

THE HIGH COURT

[2019 No. 203 JR]

BETWEEN

B, C (A MINOR) SUING BY HER MOTHER AND NEXT FRIEND, B, D (A MINOR) SUING BY HIS MOTHER AND NEXT FRIEND, B, AND E (A MINOR) SUING BY HER MOTHER AND NEXT FRIEND, B

APPLICANTS

– AND –

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL
AND THE MINISTER FOR JUSTICE AND EQUALITY**

RESPONDENTS

JUDGMENT of Mr Justice Max Barrett delivered 14th day of November, 2019.

1. Ms B and her husband, both Albanian nationals, have latterly had a wretched time in Albania. They fell victim to a onetime co-worker of Ms B who began stalking Ms B at her workplace, initially leaving her unwanted anonymous messages at her workstation and later making anonymous telephone calls to her landline. Subsequently, he vandalised the car belonging to Ms B's husband and even appears to have shot several times at her husband when he was out driving. In the end, matters became so bad that Ms B quit her job and moved with her family to Tirana. But they were settled there for only a short time when, it seems, they woke up one morning to find a cat's head left in a box on their doorstep, an episode Ms B and her husband attribute to the stalker. Ms B believes that the stalker enjoys political influence/protection in Albania and the episode of the cat's head seems to have been the last straw. Thereafter, despite having made a previous complaint to the police about the pre-Tirana occurrences, Ms B and her family took the decision to flee Albania and have ended up in Ireland.
2. Almost all the elements of Ms B's account of events has been accepted by the International Protection Appeals Tribunal ('IPAT') which, in a decision of 06.03.2019 (the 'Impugned Decision') has concluded, *inter alia*, that: the stalker "*who has already proven himself to be relentless and to use physical and psychological force in the advancement of his objectives, remains a credible threat*"; and that "*there are substantial grounds for believing that if [Ms B]...were to be returned to...[Albania, she] and her infant children would face a real risk of suffering serious harm in the form of physical and/or psychological harm at the hands of her stalker*". However, the IPAT has ruled against Ms B's application for asylum and subsidiary protection on the basis that: the persecution feared by Ms B, should she return to Albania, does not have the necessary nexus to Convention grounds; and that Ms B has not shown that she would not enjoy State protection or that, were she to return to Albania, its laws would not be applied for the benefit of her and her family.
3. The notion that Ms B's stalker might enjoy a certain freedom of action because of his political connections was touched upon at some length in Ms B's s.11 interview. So, for example, the following exchanges occurred (there are a limited number of errors in the grammar/syntax as Ms B is not a native English speaker):

"Q56: Why do you believe the police will not prosecute Mr [X, the stalker]?"

A56: *The police in Albania are quite corrupt....[Mr X] has connects with the police and people in the government. He got the job because of political connections. He didn't deserve it...Even if he goes to prison...he will come out of it in 2 or 3 months so what's the point really? Even if you go and report these situations in Albania, the police wouldn't support or protect you from these people. In Albania there are so many cases very similar to my one...and the police haven't taken them seriously. Some of them have ended up killed....The people who have relationship with politicians and money, only they win cases."*

Q57: *Who are Mr...[X]'s political connections?*

A57: *With the Socialist Party. Members of the Party in the area where he lives. The reason they favour them [is] because they help them through the elections to get more votes. The favour they give them is to give them jobs and protect them from these kinds of situations.*

Q84: *Did you report the incident in Tirana to the police?*

A84: *No I just left, I didn't bother. The police they always say that they will take care of this and that but they never do....It is corruption in every angle."*

4. Similar exchanges transpired at Ms B's s.35 interview, for example:

"Q56: *At the start of this interview, you spent quite a bit of time telling me about how political parties reward their supporters with jobs in Albania. I don't understand how that relates to your claim. Could you please explain?*

A56: *It relates because it is one of the reasons that I can't go to the police about him because I know that he had political protection.*

Q57: *How do you know that he has political protection?*

A57: *I said at the beginning that he came with the group of people that were rewarded with jobs. In Albania, they buy votes....[Those who sell their votes] are politically protected and they are untouchables. The justice system in Albania doesn't work.*

Q58: *So you haven't actually been told by anyone that [Mr X]...is politically protected?*

A58: *But I know it. Albania is a small [country] and it is easy these things. I know a lady in Albania who was a judge. She was killed by her stalker. She looked for protection and she even wrote to the American ambassador....She was killed. Now who am I? What chance do I have....You might think it's insane but that's how it works in Albania and we had to come here and abandoned our good life in Albania [Ms B is a degree-educated woman and her husband is a businessman]. I want our daughter to have life. I would not endure the life I have here unless I really had to."*

5. There are other exchanges at the two interviews that deal with the issue of State protection and corruption. However, the above suffices to give an overall sense of the thrust of the interviews in this regard.
6. In passing, the court notes that, regrettably, Ms B's concerns regarding the Albanian police are not some figment of her imagination. The Country of Origin Information ('COI') to which the IPAT had regard, included the following observation in a US State Department Report (an observation endorsed by the UK Home Office in certain other COI that was before the IPAT): *"Police did not always enforce the law equitably. Personal associations, political or criminal connections...often influenced law enforcement"*.
7. What legal errors are contended by Ms B to arise in the Impugned Decision? Such errors, as she contends for, are perhaps best addressed by turning to the five questions which the Impugned Decision is contended by Ms B to present.
 - A. (a) Did the IPAT fail to give adequate reasons for its finding that, based on COI, State protection would be available to the applicants; (b) Has the IPAT thus acted in breach of constitutional justice in breach of s.46(6) of the International Protection Act 2015 ('Act of 2015')?
8. 'Yes' to both (a) and (b). Despite the political connections of Mr X being, to use a colloquialism, 'front and forward' in Ms B's application, the IPAT in its conclusions, and in the face of the COI referenced above, offers no reasons as to why Mr X's political connections do not affect the availability of effective State protection. The duty to give reasons has now been fully elaborated upon, some might contend too fully elaborated upon, by the Superior Courts in recent years. So the court will be brief: it is clear from, *e.g. Connelly v. An Bord Pleanála* [2018] IESC 31 that a person affected by a decision is at least entitled to know in general terms why a decision was made. Ms B has been left by the IPAT with no reason as to why Mr X's political connections, an issue of central importance to her application, are perceived by the IPAT not to affect the availability of effective State protection to her. There is, in consequence, (i) a breach of s.46(5) of the Act of 2015 and the duty to communicate reasons imposed thereby, and (ii) a breach of fairness of procedures.
 - B. In deciding that State protection would be available, did the IPAT (a) err in law and (b) act *ultra vires* by failing (I) to apply the State protection test and procedure required by section 31 of the Act of 2015 and (II) to pose the correct question in this regard?
9. 'Yes' to both (a) and (b). Section 31(1), (2) and (4) of the Act of 2015 provide respectively as follows:

"(1) For the purposes of this Act, protection against persecution or serious harm can only be provided by – (a) a state, or (b) parties or organisations...controlling a state or a substantial part of the territory of a

state, provided that they are willing and able to offer protection in accordance with subsection (2).

- (2) Protection against persecution or serious harm – (a) must be effective and of a non-temporary nature, and (b) shall be regarded as being generally provided where – (i) the actors referred to in paragraphs (a) and (b) of subsection (1) take reasonable steps to prevent the persecution or suffering of serious harm, and (ii) the applicant has access to such protection.
- (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.”

10. The just-quoted text 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?

11. Regrettably, the IPAT not only fails to pose the correct questions in this regard (a particular deficiency highlighted in *A.A. (Pakistan) v. The International Protection Appeals Tribunal* [2018] IEHC 497, para. 12) but, insofar as it considers this aspect of matters in the Impugned Decision, the IPAT does not enquire into (a) the steps taken by Albania to subject a man like Mr X, who is claimed to have political connections, to criminal sanction, (b) whether Ms B, in the circumstances presenting, would receive protection of an effective and non-temporary nature, and (c) whether Ms B would have access to such protection in a situation where Mr X (a man found by the IPAT to present a “credible threat”) is alleged to have political connections.

C. In assessing State protection, did the IPAT (a) err in law and (b) fail to consider relevant matters, by failing to assess in light of relevant COI whether State protection might reasonably have been forthcoming had the first applicant made further reports or given further information to the police in Albania?

12. Somewhat unusually, ‘yes’. While, *e.g.*, the *A.A. case, op. cit.*, para. 8, indicates that a decision-maker is not required to engage in a narrative consideration of COI, where (a) an applicant’s evidence is accepted (as here) to be generally credible, (b) the applicants have raised the issue of political connections, (c) the COI supports the concerns expressed by the applicants, and (d) the IPAT proposes to find (as here it found) that the applicant did not give the relevant state (here the Albanian) authorities sufficient opportunity to provide State protection, it seems to the court that in those particular

circumstances the IPAT is obliged to point to such COI as indicates that State protection might reasonably have been forthcoming had such an opportunity been provided.

D. In finding that State protection would be available, did the IPAT breach s.28 of the Act of 2015 (a) fail to take into account relevant matters by (b) failing to take into account all relevant facts as they relate to Albania, including laws and regulations of the country of origin and the manner in which they are applied?

E. In finding that State protection would be available, did the IPAT breach s.28 of the Act of 2015 and fail to take into account relevant matters by failing to take into account and assess the relevance of Mr X's political connections as referred to by Ms B?

13. The IPAT failed to take into account relevant matters by failing to consider/assess the political connections of Mr X flagged by Ms B.

14. Finally, on a general note, the court notes the contention by IPAT in its written submissions that "[t]he imposing feature of this case is that [Ms C]...is from a designated safe country". Such a designation is not lightly made and before it is made the various elements of s.72 of the Act of 2015 must be satisfied. However, it is clear from s.33 of that Act that while designation is a matter of practical and legal significance (and it is), a safe country of origin shall be considered to be a safe country of origin "only where...(b) the applicant has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her eligibility for international protection". It is apparent from the evidence before the court that Ms B has submitted such "serious grounds"; and that it seems to the court, with respect, is a more "imposing feature of this case" than the fact of designation *simpliciter*.

15. For the various reasons identified above, the court would be, and is satisfied, to grant the order of certiorari sought in the notice of motion of 11.04.2019. However, the court understands from the oral hearing that a more qualified order of *certiorari* is now perhaps being contended for and will hear the parties further in this regard, if necessary; otherwise it will make the order just indicated.