THE HIGH COURT

JUDICIAL REVIEW

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

[2023] IEHC 637

Record No. 2022/34JR

BETWEEN

MZ

APPLICANT

-and-

INTERNATIONAL PROTECTION APPEALS TRIBUNAL

-and-

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Ms. Justice Niamh Hyland delivered 25 September 2023

Introduction

1. This is a challenge to a decision of the International Protection Appeal Tribunal (the "IPAT" or "Tribunal") dated 17 November 2021. The applicant is a man from Georgia who made a claim for international protection to the Minister for Justice and Equality on 23 April 2019 on the basis that if he returned to Georgia, he would face persecution and/or serious harm. On 10 August 2021 an international protection officer recommended

pursuant to s.39 of the International Protection Act 2015 ("the 2015 Act") that the applicant not be declared to be a person eligible for asylum or subsidiary protection. The applicant appealed this decision, and the hearing took place on 20 October 2021. The IPAT concluded that the applicant should be given neither a refugee declaration nor a subsidiary protection declaration.

2. These proceedings challenge that decision by way of judicial review and seek an Order of *certiorari* quashing that decision.

Chronology of the Proceedings

3. The Statement of Grounds was filed on 16 January 2022 grounded on a Georgian language affidavit of the applicant of 18 January 2022, a translated version of which was also filed on the same date alongside an affidavit of the translator, Lasha Trapaidze. John Brick, solicitor for the applicant, similarly swore an affidavit in compliance with practice direction HC81 on 18 January 2022. On 4 May 2022, John Moore, a Higher Executive Officer in the Irish Naturalisation and Immigration Service swore an affidavit. On 20 May 2022 John Brick swore a second affidavit. An amended Statement of Grounds was filed on 8 July 2022 and the Statement of Opposition was filed on 23 September 2022. The applicant swore a second affidavit on 27 October 2022 and Mr. Trapaidze swore an affidavit on the same date exhibiting a translation into English. A second amended Statement of Grounds was filed on 17 January 2023. An amended Statement of Opposition was filed on 25 January 2023.

Factual Background

4. The following is a summary of the background provided by the applicant to the IPAT as recorded in the decision of 17 November 2021. The applicant was born in Georgia. He is married and has three children. The rest of his family continue to live in Georgia along

with his parents and his sister. In 2003 a conflict arose between a Mr. DL and the godfather of the applicant's son, Mr. RC, related to their mutual drug use. On 25 May 2003 Mr. RC assaulted Mr. DL and then went to the applicant's house. Mr. DL followed Mr. RC to the applicant's house and assaulted the applicant.

5. The applicant was taken to hospital and received stitches before being discharged shortly after. On 28 May 2003 Mr. RC told the applicant that he was going to kill Mr. DL's family. The applicant attempted to dissuade him and followed him to Mr. DL's house in an attempt to stop him, the applicant's cousin, Mr. KB also went with him to that end. The applicant and Mr. KB were unable to stop Mr. RC who entered the house and killed the mother and brother of Mr. DL. Mr. DL avoided Mr. RC by hiding in another part of the house.

6. Following these murders, the applicant agreed to help Mr. RC to leave the country. Mr. DL began to look for Mr. RC as well as the applicant and Mr. KB. The applicant then decided to leave his village. On 31 May 2003 Mr. DL burned down the applicant's parent's house. On 7 or 8 February 2004 Mr. DL and four accomplices killed Mr. KB and threw his body in a river.

7. The applicant contends that Mr. DL's family members then gave false testimony and told the police that he and his cousin Mr. KB were in Mr. DL's house when the murders of his mother and brother occurred. The applicant subsequently heard about this testimony and handed himself in to the police for questioning. He felt he had no other choice as they would seek him out otherwise. Following this questioning the applicant was arrested by the police and subsequently convicted for being an accessory to the murders. He was initially sentenced to twenty years in prison but following mitigation this was reduced by two years. Following this the applicant's lawyers unsuccessfully attempted to have the sentence further reduced to four years in total, but the final sentence imposed by the Georgian Court was ten years.

8. Mr. RC was also arrested, pleaded guilty and was convicted of the murders. He was sentenced to life imprisonment. Mr. DL was arrested for the murder of the applicant's cousin and was sentenced to twenty three years in prison.

9. The applicant was released on 7 February 2012. Upon release he resumed working in a vineyard. Mr. DL continued serving his sentence but passed threatening messages to the applicant by way of other prisoners as they were released from prison. A Mr. FG passed several threatening messages from Mr. DL following his release from prison in July 2015. The applicant reported these threats to the police to no avail.

10. In March 2019 the head of the local government called the applicant and informed him the police wished to speak with him. Upon meeting the head of the police and another man, the applicant was informed that his life was in danger as Mr. DL was due to be released shortly. They told him that he should leave Georgia and should do so within fifteen days. They informed him that if he failed to do so, they would frame him with drugs charges and take him into custody. They told him they would not be able to deal with both him and Mr. DL being free simultaneously given Mr. DL's determination to harm him. They advised him that his only alternative was to hire private security twenty four hours a day.

11. On 20 April 2019 the applicant left Georgia and travelled by plane to Ireland via Latvia and Dusseldorf. He arrived in Ireland on 21 April 2019 and applied for protection on 23 April 2019. Mr. RC was released from prison in 2019 but died that September in suspicious circumstances. He died in a car accident that the applicant thinks was organised by Mr. DL, who was questioned for twelve days in prison in respect of the crash to no avail.

12. Mr. DL was released from prison in January 2020. Following his release he threatened the applicant's father, telling him he would kill the applicant. The applicant's father reported this to the police, and they questioned Mr. DL who denied that he had made the threat. Mr. DL knows that the applicant is in Ireland and has threatened him both by way of a third

person and via a social media messaging service on 18 October 2021. On that occasion Mr. DL allegedly informed the applicant that he would do the same to him as had been done to his cousin.

13. In summary, the applicant is afraid that he will be harmed if he returns to Georgia. He fears harm at the hands of Mr. DL. He believes that the police will not protect him, and he will not be safe even if he moves to another part of Georgia.

Decision of Tribunal

14. The Tribunal carried out its assessment of the foregoing representations under s.28 of the 2015 Act in a number of discrete parts starting with the applicant's conviction and sentencing as an accessory to the murders of Mr. DL's relatives by his cousin Mr. KB. It found that the applicant had given a coherent and consistent account, and this was supported by the submission of a detailed translated judgment of the Supreme Court of Georgia. It concluded that this aspect of the account had been established on the balance of probabilities.

15. Similarly, the Tribunal accepted that the accounts given by the applicant, of the murder of his cousin by Mr. DL, the burning of his parent's house, and the threats made to him by Mr. DL, were established on the balance of probabilities. The Tribunal noted that the applicant went no further than claiming to have a suspicion that Mr. DL was responsible for the death of Mr. RC and accepted he had no hard evidence for same during the appeal hearing. In those circumstances the Tribunal concluded that there was a dearth of evidence upon which to conclude that Mr. DL was responsible for the death and as such it found that this aspect of the applicant's claim was not made out on the balance of probabilities.

16. In respect of the applicant's account of the Georgian police and the head of the local government informing him that they would not be able to protect him and that if he did not leave Georgia within approximately two weeks that he would in essence be framed for

narcotics offences, the Tribunal put it to him at the appeal hearing that this was implausible. The Tribunal also expressed the view that this was especially so where the remainder of the applicant's account gave the impression of a criminal justice system that was investigating and prosecuting related crimes in an effective manner. The Tribunal records that the applicant simply denied that it was implausible and repeated his account of his interactions with the police in March 2019.

17. The Tribunal is at pains to stress that it does not make implausibility findings lightly and that it is conscious of the risks attendant on speculation and conjecture. Despite this, the Tribunal concludes that this aspect of the account is implausible on the basis that the foregoing is *prima facie* implausible but further that it runs contrary to the applicant's own account of his direct dealings with the Georgian police in relation to other facets of his claim, namely that they carried out a competent investigation and prosecution of Mr. DL and subsequently questioned him for twelve days in relation to the death of Mr. RC. In addition to this the Tribunal notes that the country of origin information provided by the applicant does not support his account of the Georgian police advising him that they would frame him should he not leave the country due to their inability to protect him.

18. The Tribunal concluded that there is a reasonable chance that if the applicant were to be returned to Georgia, he would face a well-founded fear of persecution at the hands of Mr. DL.

19. The Tribunal rejected any nexus with a European Convention on Human Rights (the "ECHR" or "Convention") ground, noting that the potential risk to the applicant from Mr. DL is because Mr. DL might seek to avenge the deaths of his relatives and not because the applicant belongs to a validly constituted social group for the purposes of establishing a Convention nexus. However, the Tribunal found that substantial grounds were shown in the context of subsidiary protection that the applicant faces a real risk of torture or inhuman

or degrading treatment or punishment in Georgia at the hands of the criminals who attacked and threatened him previously.

20. However, the Tribunal determined that his claim would fail on the basis that state protection is available to the applicant in Georgia. At paragraph 5.6 it noted as follows:

> *"In assessing the question of state protection, it must be considered whether reasonable steps are taken by the authorities in Georgia to prevent the kind of persecution at the centre of the appellant's claim. This includes assessment of whether Georgia operates an effective legal system for the detection, prosecution and punishment of acts constituting persecution."*

21. It took into account country of origin information and concluded that the information in question, being the United States State Department Country Report of 2021, described a broadly functioning police force in Georgia albeit one where checks and balances could be improved in certain areas. It also referred to a report by Human Rights Watch which the Tribunal assessed as noting that it did not suggest there were shortcomings or ineffectiveness in the way that Georgian police investigate ordinary crimes or perform their normal police functions.

22. The Tribunal also had regard to the fact that Ireland by way of S.I. 121 of 2018 - International Protection Act 2015 (Safe Countries of Origin) Order 2018, had deemed Georgia to be a safe country of origin for the purposes of the 2015 Act and that the statutory instrument was indicative of effective state protection in Georgia.

23. The Tribunal noted that the part of his claim that had been accepted shows a Georgian police force and prosecution service that had acted reasonably in response to various crimes that formed part of the overall narrative of the applicant's claim.

24. In summary, it was satisfied that, looked at in the round, the country of origin information, together with the statutory instrument, supported a finding that reasonable steps are taken

by the authorities in Georgia to prevent the kind of persecution at the centre of the applicant's claim. Given the factual determinations the Tribunal decided it had no basis for finding that the conclusion that state protection is generally available in Georgia does not apply to him. The Tribunal concluded that adequate state protection would be available to the applicant should he be returned to Georgia.

Grounds of Challenge and Decision

25. The first argument of the applicant is identified at paragraph 1 of the Statement of Grounds where he pleads that, by the finding at paragraph 7.3 of the Tribunal decision that the applicant faces a real risk of torture or inhuman or degrading treatment or punishment, the Tribunal have in substance made a finding that the applicant is entitled to subsidiary protection i.e. he contends that if a finding of real risk is made, then he should automatically get subsidiary protection. I will describe this as the "rolled up argument".

26. In the alternative, it is pleaded that the Tribunal member failed to have adequate regard for s.28(6) of the 2015 Act. This section provides as follows:

> *"The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such serious harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."*

27. It is difficult to understand this argument given that the Tribunal concluded that there is a reasonable chance, if the applicant was to be returned to Georgia, he would face a well-founded fear of persecution at the hands of Mr. DL. In other words, the applicant is the beneficiary of a positive decision in respect of a well-founded fear of prosecution. In those circumstances, it is hard to understand how the applicant can contend that s.28(6) has been breached. Insofar as the applicant may be seeking to rely upon the wording of s.28(6) to

support his argument that a finding of a risk of torture *etc.* is equivalent to a finding of entitlement to subsidiary protection, no convincing argument has been made as to why the wording of s.28(6) supports such a contention. In my view the wording of s.28(6) is limited in its application to the analysis as to whether a person has a well-founded fear of persecution but does not go beyond that.

28. In short, where the Tribunal found, on the basis of past events, that there was a well-founded fear of persecution, it did not treat the presumption established by s.28(6) to have been rebutted and therefore the applicant has not been deprived of the benefit of s.28(6). The validity of this reasoning is confirmed by Phelan J in *E.S. v I.P.A.T.* [2022] IEHC 613 following a comprehensive analysis of earlier case law:

> *"51. Where the Tribunal accepts that there is a future risk of harm based on previous occurrences, there can be no basis for contending that the Applicant has been deprived of the benefit of s. 28(6) of the 2015 Act. Ultimately this established risk (whether presumptively established and not rebutted or established on the basis of the material) is found to not give rise to a right to protection because State protection is available. The application does not fail because it is concluded, despite the rebuttable presumption under s. 28(6), that the Applicant has not demonstrated a risk of harm. Instead, it fails because it is concluded that State protection is available."*

29. In respect of the rolled up argument, this has already been addressed in the cases of *BA v The International Protection Appeals Tribunal* [2020] IEHC 589 and *TA v The International Protection Office & Ors* [2023] IEHC 390. It is somewhat difficult to understand why this point was raised in these proceedings where it had already been comprehensively rejected in 2020. The argument was also raised again in *TA* and Heslin J. carried out a detailed analysis of same which addressed arguments essentially the same as those made in the instant case. I do not propose to repeat this analysis. I am wholly

persuaded by his reasoning, and I will limit myself to setting out his conclusions in respect of the argument. He observed as follows:

"57…[T]he Applicant submits that, in order to consider whether there is a well–founded fear, the decision maker must simultaneously consider the availability of State protection (i.e., otherwise it is not a well–founded fear). Thus, contends the Applicant, well–founded fear / real risk is not separate from the concept of State protection, for the purposes of the 2015 Act / Qualification Directive.

…

63. Well–founded fear is certainly an element of the definition of refugee status. However, it seems to me that there is a clear distinction between the concept of well–founded fear and the entitlement to refugee status (whereas the applicant contends that a finding of the former automatically gives rise to the latter). Based on a literal interpretation of the words used (in s.2 of the 2015 Act/Article 2 of the Qualification Directive), it seems to me that State protection is an element of, but distinct from, the definition of refugee.

…

66. In other words, the concepts of (i) fear of persecution and (ii) protection are certainly "intrinsically linked" (to cite OA), but this is a close linking of distinct elements making up a unitary definition. In the impugned decision, both these elements were considered by the IPO and I cannot accept that it is permissible for this Court to take issue with the clear and logical approach taken by the IPO when carrying out this consideration. ..

67. Similar comments apply in respect of the definition of a " person eligible for subsidiary protection". Again, distinct elements of a unitary definition are linked by

use of the word " and". It seems to me that the concepts of " risk" and " protection", whilst elements of a single definition, amount to distinct concepts.

68. I do not accept that the 'proper' interpretation of the words used in the 2015 Act/Qualification Directive mean that (i) fear of persecution / real risk of serious harm; and (ii) State — protection are the same, not different, concepts (as opposed to being closely linked but distinct elements of a definition, which elements the decision maker considered in a careful and logical fashion)." (Emphasis added)

30. Heslin J. notes that he was fortified in this interpretation by the conclusions of Burns J. in *BA* where she held as follows:

"*12. At paragraph 5.8 of the First Respondent's decision it found "that there is a reasonable chance that if she were to be returned to her country of origin she would face a well-founded fear of persecution from her ex-partner." The First Respondent then proceeded to consider whether state protection was available to her.*

13. Counsel for the Applicant submits that this was a finding of the First Respondent which necessitated a declaration of refugee status being granted to the Applicant. A convoluted argument was made that this finding, by the First Respondent, encapsulated an objective finding that the Applicant feared her ex-partner because state protection was not available to her and that accordingly, the sole determination to be made by the First Respondent was whether she was unwilling, because of this objectively justified fear, to return to Nigeria.

14. I cannot accept that interpretation of this finding of the First Respondent and do not follow the logic of the argument. Considering the decision as a whole, it is clear that what the First Respondent meant to convey is that in the absence of a finding by the First Respondent that state protection was available to her, the Applicant had a well-founded fear of persecution from her ex-partner. The First Respondent ordered its

decision making process in a logical fashion: initially determining whether a well-founded fear of the Applicant being subjected to serious harm by her ex-partner existed, and then determining, on foot of the positive finding that it did exist, the question of whether state protection was available.

15. The impugned sentence cannot be interpreted as a finding that refugee status should be declared to the Applicant."

31. The second argument raised by the applicant is that the Tribunal member erred in finding that the statutory instrument is indicative of effective state protection in Georgia in the circumstances of this case where the applicant had submitted serious grounds to believe Georgia not to be safe in his particular circumstances. The applicant alleges a breach of s.33(b) of the 2015 Act. Section 33 provides in relevant part:

"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."

32. The respondent pleads that the Tribunal was entitled to take account of the statutory instrument. It is apparent from the section that the Tribunal is entitled to treat a country as a safe country of origin where the applicant has not advanced any serious grounds for considering the country not to be such in his or her particular circumstances. Here, the Tribunal did not rely exclusively on the statutory instrument but also looked at country of origin information, in particular the Human Rights Watch Report and the US State

Department Country Report referred to above, and also looked at the individual circumstances of the applicant.

33. The applicant separately criticises the Tribunal for not accepting his reasons for not believing Georgia to be safe. I will deal with that ground of challenge below. However, the applicant cannot use the terms of s.33 to attack the substantive findings of the Tribunal. In my view the purpose of s.33 is to demonstrate that a deciding body cannot simply rely upon a designation as a safe country of origin without looking at the individual circumstances of the applicant as well. In short, a decision-maker cannot treat a country so designated as a safe country of origin to foreclose consideration of an applicant's claim.

34. That is emphatically not what happened here. Rather, the Tribunal looked at the statutory instrument and country of origin information but also looked at the individual circumstances of the applicant. As pointed out by counsel for the respondent, the Tribunal did not treat Georgia as a safe country of origin on the basis of the statutory instrument but rather used the statutory instrument as an ancillary support to its decision. Therefore, I cannot discern any flaw or illegality in the Tribunal's approach to safe country of origin.

35. The third argument raised by the applicant is that the Tribunal applied the incorrect standard when concluding that it established on the balance of probability that Mr. DL was behind the death of Mr. RC. At paragraph 3 of the Statement of Grounds, it is argued that the Tribunal member ought to have accepted the applicant's views in respect of the involvement of Mr. DL unless he had no real doubt that Mr. DL was not behind the said death. In fairness to the applicant, it is acknowledged in the Statement of Grounds that this argument is inconsistent with the decision of the High Court in *ON v Refugee Appeals Tribunal* [2017] IEHC 13. I reject this argument having regard to the settled state of the law on the correct standard to be applied.

36. In *ON*, O'Regan J. considered the question of the standard of proof with respect to findings of fact in relation to the history of past events disclosed by applicants for refugee status and subsidiary protection. The applicant in that case contended that the standard should be in or around a 30% likelihood or "a reasonable degree of likelihood". The respondents contended that two different standards applied, the reasonable degree of likelihood standard for prospective risk and the balance of probabilities with the benefit of the doubt for the applicant with respect to the history of events they provide. Following a detailed analysis of the relevant law, O'Regan J.'s conclusion on that question was as follows:

> *"63. In light of the foregoing principles and having regard to the fact that the balance of probabilities is the civil standard of proof in this jurisdiction, I am satisfied that the principle of equivalence and the principle of effectiveness are both safeguarded by the application of the standard of proof – being the balance of probabilities – coupled with, where appropriate, the benefit of the doubt. Until such time as this State might introduce more favourable standards as contemplated by Article 3 of the 2004 Directive, this is the appropriate standard to apply, i.e. the balance of probabilities, coupled with, where appropriate, the benefit of the doubt."*

37. It is well established that a High Court Judge ought to follow applicable decisions of the High Court unless the grounds identified by Clarke J. (as he then was) in *Hughes v Worldport Communications Inc.* [2005] IEHC 189 are satisfied. The applicant has failed to persuade me that any of those grounds apply such that I ought to ignore the decision of O'Regan J. In the premises I am satisfied that the Tribunal was entitled to apply the balance of probabilities and did not err in law in this respect.

38. The applicant made a linked argument in relation to the standard of proof whereby he pleads at paragraph 8 that in dealing with the likelihood of serious harm and in making the findings in relation to state protection, the Tribunal failed to apply a standard of proof

consistent with Articles 40.3 and 40.1 of the Constitution and Article 3 of the ECHR, and Article 4 of the Charter of Fundamental Rights of the European Union. In the Statement of Grounds, it is pleaded that there should be no presumption of state protection, or the presumption has been rebutted. The applicant fairly identifies in his pleadings that domestic authority is against him in relation to the point on presumption of state protection.

39. As regards Article 3 of the ECHR, the applicant relies on the decisions of the European Court of Human Rights ("ECtHR") in *F.G. v Sweden* (Application no. 43611/11) and *RC v Sweden* (Application no. 41827/07) to argue that the standard of proof required by the ECHR is incompatible with the balance of probabilities approach contemplated in *ON* with respect to past events. The constitutional argument is not elaborated on to any significant extent in the submissions.

40. The respondent submits that the analysis undertaken by the ECtHR relates not only to the determination of past facts (as I am concerned with here) but also to the assessment of future risk and that taken in the round the approach of Irish law to both steps, affording the benefit of the doubt to applicants when appropriate, satisfies the requirements of the ECHR and the Charter. The respondent similarly submits that the civil standard with the benefit of the doubt with respect to past events does not infringe Article 40 of the Constitution.

41. As set out above, I am satisfied that the law in relation to standard of proof is well established and that the application of a balance of probabilities test is well established as a matter of Irish law. To return once again to *ON*, O'Regan J. considered the requirements of the ECHR and concluded that the civil standard, fortified by the benefit of the doubt, was permissible. Moreover, *ON* is but the first in a significant line of jurisprudence on this point. I would similarly adopt the conclusions of this Court in, *inter alia*, *M.G. v Refugee Appeals Tribunal* [2017] IEHC 94, *MEO & EU v IPAT* [2018] IEHC and *M.S. (Bangladesh) v IPAT* [2019] IEHC 786.

42. The respondent has additionally drawn my attention to the Supreme Court determinations in *MEO & UO (Nigeria) v IPAT* [2019] IESCDET 165 & 166. Although these determinations do not have the same authority as a full decision of the Supreme Court, they remain significantly persuasive, and in the context of a similar challenge to the standard of proof I would adopt their conclusion as follows with respect to the caselaw in this area:

> *"indications are the existing legislation and body of case law, and standard of proof provided for therein, are humane and just, and are attune to the difficulties and compassion required in cases of this nature. The standard of proof employed is clear and not in breach of any European or international obligations."(paragraph 11).*

43. The fourth argument identified by the applicant may be found at paragraphs 4 to 7 of the amended Statement of Grounds, where the applicant essentially seeks to challenge the substantive conclusion of the Tribunal that the applicant's account of why he left Georgia was implausible. It is said variously that the disbelief of the Tribunal was irrational, that the Tribunal failed to have regard to what was said by the applicant in the s.35 interview, failed to extend to him the benefit of the doubt, failed to apply s.28(7), failed to reason the decision, failed to consider the applicant's account in the light of the country of origin information, given that it did not run counter to what was said therein, and was unreasonable given the country of origin information.

44. The respondent submitted that the task of the Court is to consider whether there is a legal error in the Tribunal's decision. It is pointed out that the finding was quite rational given the acceptance of the following parts of the applicant's story: that the police had prosecuted Mr. DL; that they had imprisoned Mr. DL; that they had investigated the applicant's father's complaint; they had thoroughly investigated the death of Mr. RC in a car crash and had questioned Mr. DL for 12 days. In those circumstances it was not unreasonable

for the Tribunal to reject the contention of the applicant that the police would not help him, would not protect him from threats from Mr. DL and would arrest him on fake charges if he did not leave the country. Counsel emphasised that what the Tribunal was analysing was whether there was effective protection, which did not mean perfect protection but rather reasonable protection.

45. In respect of the benefit of the doubt point raised by the applicant, counsel for the respondent pointed out that the benefit of the doubt is given where the statements are found to be plausible. Because this was not the case here, that is the end of the benefit of the doubt point.

46. In respect of the s.28(7) argument, the respondent pleads *inter alia* that, given the finding of implausibility, s.28(7) did not apply. Section 28(7) provides as follows:

> *"(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."*

47. I am satisfied that the Tribunal carefully considered the question of plausibility, including expressly considering the applicant's responses when it was put to him that his account was implausible (para. 4.6). As the respondent points out, the reasoning relies on the inconsistency between the applicant's account of being told to leave Georgia by the police and other aspects of his case in which he detailed the actions of the police in investigating and prosecuting Mr. DL (for the murder of the applicant's cousin) and the questioning of Mr. DL for twelve days (in connection with the death of Mr. RC) (para. 4.7). The Tribunal's decision must be read as a whole. In setting out the "Case Facts & Documents" at paras. 2.1 – 2.18 the Tribunal set out all of the facts and circumstances being taken into account. The Tribunal took full account of the applicant's interview as set out in the decision as a whole and had adequate regard to what he had said in his interview. I do not accept the applicant's argument that the Tribunal failed to take any relevant matters into account.

48. In relation to the irrationality argument, I accept that the relevant test when testing the argument that the conclusion was irrational is that identified in *Keegan/Meadows (State (Keegan & Lysaght) v Stardust Victims Compensation Tribunal* [1986] IR 642, *Meadows v Minister for Justice, Equality and Law Reform* [2010] 2 IR 701*).* The Tribunal took what I consider to be a rational approach to the claims made by the applicant. They carefully considered the past record of the police force in relation to the dramatic events described by the applicant since 2003 and then they analysed his claims that he had been told he would be framed for narcotic offences unless he left the country within two weeks. In other words, they reached their conclusion based upon past facts i.e., the past investigation and prosecution of Mr. DL (which resulted in his imprisonment for murder) and not merely investigation and prosecution of crime generally. My role is not to substitute my own view for that of the Tribunal but to consider whether the Tribunal's view was irrational. Given

the objective, fact-based reasoning of the Tribunal, and its use of the past actions of the police force as a lens through which to evaluate the claims of the applicant, I do not find it meets the threshold of being an irrational decision.

49. In relation to the arguments on s.28(7) of the Act, that section provides that where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation where all of the conditions set out in that section (at sub-paragraphs (a) to (e)) are satisfied. These include the following condition: (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.

50. The Tribunal found that the applicant's statements were implausible because they ran counter to available specific and general information relevant to the applicant's case, the former being information relating to the investigation and prosecution of Mr. DL and the latter being country of origin information. Accordingly, as pointed out by the respondent, since the condition at s.28(7)(c) was found not to have been fulfilled, I conclude that s.28(7) simply had no application.

51. The applicant argues that, leaving aside s.28(7) of the 2015 Act, the Tribunal was in any case obliged to give him the benefit of the doubt in determining whether his assertion that the police had told him to leave Georgia should be upheld or rejected. Where the legislation clearly sets out the conditions in which the benefit of the doubt shall be given at s.28(7) and where the applicant does not meet those conditions – as in the instant case – it is difficult to see the legal basis for an obligation to apply the benefit of the doubt in cases not identified by the legislation. Moreover, as pointed out by the respondent, para. 196 of the UNHCR handbook from which the applicant quotes expressly requires that the benefit of the doubt is to apply only where the applicant's account appears credible (as confirmed by

para. 204 of the handbook). Here, where the Tribunal has found that the applicant's account was implausible, there is no basis for finding an obligation to apply the benefit of the doubt.

52. The applicant also argues that the Tribunal failed to take into account the negative aspects of the country of origin information in arriving at its implausibility finding. That is incorrect. The Tribunal identified the negative aspects of the country of origin information (dealt with in considering whether state protection was available at para. 5.7 – 5.11) and took account that these aspects did not include accounts similar to the applicant's account of being warned to leave Georgia (para. 4.8).

53. The fifth argument of the applicant is that the Tribunal erred in the application of s.31 in that, in assessing state protection, it failed to analyse whether it would be available to the applicant or effective, given the particular history he outlined and the threats he was subjected to. It is pleaded that it is not reasonable to suggest that the police could protect the applicant from the person who threatened him, and the case does not suggest he would have state protection given what had happened to him.

54. The respondent argues in response that international protection is not a substitute or alternative to state protection, it is only available if state protection is not there and that here the applicant has not made out the argument that the Tribunal erred in its conclusion on the existence of state protection.

55. To analyse this argument, it is necessary to recall the provisions of the Act on state protection. Section 30 of the 2015 Act provides that international protection is available where there is a risk of persecution or serious harm by non-state actors if it can be demonstrated that state protection is unavailable:

> *"30. For the purposes of this Act, actors of persecution or serious harm include—*
>
> *(a) a state,*

(b) parties or organisations controlling a state or a substantial part of the territory of a state, and

(c) non-state actors, if it can be demonstrated that the actors referred to in paragraphs (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm."
(Emphasis supplied)

56. Section 31 sets out what is meant by "protection against persecution or serious harm":

"31. (1) [. . .]

(2) Protection against persecution or serious harm—

(a) must be effective and of a non-temporary nature, and

(b) shall be regarded as being generally provided where—

(i) the actors referred to in paragraphs (a) and (b) of subsection (1) take reasonable steps to prevent the persecution or suffering of serious harm, and

(ii) the applicant has access to such protection.

(3) [. . .]

(4) The steps referred to in subsection (2)(b)(i) shall include the operating of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm."

57. Advocate General Hogan in his Opinion in Case C-255/19 *Secretary of State for the Home Department v OA* (ECLI:EU:C:2020:342) commented on this provision as follows at paragraph 59 to 60:

> *"59. Thus, the continued necessity for international protection (refugee status) in a case such as that in the main proceedings is determined, inter alia, by the ability or otherwise of an actor of protection to take reasonable steps to prevent the persecution of the applicant at the hand of non-State actors by, inter alia, operating an effective legal system for the detection, prosecution and punishment of such acts by, inter alia, non-State actors.*
>
> *60. If actors of protection fail to or cannot otherwise take such reasonable steps to prevent the persecution of the applicant, for whatever reason, then the applicant is in principle entitled to refugee status."*

58. In *BC v IPAT* [2019] IEHC 763 Barrett J. stated (at para. 10) that s.31:

> *"...yields the following questions for determination by IPAT when deciding whether or not state protection would be available:*
>
> *(1) Does the State in question take reasonable steps to prevent the persecution or suffering of the serious harm feared by a particular applicant?*
>
> *(2) Do such steps include the operating of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm?*
>
> *(3) Is such protection effective and of a non-temporary nature?"*
>
> *(4) Does the particular applicant have access to such protection? "*

59. The applicant asserts that the Tribunal did not deal correctly with the requirements of s.31 of the Act and the four questions identified by Barrett J.

60. In the written legal submissions of the respondent, it is argued that the analysis undertaken by the Tribunal did in fact determine the above questions, dealing as it did with the

appellant's conviction and sentence, the crimes and threats by Mr. DL, the alleged statements made by Georgian police, the nature of state protection, the applicant's account regarding state protection and the conclusion on state protection. I agree that in substance the Tribunal determined the necessary matters in relation to the question of state protection.

61. Paragraph 5.6 summarises the test applied by the Tribunal:

> *"In assessing the question of state protection, it must be considered whether reasonable steps are taken by the authorities in Georgia to prevent the kind of persecution at the centre of the appellant's claim. This includes assessment of whether Georgia operates an effective legal system for the detection, prosecution and punishment of acts constituting persecution."*

62. Paragraph 5.14 summarises the Tribunal's reasoning:

> *"5.14 While acknowledging that relevant COI does not take a unanimous view of the issue, the tribunal is satisfied that, looked at in the round, the COI, together with Irish S.I. 121 of 2018, supports a finding that reasonable steps are taken by the authorities in Georgia to prevent the kind of persecution at the centre of the appellant's claim. The Tribunal has rejected that the Georgian police told the appellant that they could not protect him and that he should leave Georgia. The Tribunal has found that, as regards those aspects of the appellant's claim that describe various crimes, the Georgian police force and criminal justice systems acted reasonably in relation to those matters. Thus I find no basis arising from the appellant's individual situation for finding that the conclusion that state protection is generally available in Georgia does not apply to him. Taking everything into consideration the Tribunal concludes that adequate state protection would be available to the appellant should he be returned to Georgia."*

63. I cannot accept the argument of the applicant that the Tribunal failed to give individual consideration to the specific circumstances in question when considering state protection.

In fact, the Tribunal quite obviously took account of the facts of the case, and in particular the applicant's own account of the operation of a system of detection, prosecution and sentencing, which system addressed not only the crimes committed by the applicant but also by Mr. DL.

64. The applicant criticises the fact that there was no consideration, for example, of whether there was an adequate witness protection programme or equivalent programme which could protect the applicant. I agree with the submissions of the respondent that this argument confuses state protection with state prevention. Section 31 does not require that the state prevent persecution by non-state actors but that it take reasonable steps to prevent such persecution (see *E.S.* at para. 55 *et seq.*)

65. The applicant has not identified any legal flaw in the Tribunal's conclusion that state protection was available to the applicant in Georgia. The essence of the applicant's objection appears to be that he does not agree with the substance of the decision made. It is not my role to substitute my own decision for that of the Tribunal or to provide a substantive appeal against the Tribunal's decision. The applicant has put forward no reasoned basis upon which I could conclude that the Tribunal erred in arriving at its conclusions and accordingly I reject this ground of challenge.

Conclusion

66. For the reasons set out above, I reject the applicant's challenge to the decision of the Tribunal and refuse to grant the relief sought. I propose Friday 6 October at **10.55am** for a hearing on costs and final orders. The parties have liberty to apply for a different date but if they wish to do so, they should agree a date and propose same in writing to the Registrar, no written submissions will be necessary.