue relevant to adverse credibility findings was the absence of documentary evidence concerning medical, including dental, treatment and as to the source of substantial sums. That being so, there was every opportunity between the IPO decision and the making of submissions to IPAT, for the applicants, with assistance from their legal representatives, either to provide documentary evidence, as of May 2021 (the first named applicant has provided in the context of the present proceedings) or to comment on or explain the absence of such documents.

106. Furthermore, it should be recalled that the first named applicant made a deliberate choice not to answer Q. 42 in his Questionnaire (i.e. "*If you do not have documents, or cannot obtain documents, please explain why*"). In a manner previously referred to, the first named applicant also deliberately chose not to answer Q. 67 in his Questionnaire (i.e. "*Have you received any medical ... treatments ... relating to your claim? All medical evidence should be provided as soon as practicable, and preferably before your interview.*"). It is also uncontroversial to say that the first named applicant's Questionnaire was not a document he was required to complete under pressure. He received it in August 2019, but did not sign the Questionnaire until October 2019.

107. Despite all the foregoing, the submissions made by the applicants in the context of the appeal to IPAT neither enclosed documentary evidence in respect of the issues of concern raised by the IPO, nor was any explanation proffered in respect of the absence of such documentation. In short, fully on notice of all relevant issues, and having available to them both the time to address the issues and legal advice and assistance, the applicants did not do so. There was no breach of the *audi alteram partem* principle in this case. The timeline should also be recalled, in that the IPO refused the international protection applications under cover of a decision of 6 August 2020 whereas it was not until over three months later, on 13 November 2020, that legal submissions and contrary reports were sent to IPAT, in the context of the appeal which ultimately resulted in a decision dated 9 April 2021.

108. In *S.H.I. v IPAT (No. 2)* [2019] IEHC 269, Keane J. addressed two questions, both of which reflect submissions made on behalf of the applicants in the present case. The first concerned the duty of the Tribunal to cooperate with an applicant. Insofar as the applicants in the present case suggest that there was any failure to cooperate with the applicants, the evidence before this court entitles me to reject any such proposition. Furthermore, the following statement of principle, which Keane J. set out at para. 35 of *S.H.I.*, seems to me to be relevant in the present case:

"[35] ... I do 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. After all, regard must also be had

to the applicant's own shared duty of cooperation in the ascertainment of the relevant facts. As Dunne J. observed in *A.C. v Refugee Appeals Tribunal & Anor* [2007] IEHC 369 (Unreported, High Court, 19th October 2007), the applicant is not a passive participant in the process."

109. Keane J. addressed a specific issue which the applicants raise in these proceedings. He did so by posing and answering a question which speaks to the extent of the *audi alteram partem* principle as follows:

"iii. did the Tribunal act in breach of a requirement to put matters to the applicant for comment before reaching a conclusion on the credibility of his claims?

36. The clear difficulty that the applicant faces in mounting this argument is encapsulated in the following passage from the decision of MacEochaidh J. in *M.A. v Refugee Appeals Tribunal* [2015] IEHC 528 (Unreported, High Court, 31st July, 2015):

'20. The essential case made by the applicant is that the Tribunal member should not have made new credibility findings against the applicant on a papers only appeal without reverting to him and putting these issues to him. I reject this argument. Where the Tribunal intends to make negative credibility findings based on the statements made by the applicant during the asylum process, whether on a papers only appeal or on an oral appeal, there is no obligation to revert to the applicant to give him or her an opportunity of explaining a perceived inconsistency, a contradiction, an implausible suggestion or any other circumstance arising from what the applicant has personally said, during the application process, which causes the Tribunal member to conclude that credibility should be rejected. The Tribunal is no more required to do this than would a judge be required on hearing implausible testimony or on noticing an inconsistency in evidence to warn a witness that a negative credibility finding is imminent. The fact that the negative credibility finding is made on a papers only appeal is irrelevant ..."

110. The decision of MacEochaidh J. in *M.A.*, to which Keane J. referred in, *S.H.I.* went on to make clear that "no reliance could be placed on material unknown to an applicant to defeat a claim for asylum" (para. 22) also emphasising that "it must be assumed that an applicant is aware of what he or she has said during the asylum process". In the present case, it is perfectly clear from IPAT's decision that no adverse credibility finding was made on the basis of anything "unknown" to the applicant. This is in circumstances where (i) not only was the first named applicant full-square on notice of the basis for the rejection of his credibility in the s. 39 report by the IPO; and (ii) not only must he be taken to know what he said and submitted and what he decided not to say or submit in the context of his international protection questionnaire; (iii) he had every reasonable opportunity to address, in written legal submissions, any issue he wished to address, including, very obviously, the lack of documentary evidence flagged in the s. 39 report and the lack of any explanation for the absence of documentation *per* Q. 42 of the Questionnaire.

111. Insofar as the applicants rely on the Court of Appeal's decision in *B.W. (Nigeria) v Refugee Appeals Tribunal* [2017] IECA 296 the principle at issue concerned the entitlement of an applicant to address, prior to an adverse credibility finding by the Tribunal, "some matter of significance, not previously raised or addressed" during the international protection process ("ORAC" being referred to in the judgment which concerned what might be called the 'old' system). Although the applicants cite only paras. 50 and 51 in their written legal submissions, para. 49 is highly relevant and needs to be read in order for paras. 50 and 51 to be properly understood. Thus, it is necessary to set out para. 49 of *B.Y. (Nigeria)*:

"49. These passages underscore the importance, as a matter of fair procedures, attaching to the requirement that where some matter is giving rise to a concern as to credibility on the part of the

decision-maker, the applicant must be given a fair opportunity of addressing that concern before any adverse finding of credibility is made against her. **That obligation is fulfilled where the particular issue(s) is raised at first instance during the ORAC process. In that case, it is unnecessary that she be provided with another opportunity during a papers-only appeal process to again address the same issue of concern as to credibility, though the applicant is surely to be permitted should she wish to do so, to submit any further material relevant to the concern.**" (emphasis added).

112. On the facts of the present case, the Tribunal did not reach adverse credibility findings on the basis of any issue which was *not* previously raised in the process which resulted in the s. 39 report. Moreover, fully on notice of all issues of concern, the applicants in the present case had the opportunity to submit any further material relevant to the concern which they wished to submit. The fact that they did not do so is incontrovertible. The nature of what the first named applicant seemingly *could* have submitted, but chose not to, is illustrated by the averments made at paras. 7 and 8 of his 11 May 2021 affidavit, to which I have already referred. It was in the context of the principle outlined in para. 49 of its decision in *B.W. (Nigeria)* – a principle which, on the facts of the present case, has been fully complied with – that the Court of Appeal proceeded to state the following, in paras. 50 and 51, upon which the applicants lay emphasis. Para. 50 states:

"50. But different considerations arise where for the first time on the papers-only appeal the Tribunal considers that some matter of significance, not previously raised or addressed during the ORAC process, speaks to the question of the applicant's personal credibility. In such a case the Tribunal is considering a significant matter for the first time in the entire process. Their procedures demand, in my view, that some opportunity be provided to the applicant to address such a concern before it is relied upon for an adverse credibility finding. Where this does not occur the finding in question may have to be set aside, particularly where that finding is objectively material to the basis for a conclusion that the applicant lacks credibility, and the decision on appeal is to uphold the recommendation of the RAC to refuse a declaration."

113. On the facts of the present case, the issues of concern were certainly raised earlier in the process, in particular in the IPAT s. 39 report. There is simply no question of the first named respondent "*considering a significant matter for the first time in the entire process*". Thus, there is no question of a breach of fair procedures. For the sake of completeness, I now set out para. 51 from the *B.W.* decision:

"51. The appellant on appeal to this Court, as she did in the High Court, has identified a number of matters within the Tribunal's decision which were relied upon for its conclusion that she lacked credibility, and which are matters never raised with her either by the Commissioner at first instance, or during the appeal process by the Tribunal. Accordingly, she was given no opportunity to address those concerns in advance of an adverse credibility finding being arrived at, in breach of her entitlement to fair procedures, she submits that each such finding should be found to be unlawful and set aside. I have identified those matters earlier in this judgment. With the exception of the issue as to the date of the death certificate, the trial judge did not consider that the matters identified were of sufficient importance that the appellant should have had an opportunity to address them as a matter of fair procedures. I am afraid I must disagree."

114. The factual context in which *B.W.* was decided is also markedly different from the position in the present case, as para. 51 suggests. The applicant, in *B.W.*, sought refugee status following the shooting of her husband in Nigeria and her application was based on the fear of persecution because of the shootings. Her

claim had been refused due to adverse credibility findings and the High Court refused her application for judicial review. On the facts of the present case, however, this is not a situation where any credibility issue was raised for the first time on appeal; and there has been no failure to afford the applicant an opportunity to deal with any relevant issue. I now turn to a third question raised by the applicants namely:

Has the respondent erred in concluding that an oral hearing was not required and is the fact that no oral hearing was held, incompatible with fair procedures and/or natural and constitutional justice?

115. Insofar as the chronology of relevant events is concerned, a notice of appeal was sent to IPAT on 14 August 2020. A copy comprises "GA2" to the first named applicant's affidavit. It was in the form of a covering email of 14 August 2020 sent by the applicant's solicitors to IPAT which attached a notice of appeal in the required form. In circumstances where Georgia had been designated as a safe country of origin, this was an 'accelerated' appeal. Insofar as the request for an oral hearing is concerned, the pre-printed question at [8.1] was in the following terms: "*Please set out any reasons why you consider it in the interests of justice that an oral hearing be held in your appeal.*" The entirety of the answer comprised: "*to address all credibility findings and reasons of refusal.*" No other submission was made by or on behalf of the applicants as to why an oral hearing was required.

116. It is also appropriate to note that the grounds of appeal submitted by the applicants' solicitors were stated to be the following:

- "(1) the International Protection Office (IPO) made errors of law and fact in its assessment of the application for international protection;*
- (2) the IPO's adverse credibility findings were unfair and/or unreasonable, and failed to afford the appellant the benefit of the doubt;*
- (3) the IPO erred in failing to give proper regard to relevant country of origin information in relation to the appellant claims;*
- (4) the IPO failed to have regard to the relevant and material facts presented as they relate to the appellant's country of origin, including the laws and regulations thereof and the manner in which they are applied;*
- (5) the IPO failed properly to consider the documentary evidence submitted by the appellant;*
- (6) the IPO failed to give proper regard to the appellant's claim in relation to past persecution or serious harm;*
- (7) the IPO failed to give proper regard to the appellant's claim in relation to future prosecution or serious harm;*
- (8) the IPO failed to consider the individual position and personal circumstances of the appellant."*

117. Although the foregoing reasons are without doubt wide-ranging, it is fair to say that they are somewhat 'generic', in that none of the grounds are specified to relate to any particular facts as found by the IPO. Furthermore, although the IPO's decision undoubtedly contained adverse credibility findings, in particular, with reference to the absence of documentary evidence, the grounds of appeal neither (i) identify any documents which it is said that the IPO failed to properly consider; nor (ii) identify any documentary evidence touching on the issues of (a) the applicants' dental treatment, or (b) the applicants' business, which was said to be the source of the \$30,000 extorted from him.

118. On 2 November 2020, IPAT notified the applicant's solicitor of its decision to decline an oral hearing and the reasons for this. A copy also comprises part of exhibit "GA2" and IPAT's email includes, *inter alia*, the following:-

"The Tribunal notes the contents of the notice of appeal in respect of the above appellant.

The Tribunal has considered your submissions in respect of section 43(b) of the International Protection Act, 2015. In respect of the reasons why the interests of justice require an oral hearing, it is stated as Part 8 of the notice of appeal:

'To address all credibility findings and reasons of refusal.'

Having considered the above submissions and the documentation before it, the Tribunal is not satisfied that the interests of justice requires an oral hearing of the above appeal. The fact that the appellant's credibility in respect of his substantive international protection claim was not accepted by IPO is not a basis, in and of itself, for an oral hearing to take place on appeal. The Tribunal will assess the relevant elements of the appellant's appeal in accordance with the 2015 Act with reference to all of the material before it. The Tribunal is satisfied that any issues of credibility and eligibility for refugee status or subsidiary protection status can be dealt with by way of written submissions. The Tribunal is satisfied that its approach is consistent with the relevant jurisprudence of the Superior Courts including:

Stewart J. in R.M. (An Infant) v. Minister for Justice, Equality and Law Reform & ors [2015] IEHC 441 (Unreported, High Court, 9th July, 2015), MacEochaidh J. in M.A. v. Refugee Appeals Tribunal [205] IEHC 528 (Unreported, High Court, 31st July, 2015) and Keane J. in S.H.I. v. The International Protection Tribunal [2019] IEHC 269 (Unreported, High Court, 3rd May, 2019)..."

119. IPAT's decision to refuse an oral hearing went on to refer to certain country of origin information which the Tribunal proposed to consider, and invited the applicants' solicitors to make observations in relation to same within ten working days. The Tribunal's email concluded by stating the following:-

"The Tribunal is anxious to ensure the appellant has a full opportunity of addressing any issues of credibility or eligibility for international protection. To that end if appellant wishes to make further submissions in respect of any of the material before the Tribunal, the Tribunal will also allow a period of 10 working days from the date of this letter for these to be submitted. The Tribunal will determine the appeal on the papers before it thereafter."

120. Several comments seem to me to be appropriate with regard to IPAT's decision of 2 November 2020. Firstly, at the risk of stating the very obvious, it comprised a discrete decision.

121. It will be recalled that *per s. 43* of the 2015 Act "*the Tribunal, unless it considers it is not in the interests of justice to do so, shall make its decision in relation to the appeal without holding an oral hearing...*". Thus, in the manner observed earlier in this judgment, the 'default' position was for a 'papers-only' appeal to proceed. The applicants requested an oral hearing. That request was considered, decided upon and, for the reasons outlined in IPAT's 2 November 2020 decision, it took the view that the interests of justice did *not* require an oral hearing in this particular case.

Mode v. Merits

122. Plainly, the 2 November 2020 decision did not concern the *merits* of the applicants' appeal, but it did concern the *mode* of same. In my view, these are two materially different and separate issues. That being so, I regard myself as bound to reject the submission made on behalf of the appellants to the effect that the 2 November 2020 decision only "crystallised" on 14 April 2021 when a letter was received from IPAT enclosing their decision in respect of both appeals, dated 9 April 2021.

123. In my view, had the applicants wished to challenge the lawfulness of the 2 November 2020 decision to refuse an oral hearing, time began to 'run' against them as and from that date, insofar as an application seeking judicial review of that discrete decision as to the *mode* of an appeal, was concerned.

124. At paras. 15 and 16 of the Statement of Opposition, the following is pleaded:-

"15. *It is denied that section 43 of the International Protection Act 2015 is unconstitutional and in breach of the requirements of the administration of justice, the requirements of fair procedures, the right to an effective remedy and the right to equality before the law. **The applicants are estopped from seeking such relief where they failed to challenge the within decision not to have an oral hearing within the time limits prescribed by Order 84 of the Rules of the Superior Courts.** The contents of E.9 of the Statement grounding the within application for judicial review are denied as if set out here and traversed seriatim.*

16. *It is denied the provisions of the International Protection Act 2015 particularly Section 43 are incompatible with the European Convention on Human Rights and in particular Articles 6, 8, 13 and 14. **The Applicants are estopped from seeking such relief where they failed to challenge the within decision not to have an oral hearing within the time limits prescribed by Order 84 of the Rules of the Superior Courts.** The contents of E.10 of the statement grounding the within application for judicial review are denied as is set out here and traversed seriatim."* (emphasis added)

Time limits

125. The time limits specified in O. 84 of the RSC are well known, but were not complied with insofar as a challenge to the 2 November 2020 decision. I also take the view that no reason or satisfactory explanation is given by the applicants for their delay in seeking to challenge the 2 November 2020 decision to refuse an oral hearing.

126. Among the submissions made with great skill by the applicants' counsel was to suggest that it was perfectly legitimate for the applicants not to challenge the 2 November 2020 decision on the basis of their legitimate assumption that IPAT would conduct the paper-based appeal in a lawful manner and, runs the applicants' submission, they only discovered that this was not the case when IPAT delivered its decisions in respect of the appeals in April 2021.

127. Regardless of the ingenuity with which that submission is made, it seems to me that it is flawed from two perspectives. First, it ignores the material difference between the two decisions. As I have observed, the decision of April 2021 concerned the *merits* of the appeal, whereas the decision of November 2020 related to the wholly different issue of the *mode* by which it would be conducted. Secondly, the applicants' submission is, in essence, to say that we had no difficulty with the decision to refuse an oral hearing until the result went against us. It seems to me that the logic of the submission is that, had the appeals gone in favour of the applicants, neither would have had any difficulty with the decision to refuse an oral hearing. In other words, the applicants' true objection is to the *outcome*, not whether that outcome was reached via the default position of a papers-based appeal or via an oral hearing.

128. In my view, there is no evidence before the court which would entitle it to take the view that time should be extended in accordance with O. 84, r. 21(3)(a) and (b). It does not seem to me that there is "good and sufficient reason" for extending time, or that the circumstances which resulted in the failure to apply for leave to challenge the 2 November 2020 decision were either "outside the control of" or "could not reasonably have been anticipated" by the applicants. The contrary is the case.

129. In light of the foregoing, I am satisfied that it would not be appropriate to extend time with regard to a challenge to the 2 November 2020 refusal of an oral hearing.

130. Even if I am entirely wrong in the foregoing views, it is not in dispute that IPAT is *required* by law to make its decision without holding an oral hearing, save and so far as it retains discretion not to do so where it considers that this would not be in the interest of justice (the mandatory term "*shall*" is employed in s. 43 of the 2015 Act). In contending that the refusal of an oral hearing was in breach of fair procedures and/or natural and constitutional justice, significant reliance is placed by the applicants on the Supreme Court's decision in *Zalewski v. WRC & ors* [2021] IESC 24. It seems to me, however, that the factual context in which *Zalewski* was decided by the Supreme Court and the central issues at play in that case are entirely different to those in the present proceedings.

131. *Zalewski* concerned the constitutionality of the adjudicative process established under the Workplace Relations Act ("the WR Act 2015"). Central to the case was whether the aforesaid process amounted to the 'administration of justice' which, under the Constitution, was required to be administered in Courts; and whether the relevant statutory framework adequately vindicated a claimant's rights under Bunreacht Na hÉireann and the European Convention on Human Rights ("ECHR"). A central element of the judgment in *Zalewski* involved an analysis of whether the procedure under the WR Act 2015 amounted to the administration of justice, with the Supreme Court's careful analysis starting with the five-point test set out in a *McDonald v. Bord na gCon* [1965] IR 217 as more recently applied in the Supreme Court's decision in *O'Connell v. The Turf Club* [2015] IESC 57.

132. To my mind, reliance on *Zalewski* cannot avail the applicants, in circumstances where the adjudication of an employment claim is wholly different from the assessment of an application for international protection. It might also be noted that a central issue in *Zalewski* concerned the obligation to conduct Workplace Relations Commission ("WRC") hearings in public. By contrast, the 2015 Act requires that international protection assessments are conducted in private (see ss. 26(1) and 42(4) of the 2015 Act).

133. It might also be noted that, in *Zalewski*, the Supreme Court did not consider the activity of non-lawyers as adjudicators in the WRC to be unconstitutional. This is of some note in circumstances where, although the point was not pursued during the oral hearing, para. 24 of the applicants' written submissions state, *inter alia*, that: "*The only opportunity they had to 'be heard' was at interview with an authorised officer at the IPO, a person who is not required to have the same qualifications or legal qualifications as a tribunal member, a matter not unlike the factors considers in Zalewski...*" (emphasis added).

134. I accept, as correct, the submission on behalf of the respondents that a far more relevant authority is the Supreme Court's decision in *Damache v. Minister for Justice* [2020] IESC 63. From paras. 37-73, Dunne J. considered whether the process of revocation of a certificate of naturalisation involved the 'administration of justice'. The case before the Supreme Court related to s. 19 of the Irish Nationality and Citizenship Act, 1956 ("the 1956 Act") and the procedure to revoke Irish citizenship. The appellant contended that s. 19 of the 1956 Act was a category of power that could only be exercised lawfully by the Courts. Section 19(2) and (3) of the 1956 Act set out the process to be followed after an intention to revoke citizenship had been formed by the relevant Minister. In general terms, where an intention to revoke is opposed by a person the subject of the intended revocation, a Committee of inquiry will consider the case and issue a recommendation, upon which the Minister makes her or his final decision. Having become aware of the Minister's intention, the appellant sought judicial review, seeking to quash the notice of the Minister's intention to revoke his citizenship. Dunne J. explicitly rejected the proposition that an application to revoke a certificate of

naturalisation involved the 'administration of justice' and held that it constituted the exercise of executive function referring, at para. 66 of the Supreme Court's judgment, to the observations of the trial judge, at para. 34 of the decision wherein Humphreys J. refused the relief sought, stating: "*the control of the entry and presence, and therefore of removal, of non-Irish nationals is an aspect of the executive power of the State.*"

135. Applying the *McDonald* criteria, Dunne J. was satisfied that the process did not involve the administration of justice, also quoting with approval (at para. 72 of the judgment of Dunne J.) the conclusions of the Court of Appeal in *Habte v. Minister for Justice and Equality* [2019] IEHC 47 which referred, *inter alia*, to "...*the general role of the Executive in relation to the entry residence of foreign nationals (Bode v. Minister for Justice [2008] 3 IR 663)*".

136. Insofar as the applicants submit (para. 24 of their written submissions) that "*the determination made deprived the applicants the opportunity of being heard under oath*", two comments seem appropriate. First, the relevance and/or significance of being heard under oath was not elucidated. Secondly, and perhaps more importantly, it was at all material times open to the applicants to submit sworn testimony, had they wished to do so. There does not appear to be any impediment in respect of the ability of an applicant for international protection to furnish an affidavit. Doing so plainly does not require an oral hearing, but constitutes the opportunity to proffer evidence under oath. In making the foregoing observations, it should be stated clearly that the ability of an applicant for international protection to provide evidence under oath by means of an affidavit is certainly not in issue in the present proceedings.

137. *V.Z. v. Minister for Justice* [2002] IR 135 concerned an applicant for refugee status who received a decision, in June 2000, that the application was in "*manifestly unfounded*". The applicant's case proceeded thereafter in accordance with an 'accelerated' procedure, whereby there was no oral hearing on appeal. The applicant was unsuccessful in judicial review proceedings before this Court and, in dismissing the relevant appeals, the Supreme Court held that the absence of provision for an oral hearing of the appeal, from a decision that an application for refugee status was manifestly unfounded, did not infringe the right of an applicant for refugee status to natural and constitutional justice. As the decision of McGuinness J. makes clear (at p. 152), the submission was made in *V.Z.* (just as it was made to this Court) that the refusal of an oral hearing denied the first named applicant the opportunity "*to expand orally on the material dealt with in the Questionnaire and in the interview*". The learned judge's statements, at p. 161 of the decision, seem to me to be particularly appropriate in the present case:-

"...I would accept the submission on behalf of the respondents that there is no authority to establish that an oral hearing on appeal is necessary in all cases. The applicant is not in the position of an accused person facing prosecution. There are no witnesses against him. He is not in a position to cross-examine the assessors of his claim and it is difficult to see how in these circumstances a right to cross-examine is relevant. He may certainly wish to expand on either his own evidence or independent evidence concerning the conditions prevailing in his country of origin but it is open to him to provide this information in writing. His appeal was drafted on his own instructions by his solicitor and did not challenge the factual matters set out in the papers provided to him.

Hogan and Morton in Administrative Law in Ireland (3rd ed.) at p. 556 discuss the right to an oral hearing, the right to summons witnesses and the right to cross-examine. They state:-

'Plainly whilst these issues may need to be considered independently, there is often a substantial connection between them. In any case, with each of them, as with other aspects of the audi alteram partem rule, it may be misleading to speak of a single 'right' since in such an amorphous

area, entitlement to the advantage sought will depend on all the circumstances of the case. On the question of whether they apply, De Smith states:

'A fair 'hearing' does not necessarily mean that there must be an opportunity to be heard orally. In some situations it is sufficient if written representations are considered.'

The authors draw attention to the comments of Keane J. in *The State (Williams) v. Army Pension Board* [1981] I.L.R.M. 379 at p. 382:-

'whether [there must be an oral hearing] in any particular case most depend on the circumstances of that case... the application in the present case was capable of being dealt with fairly... in the manner actually adopted by [the Board].'

It should be noted that in these references the authors are dealing with situations where there is no oral hearing even at first instance. Here there has already been an oral hearing at first instance."

138. In the present case, the applicants chose not to challenge, at the time it was made, a decision by IPAT not to conduct an oral hearing in respect of their appeal. The reasons for that decision were communicated to the applicants, via their solicitors, and, on any objective view, those reasons were clear and cogent. The appeal in this case was capable of being dealt with fairly by way of a papers-based consideration by IPAT of all relevant matters. This is what actually occurred. Among the submissions made on behalf of the applicants is that they never had any opportunity to be seen and heard, face to face. That is simply not so, having regard to the face to face interview conducted by the relevant international protection officer which gave rise to the report pursuant to s. 35(12) of the 2015 Act.

139. The judgment of 14 December 2021 of Ferriter J. in *S.K. v. IPAT & Ors* [2021] IEHC 781 concerned an application for an order of *certiorari* to quash a decision of IPAT made on 9 September 2020, which affirmed the IPO's recommendation that the applicant be given neither a declaration of refugee status, nor subsidiary protection declaration. Of particular relevance to the present proceedings is that the applicant in *SK* also sought an order quashing decisions of IPAT made on 27 July and 17 August refusing the applicant's request that his appeal to IPAT be given an oral hearing pursuant to s. 43(b) of the 2015 Act.

140. Although, coincidentally, *SK* also concerned a national of Georgia, the underlying facts were very different. In *SK*, the applicant sought international protection based on an asserted well – founded fear of persecution in Georgia at the hands of his family and society, due to his membership of the LGBT social group. The applicant alleged that he had suffered physical violence due to his relationship with another man.

141. In marked contrast to the facts in the present case, the applicant's solicitors submitted detailed written submissions to IPAT as to why it was in the interests of justice to hold an oral hearing concerning the applicant's appeal. It will be recalled that, in the present case, the sum total of the applicant's submissions as to why an oral hearing was required was "to address all credibility findings and reasons of refusal".

142. At para. 16 of his judgment, Ferriter J. noted that, in circumstances where Georgia has been designated as a safe country of origin, the 'accelerated' appeals procedure prescribed in s. 43 of the 2015 Act applied; and s. 43 was set out in full. Having noted the mandatory term "shall" which appears in s. 43 (b) of the 2015 Act, the learned judge proceeded to examine prior jurisprudence, including the decision of Cooke J. in *SUN v. the Refugee Appeals Commissioner* [2013] 2 IR 555 and the decision of Stewart J. in *RM. v Minister for Justice* [2015] IEHC 441.

143. At para 22, Ferriter J. indicated that the applicant's counsel was "clearly correct" wherein it was emphasised that he was *not* making the case that the applicant was entitled to an oral hearing as of right.

Ferriter J. went on to cite from the decision of the Supreme Court (O'Donnell J., as he then was) in *MM. v. Minister for Justice and Equality* [2018] 1 ILRM 361, in particular, that:

"25... The decision of the European Court of Justice makes it clear that in the Irish context which existed at the time of the decision here, and where the decision on subsidiary protection was a separate decision taken after the determination of the asylum process, it was permissible to make that decision on the basis of a written procedure, so long as the procedures adopted were sufficiently flexible to allow the applicant to make his case. Exceptionally, it may be necessary to permit an oral interview"

144. Not only has there been a face-to-face interview in the present case, which took place after the submission by the applicants of the relevant Questionnaire, the procedures laid down in the 2015 Act which have, without doubt, been complied with in the present case, are in my view sufficiently flexible in the context of what was a *de novo* hearing, wherein the applicants had every reasonable opportunity to adduce any and all evidence which they wished to put before IPAT. That this was to be done in written form takes nothing away from how meaningful the opportunity was.

145. Ferriter J. went on to discuss, at para. 23, the distinction made by the current Chief Justice between, on the one hand, credibility in the "*classic sense*" (being whether an account of disputed facts is to be believed, or not) and, on the other hand, where credibility is used in the sense of whether a particular conclusion should be accepted, or not, as flowing from a particular state of facts. While emphasising that the Supreme Court's decision in *MM* was not dealing with s. 43(b), Ferriter J. felt that the analysis in *MM* was of assistance, and he expressed the view that when credibility has been rejected in the classic sense, the interests of justice may require an oral hearing.

146. It is appropriate to pause at this juncture to observe that the rejection of the first named applicant's credibility by IPAT could not accurately be described as confined to a rejection of credibility in the "*classic sense*". A material factor in the adverse credibility finding concerned the absence of documentation which one might reasonably expect to exist, touching on core aspects of his claim (specifically, regarding both dental treatment and a business said to have enabled the making of very substantial payments). It is also appropriate to emphasise at this point that the element of credibility with which the court in *SK* was concerned, was the applicant's sexual orientation. This is in marked contrast to the present case and to see why this is so, one need only turn to the following extracts from the guidelines which the applicant in *SK* included with his detailed written submissions to IPAT, namely, the "*UNHCR, claims to refugee status based on sexual orientation and/or gender identity within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the status of refugees (23 October 2012)*". Paras. 62 and 64 of these guidelines, as quoted by Ferriter J. at para. 25 of *SK*, include, *inter alia*, the following:

"Ascertaining the applicant's LGBTI background is essentially an issue of credibility";

"The applicant's own testimony is the primary and often the only source of evidence...";

"Applicants should never be expected or asked to bring in documentary or photographic evidence of intimate acts".

147. In the present case there are, without doubt, *other* potential sources of evidence. Indeed, this is elegantly illustrated by the fact that, in May 2021, the first named applicant purported to exhibit documentary evidence which, whilst in the Georgian language, apparently speaks to (i) his dental treatment; and (ii) his business. Nor is it the case that the applicants in the present proceedings "*should never be expected*" to produce documentary evidence.

148. Wholly unlike the position in *SK*, the core issue does not revolve around sexual orientation. Indeed, in the manner explained earlier in this decision, not only had the applicants a statutory duty to proffer information and documentation, they were specifically asked for it, repeatedly, by means of the Questionnaire, yet failed either to provide it, or to furnish an explanation for its absence. In short, entirely unlike the position in *SK*, the issues which went against the first named applicant's credibility in the present case were issues which were capable of independent support by means of documentary evidence. At para. 30, Ferriter J. stated the following: -

"30. While of course a wide discretion such as that contained in s.43(b) based on "the interests of justice" is not susceptible to any hard and fast rule, it seems to me that the following matters should normally be taken into account by IPAT under s.43(b) when considering an application for an oral hearing **in the context of a sexual orientation/gender identity case:**

- (i) Was the applicant's credibility rejected by the IPO on the basis of a rejection of the veracity of the applicant's account of matters which related to his or her sexual orientation or gender identity and feared persecution in relation to same?
- (ii) Was the applicant's account prima facie coherent and plausible bearing in mind that, in the case of sexual orientation and self-realisation of same, inconsistencies may in fact be an inherent part of the applicant's self-realisation narrative?
- (iii) Did the applicant's account not otherwise run counter to available specific or general information relevant to the applicant's case which can be objectively ascertained e.g. country of origin information in relation to the attitude of the police or other authorities to members of the applicant's particular social group, in this case the LGBTI section of society?
- (iv) In light of the foregoing, would the credibility questions arising in the appeal be most justly resolved by the Tribunal hearing oral evidence on the appeal?" (emphasis added)

149. With regard to the applicants' reliance on *SK*, the first observation to make is that the foregoing *dicta* recognises that there can be no 'hard and fast' rule. In the present case (and leaving aside my finding that the applicants are 'out of time' to challenge the 2 November 2020 decision) the applicants have not established that there was any unlawfulness or error in IPAT's decision to decline an oral hearing. Secondly, but very importantly, the approach set out so carefully at para. 30(i) to (iv) in *SK* is explicitly one applicable when consideration is being given to "an application for an oral hearing in the context of a sexual orientation/gender identity case". The present proceedings did not involve such a case.

150. The material facts and context in *SK* are so markedly different to those in the present proceedings that the guidance given by Ferriter J. does not assist and cannot avail the applicants. I say this in circumstances where the starting position in the approach outlined at para. 30 is, of course, where there has been a rejection of credibility in the purely classic sense, where the applicant could never be expected or asked to proffer documentary evidence concerning their core claim. That is wholly different to the position in the present case. Another key point of distinction is that, at para. 35, Ferriter J held that: -

"...the oral hearing decision simply fails altogether to engage with or take into consideration the substantive matters set out in [the applicant's] written submissions in support of his request for an oral appeal". That is not the situation here. Later in para. 35, Ferriter J. observed that "... the applicant, over the course of a substantive fourteen-page written submission, had detailed why in the particular circumstances of his case, given the manner in which the IPO had dismissed the

credibility of his account of his sexual orientation, an oral hearing was necessary in the interests of justice to ensure that he achieved an effective remedy by way of appeal”.

The foregoing is not the position in these proceedings.

151. In the very particular facts and circumstances of SK that Ferriter J. held, at para. 36 that: “*IPAT failed to lawfully discharge its assessment of the interests of justice, pursuant to s. 43(b) in light of the submissions made on the applicant's behalf*”. The position is otherwise in the present case. The applicants have not established any failure on the part of IPAT to lawfully discharge its assessment of the interest of justice *per* section 43(b).

152. Among the submissions as to why the first named respondent ‘erred’ in refusing an oral hearing, it was argued on behalf of the applicants that “*the person who refused the oral hearing didn’t look in his eyes and test his evidence*”. The foregoing is not the consideration required pursuant to s. 43(b) of the 2015 Act. It was also submitted that cross-examination of the first named applicant and his wife “*could and would have strengthened their cases*” in circumstances where it was submitted that both accounts “*could corroborate each other*”. Certain comments appear to me to be appropriate with regard to the foregoing submissions. First, it appears to me to speak to the merits of the decision to refuse an oral hearing, as opposed to the lawfulness of the process pursuant to which that decision was made, whereas this Court is not the decision maker and it is wholly impermissible for this court to conduct a merits-based analysis and ‘second-guess’ decisions made lawfully. Secondly, on the particular facts of this case, the second applicant had and has no ‘independent’ claim for international protection, and no ‘independent’ fear. The account she gives is the account which her husband gave to her, other than the single issue of saying that her husband sustained injuries. In other words, she plays no part in the relevant story, having witnessed nothing of the alleged events ‘first-hand’ and her application is entirely dependent on her husbands. That being so and stressing again that this court is not a decision maker and its approach is not to look at the merits of decision making, it is not at all clear how supposed ‘corroboration’ and ‘strengthening’ of a cases could arise in these circumstances, had an oral hearing been the mode. Far more importantly, however, the applicants never enjoyed any *right* to an oral hearing and their request for same was duly considered, and was declined for clear and cogent reasons, which decision was lawfully made and was not one challenged at the time, or ‘within time’, in the context of O. 84 requirements. On the contrary, the applicants engaged with the process by making detailed written submissions, knowing that their appeal would not be oral, but ‘papers-based’. This is clear from the submissions proffered under cover of the email from their solicitors of 13 November 2020.

153. In a recent decision by Meenan J. delivered on 28 February 2022 in *I.M. v. IPAT & Ors* [2022] IEHC 164, this court decided on the substantive hearing in respect of which Burns J. had previously given leave (see *I.M. v. IPAT & Ors* [2020] IEHC 615). From paras. 11 – 13, Meenan J. stated the following:

“11. The fact that negative credibility findings were made by the IPO does not mean that an oral hearing is required. The Tribunal stated:

‘... The Tribunal is also capable of carrying out an assessment of the credibility of a claim for international protection without recourse to an oral hearing. The fact that negative credibility findings were made at first instance does not require, in and of itself, an oral hearing of the appeal. In a papers only appeal, the Tribunal remains required by section 28(2) of the Act of 2015 to carry out an assessment of the relevant aspects of application for international protection. The Tribunal is required to exercise extreme care in considering a papers only appeal. ...’

12. *This decision of the Tribunal is supported by two authorities. Firstly, M.A. v. Refugee Appeals Tribunal [2015] IEHC 528 and, secondly, S.H.I. v. The International Protection Tribunal [2019] IEHC 269.*

13. *It follows from the foregoing that the Tribunal considered the applicant's request for an oral hearing and rejected this request having correctly applied the statutory provisions and having correctly considered the relevant authorities."*

154. What Meenan held at para. 13 applies equally in the present case, having regard to the Tribunal's 2 November 2020 adjudication, which evidences the fact that the Tribunal considered the submissions in support of the request for an oral hearing and declined to grant an oral hearing for clear and cogent reasons, consistent with the authorities cited.

155. The submission was also made on behalf of the applicants that, having rejected the request for an oral hearing, in the 02 November 2020 decision, the first named respondent was under an ongoing duty to "re-consider" or to "continue considering" the grant of an oral hearing, which duty IPAT allegedly failed to discharge. Quite apart from the fact that the foregoing is not pleaded, the applicants have not established either such a duty, or the breach of same.

156. For the reasons set out above, the third of the applicant's questions must also be answered in the negative. The fourth question raised by the applicants is as follows:

Is the designation of Georgia as a safe country of origin unwarranted or unlawful?

157. The starting point in respect to an analysis of the foregoing question is s. 72 of the 2015 Act. It provides as follows:

"Designation of safe countries of origin

72. (1) *The Minister may by order designate a country as a safe country of origin.*

(2) *The Minister may make an order under subsection (1) only if he or she is satisfied that, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or armed conflict.*

(3) *In making the assessment referred to in subsection (2), if a Minister shall take account of, among other things, the extent to which protection is provided against persecution or mistreatment by –*

- (a) the relevant laws and regulations of the country and the manner in which they are applied,*
- (b) observance of the rights and freedoms laid down in the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention on Human Rights,*
- (c) respect for the non-refoulement principle in accordance with the Geneva Convention, and*
- (d) provision for a system of effective remedies against violations of those rights and freedoms.*

(4) *The Minister shall base his or her assessment referred to in subsection (2) on a range of sources of information, including in particular information from –*

- (a) other member states,*
- (b) the European Asylum Support office,*
- (c) the High Commissioner,*

(d) *the Council of Europe, and*

(e) *such other international organisations as the Minister considers appropriate.*

(5) *The Minister shall, in accordance with subsections (2) to (4) and on a regular basis, review the situation in a country designated under subsection (1).*

(6) *The Minister shall notify the European Commission of the making, amendment or revocation of an order under subsection (1)."*

158. It is also appropriate to set out what s. 33 of the 2015 Act provides:

"Applicant from safe country of origin

33. A country that has been designated under section 72 as a safe country of origin shall, for the purposes of the assessment of an application for international protection, be considered to be a safe country of origin in relation to a particular applicant only where –

(a) the country is the country of origin of the applicant, and

(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."

159. In light of s. 72 of the 2015 Act, it cannot be disputed that the second named respondent, the Minister, has the power to designate a country as a safe country of origin. It is not in dispute that the Minister did so in respect of Georgia, by ministerial order on 16 April 2018. In so doing, the Minister was obliged to have regard to the provisions of s. 72(3)(a) to (d), inclusive, as well as the provisions of s. 72(4)(a) to (e), inclusive, insofar as making the relevant assessment.

160. It is appropriate to state at this juncture that the applicants in the present case have advanced no evidence whatsoever that the Minister did not comply with the statutory obligations placed upon them by the foregoing sections.

161. As seen above, s. 72(5) requires the Minister to review the situation on a regular basis and the applicants in the present proceedings have proffered no evidence whatsoever of a failure on the Minister's part in that regard. Furthermore, it is not in dispute that Georgia has been designated as a safe country of origin in 11 other member states of the European Union.

162. It also seems to me appropriate to refer, once more, to the timeline in this case. The applicants arrived in this State in August 2019 and completed an interview, *per* s. 13(2) of the 2015 Act, on 24 August 2019, later attending at the IPO, on 26 August 2019, when they received their International Protection Questionnaires, which were signed and submitted as of 2 October 2019. The applicants have had available to them legal advice and assistance throughout the international protection process.

163. Despite the foregoing, they made no challenge to the designation of Georgia as a safe country of origin in 2019. Nor did they make any such challenge in 2020.

164. It appears that the first time the designation of Georgia as a safe country of origin is challenged, was in the applicants' Statement of Grounds dated 12 May 2021.

165. Moreover, the applicants do not seem to have ever engaged with the Minister in respect of their dissatisfaction with the designation. Not a single letter appears to have been written to the Minister at any stage objecting to the designation.

166. It seems to me that there is a fundamental difference between, on the one hand, (i) contending that the designation of Georgia as a safe country of origin is unwarranted or unlawful and, on the other hand (ii)

making no objection to such a designation but contending, *per s. 33* of the 2015 Act that, based on serious grounds submitted by the applicant, Georgia should not be considered as a safe country of origin in his or her particular circumstances. During their engagement with the international protection process, the applicants did the latter, not the former.

167. It will be recalled that in IPAT's 2 November 2020 decision refusing an oral hearing in respect of the appeal, the Tribunal, having given its reasons for such a refusal, went on to enclose country of origin information and, having made clear that the Tribunal would refer to same in making its determination, the applicants were afforded time to "*provide any observations in respect of the above country of origin information within 10 working days of this letter*". In addition, the Tribunal invited any further submissions in respect of any other matter, in circumstances where the Tribunal was also anxious to ensure that "*the appellant has a full opportunity of addressing any issues of credibility or eligibility for international protection*". The country of origin information referred to and enclosed with IPAT's 2 November 2020 email to the applicants' solicitors comprised the following:

- United States Department of State, *2019 Country Reports on Human Rights Practices: Georgia*;
- Freedom House, *Freedom in the World 2020 – Georgia*;
- Human Rights Watch, *World Report 2020 – Georgia*.

168. During the hearing, counsel for the applicants spent some time going through this country of origin information and highlighting what he fairly acknowledged were a selection, only, of quotes. For understandable reasons, counsel for the applicants focused on selected extracts where the authors of the relevant reports referred to shortcomings. It is unnecessary to set out in this judgment each one of the quotes which counsel for the applicants directed this court's attention to. The following, however, will provide a 'flavour' and these comprise selected extracts from the aforesaid (53-page) 2019 report by the US Department of State:

"Organisation for Security and Cooperation in Europe (OSCE) observers described the first round of the October 2018 Presidential elections as competitive and professionally administered but raised concerns, including the lack of a level playing field, voter intimidation, and fear of retribution." (p. 1);

"There were indications that at times civilian authorities did not maintain effective control of domestic security forces." (p. 1);

"Significant human rights issues included: unlawful or arbitrary deprivation of life by Russian and de facto authorities in the Russian-occupied Georgian regions of Abkhazia and South Ossetia, including unlawful or arbitrary killing in Abkhazia; arbitrary detentions by the government and Russian and de facto authorities; significant problems with the independence of the judiciary and investigations and prosecutions widely considered to be politically motivated; unlawful interference with privacy; inappropriate police force against journalists; substantial interference with the right of peaceful assembly, including inappropriate police force against protestors; and crimes involving violence and threats targeting lesbian, gay, bisexual, transgender and intersex (LGBTI) persons." (p. 1 – 2);

"C. Torture and other cruel, inhuman or degrading treatment or punishment – while the constitution and law prohibits such practices, there were reports government officials employed them. In its report for 2018 released in April, the PDO stated that effectively combatting torture and other forms of cruel, inhuman or degrading treatment remained 'one of the most important challenges faced by the country'." (p. 5);

"In its report for 2018, the PDO reported a decrease in the number of cases of mistreatment by police it referred to prosecutors brought a near doubling in the number of injuries sustained by individuals admitted to temporary detention facilities and during or after administrative arrests (116 in 2018, compared with 65 in 2017)". (p. 5);

"During the year the PGO investigated 367 cases of alleged mistreatment by penitentiary and law enforcement officers, including cases from previous years. The investigations led to the prosecution of three persons, all of whom were charged with degrading or inhuman treatment." (p. 6);

"D. Arbitrary arrest or detention – the constitution and law prohibit arbitrary arrest and detention and provide for the right of any person to challenge the lawfulness of his or her arrest or detention in court. The government's observance of these prohibitions was uneven. Local NGO's considered the detention of some individuals in connection with the June 2020 – 21 protests to be politically motivated..." (p. 8);

"Upon arrest a detainee must be advised of his or her legal rights. Any statement made after arrest but before a detainee is advised of his or her rights is inadmissible in court. The arresting officer must immediately take a detainee to the nearest police station and record the arrest, providing a copy to the detainee and his or her attorney. The PDO reported, however, that maintenance of police station log books was haphazard and that in a number of cases the log books did not establish the date and time of an arrest." (p. 9);

"Witnesses have the right to refuse to be interviewed by law enforcement officials for certain criminal offences. In such instances prosecutors and investigators may petition the court to compel a witness to be interviewed if they have proof that the witness has 'necessary information'. The PDO reported that police continued to summons individuals as 'witnesses' and later arrested them. According to the PDO, police used 'involuntary interviews' of subjects, often in police cars or at police stations. The PDO's annual report for 2018 noted that police failed to advise interviewees of their rights prior to initiating interviews and failed to maintain records of individuals interviewed in police stations or vehicles." (p. 10);

"Although the constitution and law provide for an independent judiciary, there remained indications of interference in judicial independence and impartiality. Judges were vulnerable to political pressure from within and outside the judiciary." (p. 12);

"Press and media, including online media: Independent media were very active and expressed a wide variety of views. NGO's continued to criticise the close relationship between the heads of the Georgian Public Broadcaster (GPB) and Georgian National Communications Commission (GNCC) and the ruling party, and GPB's editorial bias in favour of the ruling party." (p. 19);

"Some media outlets, watchdog groups, and NGO's continued to express concern regarding media pluralism and political influence in media." (p. 19);

"Violence and harassment: While crimes against media professionals, citizen reporters, and media outlets were rare, a number of journalists sustained injury during the June 20 – 21 protests." (p. 20).

"Section 4. Corruption and Lack of Transparency in Government – The law provides criminal penalties for officials convicted of corruption. While the government implemented the law effectively against low-level corruption, NGO's cited weak checks and balances and a lack of independence of law enforcement agencies as among the factors contributing to allegations of high-level corruption. NGO's assessed there were no effective mechanisms for preventing corruption in State-owned enterprises

and independent regulatory bodies. While noting that petty bribery was extremely rare, Transparency International continued to describe corruption as a 'serious problem' in the country." (p. 33);

"Corruption: In January, Transparency International described the country's progress on anti-corruption as stalled and noted that authorities had failed to establish independent agencies to investigate cases of alleged corruption and misconduct in the government." (p. 33 – 34);

"Section 5. Governmental Attitude Regarding International and Non-Governmental Investigations of Alleged Abuses of Human Rights – Domestic and international human rights groups in most instances operated without government restriction, investigating and publishing their findings on human rights cases." (p. 35).

"The effectiveness of government mechanisms to investigate and punish abuse by law enforcement officials and security forces was limited, and domestic and international concern regarding impunity remained high. In July 2018 Parliament passed a law establishing an institutionally independent State Inspectorate charged with investigating alleged misconduct by government officials, including in law enforcement. The Inspectorate's mandate entered into force on November 1." (p. 37);

"Domestic and other violence against women remained a significant problem, which the government took several steps to combat." (p. 38);

"Acts of violence, discrimination, and other abuses based on sexual orientation and gender identity – The criminal code makes acting on the basis of prejudice because of a person's sexual orientation or gender identity an aggravating factor for all crimes. According to NGO's however, the government rarely enforced the law. The Human Rights Department of the Ministry of Internal Affairs trained officers on hate crimes. The PDO reported that LGBTI individuals continued to experience systemic violence, oppression, abuse, intolerance and discrimination." (p. 46).

169. Several comments seem necessary to make with regard to the foregoing. Firstly, for very obvious reasons, counsel for the applicants laid no emphasis in his submissions on the aspects of the country of origin reporting which indicated compliance with expected norms. Secondly, it is uncontroversial to say that, while a selection of extracts may convey a particular impression, the fundamentally important point is that the entirety of all country of origin information, positive and negative, is considered. It is a matter of fact that it was considered by IPAT in the present case.

170. Paras. [4.8] to [4.11] inclusive, of the Tribunal's decision are dedicated to the country of origin issue. At para. [4.8] IPAT note the designation of Georgia as a safe country of origin by means of the International Protection Act, 2015 (Safe Countries of Origin) Order 2018 which was made by the Minister for Justice and Equality pursuant to s. 72 of the 2015 Acts. The Tribunal's decision proceeds to make clear that IPAT is required to have regard to s. 33 of the 2015 Act which is quoted *verbatim*. The decision then states the following:

"[4.9] It is clear from the provisions of section 33 of the Act that notwithstanding the designation of Georgia as a safe country of origin, the Tribunal remains required to make an individual assessment of the appellant's claim for international protection."

171. The Tribunal's decision refers to and quotes from "OSAC – United States Overseas Security Advisory Council, *Georgia 2020 Crime and Safety Reports*", 5th November 2020 and, at para. [4.11], the Tribunal's decision states the following:

"[4.11] The Tribunal has considered all country of origin information submitted, including that not excerpted above. The appellant's claim does not run counter to available general country of origin information. There are criminal gangs active in Georgia who engage in violence."

172. In the manner previously examined in this judgment, the Tribunal then proceeded to examine the appellant's 'core' claim and, for a variety of reasons, reached negative credibility findings, ultimately coming to the view that, on the balance of probabilities, the Tribunal was not satisfied that the applicants' core claim had been made out.

173. It should be noted that the reference at para. [4.10] to the OSAC "*Georgia 2020 Crime and Safety Reports*" was a reference to a report which accompanied submissions made on behalf of the applicants which were sent to IPAT on 13 November 2020 in an email which began: "*We refer to yours of the 2nd November last, and enclose herewith the following documents for your consideration in the above papers-only appeals:*". As well as the fact that this communication which was sent some 10 days *after* the Tribunal's decision to refuse an oral hearing, plainly acknowledges that the matter shall proceed by way of a 'papers-only' appeal, there is certainly no objection to the designation of Georgia as a safe country of origin. Nor had there been any such objection at any stage during the previous year and more when the applicants' cases were being progressed through the international protection system, with the assistance of their legal advisors.

174. It is also entirely fair to say that, although their counsel highlighted numerous selected extracts from the country of origin information during the hearing, the applicants themselves did not highlight these when making submissions to IPAT in respect of their appeal. On the contrary, the sole extract from country of origin information which was referred to in the applicants' 13 November 2020 submissions was as follows:

"12. The report of Freedom House (submitted and relied upon by the IPO) notes that while there are laws that guarantee due process, **this protection is not always respected in practice**. This was certainly the applicant's own experience in Georgia and he fears he will suffer further serious harm if returned:

"Does due process prevail in civil and criminal matters? 2/4

The law guarantees due process, but this protection is not always respected in practice. The office of the country's public defender, or ombudsperson, has reported problems including a failure to fully implement Constitutional Court rulings administrative delays in court proceedings, the violation of the accused's right to a presumption of innocence, and the denial of access to a lawyer upon arrest.

Similarly, the United States Department of State Report relied on by the IPO notes that 'some shortcomings remain'."

175. For the sake of clarity, the foregoing is the only quote from country of origin reporting which the applicants chose to refer to in their written legal submissions which were furnished prior to the appeal being determined. Even that quote recognises the existence of a legal system in which due process is guaranteed by law, albeit "*not always respected in practice*", with "*some shortcomings*" remaining.

176. The present proceedings do not constitute a merits-based appeal and nothing I say in this judgment detracts from that fundamentally important point. It was for IPAT to consider and determine the matter, and the evidence before this court is that it did so in a most careful manner which, for present purposes, involved *inter alia*, a consideration of all country of origin information as well as all other relevant material. Indeed, the evidence is that the Tribunal, very appropriately, approached the matter with extra care, in the context of it being a papers-only based appeal. This was made explicit in the decision wherein, at para. [4.1], IPAT stated the following:

"[4.1] Given that this is a papers-only appeal, the Tribunal is cognisant of the extreme care required in circumstances where the Tribunal has not had an opportunity of forming a personal impression of the appellant at an oral hearing. The Tribunal has exercised extreme care in reading all the material before it and assessing the appellant's claim."

177. Thus, the evidence before this court is that, rather than making any challenge to the designation of Georgia as a safe country, the applicants acknowledged that designation and actively engaged with it by making submissions under s. 33 of the 2015 Act as to why there were said to be serious grounds against such a designation in the particular circumstances of their case.

178. Returning to the selected extracts from the country of origin reports which counsel for the applicants referred to during the hearing, it is very difficult to see any connection between many of those extracts and the particular circumstances of the applicants' case. Although in the account given by the first named applicant he certainly claims that a report he made to police found its way to the criminals who allegedly kidnapped him repeatedly, beat him unconscious repeatedly, and extorted money from him, his fundamental claim relates to a fear of persecution or serious harm from *non-State actors*, namely, criminals prepared to use violence in pursuit of money.

179. Whilst various extracts from country of origin reports refer *inter alia* to: serious human rights concerns in the Russian-occupied regions of Georgia; mistreatment by penitentiary officers; uneven observance of prohibitions on arbitrary arrest and detention; arrest of protestors considered to be politically motivated; the close relationship between national broadcasters and the ruling party; concerns regarding media pluralism and political influence; and violence against women remaining a significant problem, which government took several steps to combat, it is very difficult to see the relevance of any of the foregoing to the particular circumstances of the applicants' case.

180. The more important point is, however, that (i) IPAT considered everything and did so with great care. It did so against the backdrop of (ii) the Minister having designated Georgia as a safe country of origin and (iii) the applicants having recognised that designation but having attempted to establish that it did not apply in the particular circumstances of their case. They did not establish this. Their failure to do so by no means suggests, much less establishes, that there was anything unlawful or unwarranted in the Minister's 2018 designation which, as I say, the applicants never challenged until they received decisions against them but which were, I am entirely satisfied, lawfully made.

181. The designation of Georgia as a safe country of origin was examined, in great detail, in the 25 November 2020 decision by Burns J. in *I.M. v IPAT & Ors.* [2020] IEHC 615. In that decision, the learned judge carefully analysed the legislative history and how the relevant provisions are rooted in Community law. *I.M.* related to the seeking of leave to apply by way of judicial review for *inter alia* a declaration that the Minister erred in the designation of Georgia as a safe country of origin, and the learned judge refused leave. It should not be lost sight of in the present case, that IPAT found that "*The appellant's claim does not run counter to available general country of origin information. There are criminal gangs active in Georgia who engage in violence*". However, as a result of a very careful consideration of all relevant matters, the Tribunal reached adverse credibility findings in respect of the first named applicant and this was the key determining factor in the rejection of his appeal.

182. Thus, there is simply no question of the Minister's s. 72 designation having "*fettered the hands of the Tribunal*", as submitted on behalf of the applicants at para. 41 of their written submissions. In other words, it seems to me that at the heart of matters is a rejection of the first named applicant's credibility, both by the

IPO, and, on appeal, by IPAT. That rejection of credibility represented lawful decision-making on the part of the first named respondent. IPAT's decision was plainly within their power to make and, in my view, was fully compliant with fair procedures, including the *audi alteram partem* principle. Moreover, the decision was made after a careful consideration of all matters which required to be taken into account. As well as clear and cogent, it was rational in the sense in which that term is used in judicial review.

183. The applicants plainly object to the decisions and it is fair to say that their fundamental aim is to have quashed what were lawful decisions. It seems to me that this fourth question under discussion (which reflects the declaration sought at para. D (iii) of their Statement of Grounds), is simply part of an attempt to overturn decisions lawfully made. On the particular facts of this case, it also seems to me to be something which could not avail the applicants. Had they demonstrated (and they most certainly have not) that the second named respondent Minister failed to comply fully and properly with the Minister's obligations when making a s. 72 designation in respect of Georgia in 2018, it would neither (i) alter the reality that IPAT found that the claim did not run counter to country of origin information; nor would it (ii) set aside or speak to in any way the adverse credibility findings reached by IPAT arising from a range of factors carefully set out in its decision.

184. It seems to me that there are a range of fundamental difficulties facing the applicants in respect of the declarations sought. These can be summarised as (i) their failure to challenge the designation at any stage until after adverse decisions issued from IPAT; (ii) their acceptance of, indeed reliance upon, the designation in the context of submissions made pursuant to s. 33 of the 2015 Act; (iii) their failure to adduce any evidence of a breach by the Minister of their obligations pursuant to s. 72 of the 2015 Act; and (iv) that the declaration they seek seems to me to be wholly irrelevant, given what was, in fact, decided by IPAT, both in respect of the relationship between the first named applicant's claim and country of origin information; and the applicant's credibility or lack thereof. For these reasons the fourth question must also be answered in the negative.

185. Before leaving the country of origin information, the following comments seem appropriate, given what was urged on this Court at the hearing. In skilled submissions, counsel for the applicants laid emphasis on the fact that the "Freedom House" report "Freedom in the World 2020" gave Georgia a score of 61/100, comprising 24/40 in respect of political rights; and 37/60 as regards civil liberties. The applicants' counsel went on to submit to this Court that the score for Ireland is 97/100, comprised of 39/40 for political rights and 58/60 for civil liberty.

186. The foregoing, however, is not evidence that the Minister breached any of the obligations imposed on them pursuant to section 72. It cannot be extrapolated from a comparison of two scores (of 61, versus 97, out of 100) that the designation of Georgia as a safe country of origin was in any way unlawful or unwarranted. This court is not tasked with making 'value judgments'. It fell to the Minister to make the assessment required pursuant to s. 72 and to make a decision having regard to the assessment conducted. There is simply no evidence of any failure on the Minister's part to conduct a proper assessment, emphasising again, that it is not for this court to *make* the assessment. It is not at all clear what the applicants contend flows from the difference between a score for Georgia of 61 and one for Ireland of 97. If it is contended that only a country with a score of 97 or above (or approaching same) can be considered a safe country of origin, that would not appear to be the view taken by either the Minister or by 11 other EU States who have designated Georgia as a safe country of origin, notwithstanding their "Freedom House" score of 61/100. It might also be added that even in this State, the activity of criminal gangs prepared to use violence is, very sadly, not unknown, despite the 97/100 score.

187. Among the other oral submissions made on behalf of the applicants was to say that the country of origin information "*seriously questions*" whether Georgia is a safe country of origin and "*the Minister has not told this court what evidence was before them when the Minister designated Georgia as a safe country of origin*". Underpinning the foregoing submission is that, because the applicants seek a declaration that the Minister erred in the designation of Georgia as a safe country of origin, the onus is somehow on the Minister to 'prove' what was done and what was considered in the context of the s. 72 assessment. I reject such a submission as fundamentally flawed. It is for the applicants to prove their case. To accept the foregoing submission would be to create a Kafkaesque situation where the Minister is required to 'prove a negative' i.e. that they did *not* err.

188. The submissions made on behalf of the applicants also seem to me to run counter to established principles including that administrative decisions enjoy a presumption of validity and that the onus of proof rests at all times on a party seeking judicial review. Similar comments apply in relation to the oral submission made on behalf of the applicants that "*it is up to the Minister to come to court and say what was relied upon to show how she was satisfied that Georgia should be designated as a safe country of origin*" and that "*the designation is unsafe and should be quashed, pending the Minister establishing the basis for the designation*" or words to that effect.

189. I also reject as fundamentally flawed the submission made on behalf of the applicants that they are entitled to the declaration sought because country of origin reports issued subsequent to the Minister's decision which came into operation on 16 April 2018 "*suggest the legal situation and the application of the law are out of step with the current situation*", being a submission made at para. 42 of the applicants' written legal submissions. The foregoing ignores entirely the explicit obligations placed upon the Minister pursuant to s. 72(5) which mandates that "*the Minister shall, in accordance with subsections (2) to (4) and on a regular basis, review the situation in a country designated under subsection (1).*" and the applicants have proffered no evidence whatsoever of any breach of the foregoing duty on the Minister's part.

190. Given the s. 72 designation of Georgia as a safe country of origin, IPAT was to consider Georgia to be a safe country of origin *unless* the applicant provided serious grounds to show that this was not the case. The burden rested on the applicant that the evidence demonstrates that the applicant failed to discharge this burden in the Tribunal's view. The applicants in the present case have not demonstrated that there was anything unlawful in the view which the Tribunal came to in this regard.

191. Although the applicants may not like the outcome of the decision, this is not an appeal on the merits. The evidence before this court demonstrates that the applicants simply did not discharge the burden of showing that Georgia was not a safe country in the context of the applicant's specific facts and circumstances. Purported reliance, before this court, on country of origin information, including statements which have no relevance to the applicants' particular circumstances and which were not highlighted for the Tribunal simply cannot avail the applicants.

192. Among the oral submissions made in respect of the designation by the Minister of Georgia as a safe country was to submit that "*while the designation was lawful per se, looking at their particular circumstances, the designation could and should have been disapplied*". The acknowledgement in the foregoing submission that the 2018 designation was lawful *per se* seems to me to be an entirely appropriate acknowledgment to make, in circumstances where there is simply no evidence to the contrary put before this court. The balance of the submission, namely, that the designation could and should have been disapplied recognises, of course, and again very appropriately, the fact of the applicants' engagement with the reality of the designation by

virtue of their submissions based on s. 33 of the 2015 Act. It is also, however, a submission which speaks to the merits of the decision made by the Tribunal. In other words, it recognises what is at the heart of the applicants' case, namely, their dissatisfaction with the outcome of IPAT's decision. The submission does not, however, direct this Court to any unlawfulness, be that in respect of IPAT's decision-making in April 2021 or, for that matter, the Minister's in 2018.

193. For the reasons outlined above, the answer to the fourth question must also be in the negative.

194. I now turn the fifth and final question which, according to the applicants, arises for determination in these proceedings, being:

Are the provisions of the 2015 Act, in particular s. 43, incompatible with the European Convention on Human Rights, in particular Articles 6, 8, 13 and 14 thereof?

195. Article 6 of the ECHR provides the right to a fair trial. As already examined in this judgment, where an applicant's country of origin has been designated as a safe country of origin, 'accelerated' procedures apply, in that the tribunal is statutorily required not to conduct an oral opinion save where, *per* s. 43(b) the tribunal "*considers it is not in the interests of justice*" to determine the appeal on a 'papers-only' assessment. Considerable reliance is placed by the applicants on the CJEU decision in *Case – 348/16 Moussa Sacko v. Commissione territoriale per il riconoscimento della protezione internazionale di Milano* (26 July 2017). That decision which concerned a preliminary reference from Italy in respect of the recast Asylum Procedures Directive, which Ireland had not opted into, stated *inter alia* the following: -

"32. *The principle of effective judicial protection of the rights which individuals derive from EU law comprises various elements; in particular, the rights of the defence, the principle of equality of arms, the right of access to a tribunal and the right to be advised, defended and represented (judgment of 6 November 2012, Otis and Others, C-199/11, EU:C:2012:684, paragraph 48).*

33. *With regard, first, to the proceedings at first instance covered by Chapter III of Directive 2013/32, it should be recalled that when the authorities of the Member States take measures which come within the scope of EU law, they are, as a rule, subject to the obligation to observe the rights of defence of addressees of decisions which significantly affect their interests (judgment of 10 September 2013, G. and R., C-383/13 PPU, EU:C:2013:533, paragraph 35, and of 11 December 2014, Boudjlida, C-249/13, EU:C:2014:2431, paragraph 40).*

34. *In particular, the Court has held that the right to be heard in any procedure, inherent in respect for the rights of the defence, which is a general principle of EU law, guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely (see, to that effect, judgments of 11 December 2014, Boudjlida, C-249/13, EU:C:2014:2431, paragraphs 34 and 36, and of 9 February 2017, M, C-560/14, EU:C:2017:101, paragraphs 25 and 31).*

35. *In that regard, the purpose of the rule that the addressee of an adverse decision must be placed in a position to submit his observations before that decision is adopted is, inter alia, to enable that person to correct an error or submit such information relating to his or her personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content (see, to that effect, judgment of 5 November 2014, Mukarubega, C-166/13, EU:C:2014:2336, paragraph 47, and of 11 December 2014, Boudjlida, C-249/13, EU:C:2014:2431, paragraph 37 and the case-law cited).*

36. *With regard, on the other hand, to the appeals procedures covered by Chapter V of Directive 2013/32, in order for the right to a remedy to be exercised effectively, the national court must be able to review the merits of the reasons which led the competent administrative authority to find that the application for international protection was unfounded or made in bad faith (see, by analogy with reference to Directive 2005/85, judgment of 28 July 2011, Samba Diouf, C-69/10, EU:C:2011:524, paragraph 61).*

37. *In this instance, it should be noted that failure to give the applicant the opportunity to be heard in an appeals procedure such as that covered by Chapter V of Directive 2013/32 constitutes a restriction of the rights of the defence, which form part of the principle of effective judicial protection enshrined in Article 47 of the Charter”.*

196. The applicants in the present proceedings lay particular emphasis on paras. 34, 35, and 37 of the CJEU’s decision in *Moussa Sacko* both in contending that IPAT erred in law and /or acted in breach of principles of natural and constitutional justice in making adverse findings against the applicants without, contend the applicants, giving them an opportunity to respond. The applicants assert that the 2015 Act, in particular s. 43, is incompatible with the ECHR by facilitating such decision making in the absence of the applicants having the opportunity to respond.

197. In the manner previously examined, the facts in the present case utterly undermine the proposition that the applicants were not given an opportunity to respond. Although not referred to in the applicant’s written legal submissions, further extracts from the decision in *Moussa Sacko* appear to be relevant to this fifth and final question: -

“38. However, according to the Court’s settled case-law, fundamental rights, such as respect for the rights of the defence, which includes the right to be heard, do not constitute unfettered prerogatives and may be restricted, provided that the restrictions in fact correspond to objectives of general interest pursued by the measure in question and that they do not entail, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed . . .

39. An interpretation of the right to be heard, guaranteed by Article 47 of the Charter, to the effect that it is not an absolute right is confirmed by the case-law of the European Court of Human Rights, in the light of which Article 47 of the Charter must be interpreted, as the first and second paragraphs of that article correspond to Article 6(1) and Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms . . .

40. In that regard, the Court has previously stated that Article 6(1) of that convention does not impose an absolute obligation to hold a public hearing and does not necessarily require that a hearing be held in all proceedings . . .

41. Furthermore, the Court has also held that the question whether there is an infringement of the rights of the defence and the right to effective judicial protection must be examined in relation to the specific circumstances of each case, including the nature of the act at issue, the context in which it was adopted and the legal rules governing the matter in question

. . .

48. Moreover, while Article 46 of Directive 2013/32 does not require a court or tribunal hearing an appeal against a decision rejecting an application for international protection to hear the applicant in all circumstances, it does not, nonetheless, authorise the national legislature to prevent that court or

tribunal ordering that a hearing be held where, having found that the information gathered during the personal interview conducted in the procedure at first instance is insufficient, it considers it necessary to conduct a hearing to ensure that there is a full and ex nunc examination of both facts and points of law, as required under Article 46(3) of the directive”.

198. None of the foregoing principles are transgressed by the provisions of the 2015 Act. Nor does the ruling by the CJEU offer any support for the declaration sought at para. D(v) of the applicant’s statement of grounds, in light of the evidence before this Court. The applicants have not established any absolute right to an oral hearing. Nor have they established that the refusal of an oral hearing breached any right, whether rooted in the Constitution, the ECHR, or otherwise.

199. It is also important to make clear that this Court should only engage in an analysis of whether or not there is incompatibility with the ECHR if the provisions (in particular s. 43) is found to be constitutional and it is not possible to interpret that provision in a manner compatible with the Convention. In that regard, it is appropriate to refer to the Supreme Court’s decision in *MCD v. L* [2009] IESC 81.

200. In the judgment of Murray C.J. in *McD. v L.*, the Supreme Court set out a comprehensive analysis of the status of the ECHR and the relationship between national law and international treaties to which Ireland is a party. The learned judge also referred to s. 2 of the European Convention on Human Rights Act, 2003 which provides that: *“In interpreting and applying any statutory provision or rule of law, a court shall, insofar as possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State’s obligations under the Convention provisions”.* In the present case, it does not appear to me that there is any difficulty in interpreting the provisions of the 2015 Act, in particular s. 43, in a manner compatible with the ECHR.

201. Article 8 of the ECHR concerns the right to private and family life and in *P.O. & Anor v The Minister for Justice & Equality & Ors* [2015] IESC 64; [2015] 3 I.R. 164, the Supreme Court took the view that, even if Art. 8 rights had been engaged, there had been no breach of those rights and no breach of fair procedures by the respondent Minister as regards the deportation orders issued against the appellants, who were a mother and son seeking asylum in Ireland from Nigeria. The mother arrived in this State in 2006, giving birth to her son shortly thereafter. The son had been born and brought up for eight years in this State but did not have Irish citizenship as he was entitled to Nigerian citizenship. The mother’s asylum claim centred on the assertion that she faced persecution by the family of a friend, after converting that friend to Christianity, and that she would not be afforded adequate protection by the Nigerian police. That claim was dismissed on the grounds of credibility. Rather than appealing the determination of the Refugee Appeals Tribunal, judicial review proceedings were brought, but discontinued three years later. Deportation orders against the appellants were subsequently signed and an unsuccessful application was made for revocation of those orders. The decision not to revoke the deportation orders was challenged in this court and leave to seek *certiorari* was granted, but the claim was dismissed at the substantive hearing and the Minister’s decision was affirmed.

202. Among the issues determined by the Supreme Court was that the Minister was not constrained to rely solely upon the information relied upon by the appellants but, rather, was entitled to use more up to date and recent information concerning the situation in Nigeria, with the onus being on the appellants to demonstrate that there had been some fundamental mistake or error in the consideration of that new information by the Minister, which onus they had not discharged. The more up to date information used by the Minister was publicly available and did not present an entirely different picture of the situation in Nigeria than that presented

by the appellants. The Supreme Court's judgment laid emphasis on the question of whether something "new" had been considered and relied upon. As MacMenamin J. stated (at para. 11):

"This court has already pointed out in Smith v Minister for Justice [2013] IESC 4, (Clarke J), that it is only when new material is advanced, that a revocation application might be properly considered. This was not the situation here. There was little new, and nothing referring to the appellant's position."

The foregoing could just as easily be said as regards IPAT's consideration of matters. In short, there was nothing "new" considered or relied on for the decision challenged. On the same topic, MacMenamin J. stated in *P.O. & Anor* (at para. 12) that:

"The minister's officials did not rely upon new material which, unknown to the appellants, presented an entirely different picture of the situation in Nigeria. Had the officials done so, there might have been a deficiency in fair procedures."

Again, the point of relevance to the present case is that IPAT did not rely on any new material which was unknown to the applicants. Rather, IPAT considered all material. Later, (at para. 15) MacMenamin J. stated the following:

"Furthermore, in making such decisions, the Minister is obliged to operate within the boundaries of natural and constitutional justice, and also to decide in accordance with the international obligations which have been incorporated into domestic law by the Oireachtas. The Minister is not entitled to act unconstitutionally. She must determine every application on its merits. This includes operating within the boundaries of the 1999 Act itself, and, more broadly, the Constitution, the European Convention on Human Rights, as explained by the ECtHR, and the principle of proportionality, all of which must be applied to the circumstances of the case."

A careful consideration of the evidence before this court reveals no failure on the part of IPAT to act within the aforesaid "boundaries", nor does the evidence demonstrate any incompatibility as between the statutory process laid down in the 2015 Act, and the provisions of the ECHR.

203. In a judgment in the same case, Charleton J. commented as follows on the statutory right to be heard (*per s. 3* of the Immigration Act, 1999) where the Minister proposes to make a deportation order and a person notified may make written representations to the Minister, which the latter is required to take into account:

"The process of giving an opportunity to an applicant to be heard, however, is not to be mistaken for the strict procedures within a criminal trial and nor are rules of evidence applicable. A fair procedure must be adopted. That is not in any way to be equated with criminal trial or civil trial procedures. This is an enquiry and not a trial. ... The right to be heard must be analysed within its proper context."

204. From para. 24 onwards, the learned judge gave the following guidance in respect of the nature of an international protection enquiry and the importance of a right to be heard in the fair procedures context, also emphasising what is *not* required to give that right expression:

"24. An enquiry about whether a person is a refugee is not an adversarial contest. Duties are cast on both sides. On the part of the applicant for refugee status, there must be full cooperation and the revelation of any relevant material. On the part of the decision maker there must be an inquiry into country of origin information and the position of the applicant in relation thereto."

205. I would pause at this stage to observe that to leave answers in the International Protection Questionnaire 'blank' and to not reveal all relevant material could hardly be called *full co-operation* on the part of the first named applicant. By contrast, the evidence demonstrates that the decision maker conducted a careful inquiry,

inter alia, concerning country of origin information and the position of the applicant in respect thereof. Charleton J. continued at para 24 of his judgment in *P.O.* as follows,

"If the stage of deportation is reached, that relevant background, if applicable, may be taken into account together with any fresh representations that are made. In case C-277/ 11 MM v Minister for Justice, Equality and Law Reform, Ireland, Attorney General a reference was made by Hogan J to the Court of Justice of the European Union as to the right to be heard in the bifurcated system operating in the State whereby an applicant for refugee status must first apply for a recommendation of refugee status and, only when that fails, may he or she apply for subsidiary protection. That case concerned the extent of the right to be heard in relation to the second part of that process; a distinct procedure whereby the person applies for subsidiary protection. The Court of Justice rejected the proposition that where, on the second stage, an official of the respondent Minister decides that subsidiary protection should be refused, a draft decision should be forwarded to the applicant so that he or she may comment thereon and make further representations. The Court used the opportunity afforded by that reference to restate what the nature of the right to be heard consists of. It does not necessarily incorporate an oral hearing; it does not require adversarial procedures; but it does need to observe two fundamental principles.

25. These principles are related both to each other and to ordinary sense. Firstly, the person affected by a decision has an entitlement to put forward their side of the case and, secondly, the administrative or quasi judicial tribunal must fairly consider such representations."

206. The evidence in the present case demonstrates that the applicants were, without doubt, afforded every entitlement to put forward "*their side of the case*". They took that opportunity in the form of detailed written submissions made by their solicitors on 13 November 2020. The fact that the mode or manner by which they were heard involved the proffering by the applicants, and the consideration by IPAT, of all material the applicants wished to rely on does not detract in any way from the availability and effectiveness of that right in the circumstances of this case.

207. Furthermore, the evidence demonstrates that IPAT fairly considered all representations made, in the context of their consideration of the entirety of the material before it. All of this was facilitated by the provisions of the 2015 Act and in my view fatally undermine the proposition that there is an incompatibility between the provisions of that national legislation, and Articles in the ECHR. At para. 25 of his judgment in *P.O.* Charleton J. continued by referring to the decision in *M.M.* going on to say:

"25. The Court of Justice stated, at paragraphs 87 and 88 of the decision:

The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely (see, inter alia, Case C-287/02 Spain v Commission [2005] ECR I-5093, paragraph 37 and case-law cited; Sopropé, paragraph 37; Case C-141/08 P Foshan Shunde Yongjian Housewares & Hardware v Council [2009] ECR I-9147, paragraph 83; and Case C-27/09 P France v People's Mojahedin Organization of Iran [2011] ECR I-13427, paragraphs 64 and 65).

That right also requires the authorities to pay due attention to the observations thus submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision (see Case C-269/90 Technische Universität München [1991] ECR I-5469, paragraph 14, and Sopropé, paragraph 50); the obligation to state reasons for a decision which are sufficiently specific and concrete to allow the person to

understand why his application is being rejected is thus a corollary of the principle of respect for the rights of the defence.

26. The form of any procedures in relation to applications for refugee status or subsidiary protection or in relation to deportation orders is not laid down by European legislation. Instead, as the Court indicated at paragraph 94 of its judgment 'it will be for the referring court to determine whether the procedure followed in the examination ... was compatible with the requirements of EU law ... [on the] ... right to be heard ...'."

208. In light of the foregoing, it seems to me that the applicants' Art. 6 argument is wholly untenable. The applicants' right to be heard does not include an absolute right to an oral hearing before IPAT. As the Court of Justice has made clear, the essence of the right to be heard is (i) the opportunity for the applicants to make their views known (and they were plainly afforded this opportunity, which they took); (ii) that this opportunity be effective (the evidence establishes that it was, i.e. this is not a situation where, to take a purely hypothetical example, the applicants were offered an opportunity to make submissions but not given any time to make them); (iii) the opportunity must be given *prior* to any decision being taken (and clearly this occurred in the present case); (iv) the decision maker must pay due attention to the submissions made (again, the evidence demonstrates that this was so); (v) all relevant aspects of the individual case must be carefully and impartially examined (which they were as the decision makes explicit); (vi) a decision incorporating reasons must be provided (and IPAT, as decision maker, undoubtedly did this); and (vii) the decision must be adequate so as to enable the applicants to understand why it was made (once more, this is plainly so and there is no challenge made to the adequacy of reasons).

209. It should also be noted that Recital 11 of the Asylum Procedures Directive explicitly provides for an 'accelerated' procedure in the context of processing asylum applications stating:

"It is in the interest of both Member States and applicants for asylum to decide as soon as possible on applications for asylum. The organisation of the processing of the processing of applications for asylum should be left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive".

210. In other words, not only have the applicants in the present case failed to demonstrate that any Articles in the ECHR are incompatible with domestic legislation, it seems to me that the provisions of the 2015 Act (in particular, s. 43) is entirely consistent with (i) the explicit terms of the aforesaid Directive; (ii) fair procedures rights as interpreted in EU authorities; (iii) Supreme Court jurisprudence with regard to the right to be heard; and (iv) any first-principles analysis of the requirements of natural and constitutional justice; as well as (v) the evidence in this case which demonstrates that, in fact, numerous invitations were given to the applicants to proffer all information and documentation relevant to their claim (see earlier in this judgment, in particular, specific statements and questions in the Questionnaire, as well as the specific questions put by the international protection officer; coupled with the statutory duty of cooperation *per s. 27* of the 2015 Act).

211. For the reasons set out in this judgment, despite the number of ways the decision in question was said to be unlawful, and the undoubted sophistication of the range of submissions made with consummate skill by the applicants counsel, I am satisfied that the applicants have not established an entitlement to any of the reliefs sought, and their proceedings fall to be dismissed.

212. On 24 March 2020 the following statement issued in respect of the delivery of judgments electronically: "*The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the*

judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the parties do not agree in this regard concise written submissions should be filed electronically with the Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate.”

213. In circumstances where the respondents have been entirely successful, my preliminary view in respect of the question of costs is that they should ‘follow the event’. The parties are invited to correspond with each other, forthwith, as regards the form of a final order, and to submit an agreed draft Order within 14 days. In default of agreement on any issue, short written submissions should be filed in the Central Office within the same 14 - day period.

214. Finally, although every effort has been made to protect the identity of the applicants, if any further redactions are thought to be necessary, this should also be dealt with in submissions within the said 14 days.