

THE HIGH COURT

[2021] IEHC 295

[2019 No. 906 JR]

BETWEEN

SULA and SULA

APPLICANTS

– AND –

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

RESPONDENTS

JUDGMENT of Mr Justice Max Barrett delivered on 29th April, 2021.

SUMMARY

In this application two IPAT decisions affirming a refusal of international protection have been challenged by Mr and Ms Sula, two Albanian nationals. The application has succeeded for five key reasons. First, certain findings of the IPAT are marred by unreasonableness and may even stray into irrationality. Second, the decision involves the implicit illogical proposition that Mr Sula's claim to international protection (by reference to election-/politically-related violence allegedly done to him) would have been stronger if he could have shown himself to be a generic opposition supporter rather than a supporter of the main opposition party. Third, it is not open to the IPAT, when confronted with uncontradicted evidence supportive of an applicant's claim for international protection, to reject the probity of that evidence on the 'gut sense' basis that more detail would have been desirable. Fourth, it is difficult to see that a breach of s.28(7) of the International Protection Act 2015 does not present. Fifth, one cannot hope to satisfy the requirements as to adequacy of reasoning where, as here, there is no evidence that is in conflict with the COI and there is no reason identified as to why such evidence as is before the IPAT is unreliable without further corroborative evidence. This summary forms part of the court's judgment.

*“Land of Albania! let me bend mine eyes
On thee, thou rugged nurse of savage men!”*

BYRON, “Childe Harold’s Pilgrimage”

1. Albania is very different today from the way it was in Byron’s time. But there is a thread in this case that links his time to ours. For the applicants claim to have fled Albania from savage *mafiosi*. Their flight has taken them to Ireland where they have pleaded to be granted refugee status or subsidiary protection. Thus far, Ireland has said ‘no’.
2. The kernel of Mr and Ms Sula’s story (that is not their real surname) is well told and best told in the words used by Mr Sula in his international protection application form. It is a little long and the English is not perfect – though I wish my Albanian was as good as the translator’s English. Yet for all its weaknesses, it captures the substance of the story that is at play in these proceedings. That makes it worth the read:

“I had rented a bar-café where I secured my monthly expenses. I know many important people from the Democratic Party starting from the Deputies to the lower rank of this political force. I joined this party after the Communist dictatorship since all the properties we had were taken away during that time but worst of all they took away our dignity and freedom which is the base foundation of Ireland. Democracy entered into force in the 90s when I was young but I was already feeling relieved somehow. We thought that now everything would get fixed but we thought wrong. It was a harsh transition like the jungle law where the strong one governs and the weak one is left the mercy of its fate. In Albania you have to be a member of a political party if you want to find a good job if your party wins the elections. I chose the Democratic Party since I wanted to take back the properties which were

*taken from me during the Communist dictatorship. I was told to convince as many relatives, friends and people I knew to vote for this political party. I was lucky because I had a bar in [Place A] and many friends in [Place B] because I lived there for many years. In [Place A] I had many relatives and friends which I convinced to vote for the party I was a member of. In [Place B] also I convinced many people from the Socialist Party to vote for the Democratic one. For this last move of mine my life was threatened because people from the Socialist Party were scared they would lose the elections since some of them were going to vote for the Democratic Party. Many friends and relatives had told me not to be so open about my ideas because it would be dangerous but I continued to support my party. One night [I] was having a coffee with some friends and after I left them I noticed some people were following me and after them was a black Mercedes. I continued walking and thought they did not have anything to do with me since I have never harmed anyone and I never will....While I was walking I felt a hand which landed on my shoulder and told me 'Wait you son of a *****, of Sali'. Sali was the leader of the Democratic Party from 1991-2013 when he lost the parliamentary elections. I turned back scared and someone slapped me hard in the face. I tried to see their faces but I couldn't because it was dark and they were wearing masks. They threw me inside the car and put a gun to my head and said 'You want to win the elections?' I was scared because I had never been in a situation like that and I did not talk at all. I only told them that I had done nothing wrong. 'Please, why are you doing this to me because I do not understand? Maybe you have confused me with someone else? For me [Stated Date] has been the most difficult night in my life. Even in the Civil War of 1997 I wasn't as scared as in that moment. I closed my eyes for a moment since I felt like I was going to faint and everything was turning black. 'Let's*

beat him,' someone said. 'No, the boss said only to warn him the first time,' someone else answered. 'You want to do politics? Why do you involve yourselves in situations where you shouldn't?' I told them to forgive me if I had done something wrong. 'Why should we forgive you? So you can go and report us?' they said. 'I don't know you and I don't want to know you' I said afterwards. 'We will let you go only if you leave Albania and we never see your face again or else we will not forgive you anymore'. I told them okay so I could leave or better save my life. After they hit and punched me they got me out of the car and left me in the outskirts of [Place B]. I called one of my friends and told him if he could come pick me up. When I went home I looked like a ghost and my wife asked if I had drunk something but I just told her I was sick because I did not her to get worried since she gets scared easily. After I talked to one of my close friends he told me what to do and I did not go out during those days since I could be seen in every moment. The Socialist Party won the elections and I was feeling very bad psychologically since the ones who threatened my life were the ones who won. Some of the politicians who won the election are involved in organised crime and with the Mafia. The elections were corrupted and they were won with threats and I am sure about this because I experienced it myself. I am not saying that all the people in my party are the best when it comes to this but as we say in Albania 'There's no forest without pigs'. After some days passed, something unexpected happened. My wife called me terrified and told me that two unknown people had threatened and pushed her out of the bus. I couldn't think anything at that moment. They had offended, pushed and threatened her. Why? Because she was my wife. After she came home she asked me who those people were and what had I done to them. After that I told her everything that had happened. 'What are we going to do now?' she asked me."

3. What the Sulas did was to flee Albania, come to Ireland, and seek international protection here. They failed before the International Protection Office. They failed before the International Protection Appeals Tribunal. Now they have come to court contending that there were errors in the Tribunal decisions that were of such a quality that the court should now quash those decisions and remit matters to the Tribunal for fresh consideration. As explained in this judgment they are right in these contentions and the court will order as they have asked.

4. The IPAT decisions have been challenged by Mr and Ms Sula on the grounds of the findings made by the IPAT as to credibility. Before proceeding to consider that aspect of matters the court notes that the credibility findings in Mr Sula's case are linked so closely to Ms Sula's case – which was that she experienced intimidation/assault that the applicants believe occurred in an incident linked to the first applicant's claim – that if an order of *certiorari* issues in Mr Sula's case then it will of necessity issue in Ms Sula's case also.

5. When it comes to consideration of objective evidential support for Mr Sula's claim, the IPAT observes as follows:

“[4.3] Country of Origin Information

A large amount of COI has been submitted in relation to this case and all of it has been considered. There are several sources carrying mostly unsubstantiated allegations of collusion and cooperation between high ranking members of the SP government and the Albanian mafia. The following passages are of interest: ‘The ruling Socialist Party was returned with an increased majority. International observers reported incidents of voter intimidation and alleged vote-buying.’ [Amnesty International Report 2017/18 at p.16 under heading “Albania”]. In

another recent article it states “One of the most prominent persons of the crime scene in the Durres region was revealed having six conversations with the mayor, the most important Socialist Party representative in the second largest city of Albania, Vangjush Dako, as well as the leaders of other administrative bodies to influence the last elections through pressures, violence, threats and vote buying.’ [Article from Tirana Times entitled “Political Circles in Albania React to German Published Wiretaps Alleging Government-Mafia Ties”, dated the 8th June 2019]. The backdrop to this article was the obtaining of secret tapes by the German newspaper BILD containing various telephone conversations between high ranking members of the SP government and members of the Albania mafia prior to the general election 2017, with a view as to how to buy or intimidate voters. The Tribunal also notes that there has been a recent conclusion to the prosecution of the former Interior Minister of Albania for allegedly allowing a mafia relation of his to use his ministerial car for drug trafficking. The court dismissed the more serious charge of drug trafficking but found him guilty of an abuse of office. [Reuter’s article entitled “Albanian ex-minister cleared on drug charges, guilty of abuse of office” dated 19th September 2019]. He was given a probationary sentence.

[4.4] The Tribunal notes that the Prime Minister of Albania, Edi Rama of the Socialist Party has recently started legal action against BILD in Germany on account of further claims in an article of taped conversations between him and a supporter/official allegedly discussing the progress of vote buying. It appears to the Tribunal reasonable to conclude in light of all the sources on file that any vote buying or intimidation of voters was partly carried out by members of the Albanian mafia at the behest of some members of the ruling Socialist Party government. Contrary to this, however, the Tribunal has not been furnished with nor has it been able to find any COI specifically detailing how a member of the Democratic Party was harmed, intimidated or even alleged to have been intimidated by anyone. Thus, the Appellant’s claim is not supported by current reputable COI.”

6. The following key conclusions as to credibility were reached by the IPAT in its appeal decision under the heading “*Conclusion on Credibility*”:

[4.13] *The Tribunal accepts that the Appellant was an active member of the Democratic Party in Albania.*

[4.14] *The medical report submitted is corroborative of the Appellant’s claim to have been struck on the right eye but is of no probative value in determining the claim.*

[4.15] *COI: Whilst the political situation in Albania is fraught with claim of the Appellant does not accord with the type of problems being found. The Tribunal accepts that the Albanian mafia are violent and have and continue to commit atrocious crimes and that there are credible claims of political corruption of the ruling party linking them to the mafia. However, the type of political intimidation that the Appellant alleges occurred against him and his wife has no support in COI. The Tribunal has rejected this evidence.*

[4.16] *Considering all of the evidence in the round the Tribunal rejects on the balance of probabilities the Appellant’s claim to have been abducted by the Albanian mafia and wanted to leave the country on the basis that he worked for the political opposition during the general election campaign in 2017. Therefore, the incident of 16th June 2017 is rejected by the Tribunal.*

Thus, the Appellant has failed to establish his general credibility and the benefit of the doubt is not afforded to those other parts of the Appellant's claim which are not otherwise susceptible of proof.

[4.17] *The accepted material facts are that the Appellant is a [Stated religion]-married Albanian man and a member of the Democratic Party.”*

7. A number of difficulties present in the above-quoted reasoning; however, to understand them it is helpful first to consider some relevant case-law.

8. The general approach of the courts in judicial review applications where a request for asylum has been rejected on credibility grounds was addressed by the Court of Appeal in *R.A. v. Refugee Appeals Tribunal* [2017] IECA 297 where Hogan J., *inter alia*, affirms the well-known ‘Ten Commandments’ identified by Cooke J. in *I.R. v. Refugee Appeals Tribunal* [2015] 4 I.R. 144, and also adds a gloss of his own, at para.44:

“To that comprehensive statement I would add only the following: as this Court pointed out in NM (DRC) v. Minister for Justice and Equality [2016] IECA 217...the effective remedy requirement of Article 39 of the Procedures Directive (Council Directive 2005/85/EC) as interpreted by the Court of Justice in Case C-69/10 Diouf EU:C:2011: 524:

‘....imposes only one - albeit, critical - requirement, namely, that the remedy in question must remain an effective one. As Diouf itself makes clear, this means that the supervisory jurisdiction of the High Court

must be ample enough to ensure that “the reasons which led the competent authority to reject the application for asylum as unfounded... may be the subject of a thorough review by the national court.”

9. Of note in the context of this application are Cooke J.’s fourth and fifth ‘commandments’:

“(4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.

(5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.”

10. Returning to the IPAT decision, in particular those elements quoted above, the following points arise to be made, all of them, regrettably, damning of the IPAT’s decisions.

11. First, the Tribunal accepts, amongst other matters, that Albanian politics are fraught, that the Albanian mafia have been linked to the Socialist Party, that the Albanian mafia are violent and commit atrocious crimes, that in the 2017 election a Socialist Party with mafia connections that appear, if *Bild* is correct, to have reached to the prime minister himself, oversaw flawed elections in which voters suffered intimidation, pressure, violence and threats. Yet despite accepting all this the IPAT finds that *“the type of political intimidation that the Appellant alleges occurred against him and his wife has no support in COI.”* As counsel for the Sulas

said in his oral submissions, with a hint of disbelief in his tone, “*Come on*” – and he was right to vocalise matters so, for precisely who did the IPAT believe were the victims of voter intimidation done by the Socialist party’s friends within the Albanian mafia? The violence was hardly done to the dedicated followers of Rama. Did the IPAT believe then that the Albanian mafia was intimidating only those who supported opposition political parties other than the main opposition party? That, with respect, would be hopelessly illogical. For the IPAT to have read the evidence as it did in this regard is, with respect, wholly unreasonable, perhaps even irrational.

12. Second, an implicit consequence of the IPAT’s just-described analysis is that Mr Sula would have had a stronger claim to international protection if he could show that he was not a member of the Democratic Party because as a generic opposition-supporting voter, he would come within the more generalised COI that he provided. One need merely state this proposition to see, with respect, how illogical it is.

13. Third, it is not open to the IPAT, when confronted with uncontradicted evidence supportive of an applicant’s claim for international protection, to reject the probity of that evidence on the ‘gut sense’ basis that more detail would have been desirable. That is to contravene Cooke J.’s fourth and fifth ‘commandments’ in *I.R.*

14. Fourth, under s.28(4) of the International Protection Act 2015, an IPAT appeal must assess the credibility of a claim that comes before it on appeal. Under s.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...Tribunal, is

satisfied that.... (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".

15. Here Mr Sula's claims were consistent with the general information and did not run counter to any available specific information. Yet the IPAT appears in its actions to be seeking precisely the form of confirmation that s.28(7) provides need not be sought. Admittedly, the various limbs of s.28(7) are cumulative, *i.e.* limbs (a)-(e) must all be satisfied; that is clear from the word "and" at the end of s.28(7)(d). However, there is no suggestion that limbs (a), (b) or (d) are not satisfied, and item (c) is satisfied for the reasons stated. So that leaves limb (e). There is, it is true, mention of some concerns regarding general credibility between paras. [4.6] and [4.17] of the impugned decision; however, the IPAT indicates that these will be considered in the round, rather than reaching any specific conclusion; and the only issue held against Mr Sula on the balance of probabilities is the perceived absence of specificity in the COI. So it is difficult to see that there is not a breach of s.28(7).

16. Fifth, there is a deficiency/inadequacy in the reasons presenting. If the IPAT was satisfied (and it clearly was satisfied) to conclude that a general reference to voter intimidation in the COI could be interpreted as excluding persons such as Mr Sula who were members of the main opposition party (itself an odd proposition) then it was incumbent upon the IPAT to explain why this was so. Reference has been made in this regard by counsel for the Sulas to 'old reliables' concerning adequacy of reasoning such as *Meadows v. Minister for Justice, Equality and Law Reform* [2010] 2 I.R. 701, *Rawson v. Minister for Defence* [2012] IESC 26, and *Connelly v. An Bord Pleanála* [2018] IESC 31. However, when it comes to the international protection context, perhaps as good an authority as any, and one that helpfully

summarises the cumulative effect of Supreme Court precedent (and one to which counsel for the Sulas also referred the court) is that of Baker J. in *A.A. v. Minister for Justice and Equality* [2019] IECA 272, where she observes, at para. 30:

“In my view, the Supreme Court must be seen to have endorsed a general proposition that sufficient and intelligible reasons must be given, reasons capable of being understood by the person receiving them, and which flow from facts before the decision maker of which the recipient is aware, and that the requirement would not be met by the furnishing of reasons in form and not in substance, and where the “underlying rationale” was not known”,

an essential test in this regard, per Baker J., at para.32, being *“whether fairness to the recipient is achieved”*.

17. One cannot hope to satisfy the just-described requirements where, as here, there is no evidence that is in conflict with the COI, and which might be preferred, yet there is no reason identified as to why such evidence as is before the COI is unreliable without further corroborative evidence. In truth, if one peruses the impugned decision carefully, the IPAT never actually addresses the (un)reliability issue; rather it states that it would have preferred alternative evidence (evidence which it indicates in para. [4.4] of the impugned decision that it has looked for and “[not] *been able to find*”). With respect, it is not a good reason for rejecting evidence to which a decisionmaker does have access that it would have preferred to see better evidence that was not before it and which was not ‘out there’ when it went looking for it itself.

18. For the reasons stated, the court will quash the impugned decision and remit the appeals to the IPAT for fresh consideration.

19. Given that the Sulas have succeeded in their application, they would seem, ostensibly, to be entitled to their costs. If either side objects to the court ordering costs in favour of the Sulas counsel might kindly advise the registrar and/or the court's judicial assistant within 14 days of the date on which this judgment is delivered; the court will then schedule a date for a costs hearing.

**TO THE APPLICANTS:
WHAT DOES THIS JUDGMENT MEAN FOR YOU?**

Dear Applicants

I am always concerned that because applicants in international protection cases are foreign nationals for whom English may not be their first language, they should, if possible, be placed by me in a position where they can read and understand a judgment that has a sometimes great impact on their lives. So I summarise my judgment below.

This summary, though a part of my judgment, is not a substitute for the detailed text above. It seeks merely to help you understand some key elements of what my judgment says. The other parties require no such assistance. So this section of my judgment is addressed to you, the applicants, though copied to all of the parties.

I have referred to you in my judgment as Mr and Ms Sula to protect your privacy.

You asked me to look at the decisions that the International Protection Appeals Tribunal made refusing your appeals. I have done so and have decided that the decisions are so flawed that they should go back to the Tribunal for fresh consideration.

To my mind, there are five key flaws that present: (1) certain findings of the Tribunal are marred by unreasonableness and may even be irrational; (2) the decision involves the implicit, illogical proposition that the claim of Mr Sula to international protection by reference to election-/politically-related violence claimed to have been done against him would have been stronger if he could have shown himself to be a general opposition supporter rather than a supporter of the Democratic Party (the main opposition party); (3) it is not open to the Tribunal, when confronted with uncontradicted evidence supportive of a claim for international protection, to reject the integrity of that evidence on the 'gut sense' basis that more detail would have been desirable; (4) it is difficult to see that a breach of s.28(7) of the International Protection Act 2015 does not present; (5) there is a legal incompleteness/inadequacy in the reasons given.

Your lawyers will explain my judgment more fully to you.

This summary note is a part of my judgment.

Me nderime

Max Barrett (Judge)