

**THE HIGH COURT
JUDICIAL REVIEW**

[2021] IEHC 797

[Record No. 2020/634 JR]

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

BETWEEN

**KT AND X
(A MINOR SUING BY HIS MOTHER AND NEXT FRIEND
KT)
AND Y (A MINOR SUING BY HER MOTHER AND
NEXT FRIEND KT)**

APPLICANTS

AND

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

RESPONDENTS

Judgment of Mr. Justice Cian Ferriter delivered on 16th December 2021

Introduction

1. In these judicial review proceedings, the applicants seek an order of certiorari quashing the decision of the first named respondent ('IPAT' or 'the Tribunal') dated 29th April, 2020, in which IPAT affirmed the recommendation of the International Protection Office ('IPO') that the applicants should be refused a declaration as refugees and refused subsidiary protection status ('the Decision').

Background

2. The first-named applicant is a 31-year-old woman from Georgia who made a claim for protection to the Minister for Justice and Equality ('the Minister') on 12th February, 2018 on the basis that if she returned to Georgia she would face persecution and/or a real risk of suffering serious harm. For ease, and unless the context otherwise requires, I will refer to the first-named applicant as "the applicant".
3. The applicant was interviewed by the IPO on 21st February, 2018 pursuant to s.13 of the International Protection Act 2015 ('the 2015 Act'). She submitted an Application for International Protection Questionnaire ('AIPQ') on 29th March, 2018. She was interviewed pursuant to s.35 of the 2015 Act on 17th May, 2018. In a decision notified to the applicant on 1st June, 2018, the IPO refused her claim. She appealed to IPAT on 13th June, 2018. The appeal hearing was listed for hearing initially on 19th September, 2018 and was adjourned for various reasons on a number of occasions. The appeal eventually came on for hearing on 20th February, 2020.
4. The applicant had originally requested that her appeal be adjourned to link her case with that of her husband, and father of her children, DT, on the basis that the cases were said to be "inextricably linked". While the Tribunal acceded to that request and adjourned the appeal (on 19th September, 2018) it does not appear that the matters were ultimately linked and they certainly did not proceed together. Indeed, at a brief hearing on 27th January, 2020, the applicant's representative sought to have excluded from the material before the Tribunal a court document referring to her husband's car crash in Georgia which had been considered by the IPO in its s.39 report. The Tribunal acceded to the

application to exclude this document from its consideration, in accordance with the applicant's wishes and this is reflected at paragraph 54 of the Decision under challenge.

5. Subsequent to the Tribunal hearing on 20th February, 2020, the applicant submitted Irish medical records for her son (X), the second named applicant in the proceedings. He is the applicant's eldest child with DT. The third named applicant is the applicant's second child (who, as with her older brother, was born in Georgia to the applicant and DT). Following her arrival in Ireland, it appears that the applicant had a third child (a daughter) with DT. That child is not a party to these proceedings.

Grounds of challenge to the Decision

6. The applicants were granted leave to apply for an order of *certiorari* against the Decision on the following legal grounds:

- "1. *The Tribunal has erred in law in making adverse credibility findings based on the applicant's evidence and the lack of information therein. Such findings were unreasonable, and were based on subjective assumptions, preconceptions, conjecture, or speculation rather than on independent, objective, reliable, and time-appropriate evidence. The Tribunal erred in law in failing to provide a clearly articulated reason as to why a person in the applicant's position would have such information. In particular, and without prejudice to the generality of the foregoing, the Tribunal at paragraphs 49, 50, 51, 52 and 54 of the impugned decision, focus on areas where the applicant "lacks detail", and makes adverse findings as a result of same. Such findings are unreasonable where the applicant has explained her inability to provide such details.*
2. *The Tribunal has erred in law in failing to make a clear and reasoned finding on the central issues raised by the applicant, that she was harassed and threatened and that her children were also threatened by the unknown or unidentified men looking for DT. The applicant experienced this first-hand, and gave evidence of same, which is recorded in the Tribunal decision, as well as elsewhere in her international protection application. It was required of the Tribunal to address this in the assessment of the applicant's claim, or in the alternative, in its rejection of this core evidence as result of its conclusions that the applicant lacked detail in her account of the events that she did not witness or experience herself and was only able to account what DT had told her.*
3. *The Tribunal has erred in law in its findings and assessment in relation to both the Second and Third Named applicants, failing to consider the specific risks to the minor children as distinct from those which their mother faced. The applicant submitted HSE and GP letters as evidence in this matter in support of her evidence that X, the Second Named applicant was adversely affected by events in Georgia and suffers with his mental health as a result of the threats received and the experience of living in Georgia and feeling unsafe."*

The Decision

7. In order to place the legal grounds in their appropriate context, it is necessary to set out the material parts of the Decision and also some of the evidence given by or on behalf of the applicant at various stages of the international protection application process.
8. In the section of the Decision headed "Case Facts and Documents", the Tribunal summarises the evidence given by the applicant at the hearing as follows:
 - "15. The Appellant was born and grew up in xxx, Georgia. She is a Christian and had about 15 years of education.*
 - 16. The Appellant has three children with her long-term partner, DT is in Ireland and is also an applicant for international protection. The Appellant has no contact with him at present.*
 - 17. DT was a member of United National Movement political party. He joined in 2003. The Appellant was not a member herself, but was a supporter. She started a relationship with T in 2008 in the UK. She was there as a tourist at the time. She started supporting the UNM after she met DT.. She did not get actively involved. This is why she could not answer questions about the party at interview. She was also stressed during the interview.*
 - 18. The Appellant overstayed on a tourist visa and resided in the UK illegally from 2008-2013. Two of her children were born there. The Appellant's son X was born on 18 April 2009. Her daughter Y was born on 5 June 2011.*
 - 19. The Appellant was aware that she was in the UK in breach of immigration laws. She did not take any steps to regularise.*
 - 20. In 2013 the Appellant and her partner and children returned to Georgia.*
 - 21. In April 2014 DT had a car accident. He told the Appellant that he hit a person with his car. The person was a high ranking official named xxx xxxxx DT was convicted and sentenced to three year's probation as a result of the incident. DT was pressured to compensate the victim of the damage to his car: 60,000 US dollars. He tried to do so. This was very stressful for him. His personality changed as a result of the stress. He borrowed money from moneylenders and banks to try and pay the 60,000. He sold his shop and his house. The people asking for the money would not leave him alone. He believes the whole thing was set up to extort money from him.*
 - 22. The Appellant is suspicious about the whole situation. She believes that DT didn't tell her the whole story – he told her there was something else going on but it was safer for her not to know about it.*
 - 23. One day DT came home looking like he had been in a fight. He said that he could no longer stay in Georgia.*

24. *In June 2014 DT left Georgia as a result of the problems he was having. He claimed international protection in Ireland.*
 25. *After he left, the Appellant was threatened by two men, unknown to her. They came to her house and told her that unless DT contacted them, they would kidnap her children from school. They also warned her to be careful, saying that she might get hit by a car one day. They asked her for DT's whereabouts and his phone number.*
 26. *People came to threaten the Appellant twice a week after that. She was afraid to put the lights on at night. They called her phone a lot – almost daily. She changed her phone number many times but this did not stop the calls.*
 27. *The Appellant heard that men also contacted DT's father and threatened him. His parents are now in Ireland.*
 28. *The Appellant went to the police but they did not take it seriously. She had no evidence of the threats so they did not assist her. She does not believe the complaint was even registered properly. She does not have any documentation to evidence her complaint as they did not give her anything.*
 29. *The Appellant was very afraid. Her mother didn't want her to be in the house anymore, as she felt the Appellant was endangering the whole family. The Appellant left Georgia and came to Ireland. She claimed international protection on 12 February 2018.*
 30. *The Appellant is afraid to return to Georgia as she is afraid of Mr K. She is afraid for her children. She doesn't believe the police will assist her.*
 31. *Since the Appellant has been in Ireland she has had a third child with DT. They are now estranged and have no contact."*
9. The Tribunal noted, at paragraph 36 of the Decision, that *"a credibility assessment was required to establish the facts."*
 10. The Tribunal then cited, under the heading *"Credibility Assessment"*, various well-known dicta of Clarke J. in *RMK v. Refugee Appeals Tribunal* [2010] IEHC 367, and referenced UNHCR guidance as to the appropriate standard of proof when a credibility assessment is being conducted *viz. "credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed"*.
 11. The Tribunal then went on to analyse the applicants' claims under the headings *"medical records"*, *"consistency"*, *"detail"*, *"clarity"*, *"coherence"*, *"immigration history"*, *"documentary evidence"* and *"country of origin information"*.

12. As can be seen from the grounds of challenge, the applicants take particular issue with paragraphs 49, 50, 52 and 54 of the Decision. It is appropriate to set out those paragraphs, in their appropriate context, in the Decision as follows:

"Medical evidence

43. *The Appellant has provided brief medical records for her son. These state the he presents with anxiety and panic attacks, as well as some OCD tendencies. A referral was made by his GP to psychiatric services, who in turn have referred the matter to a community psychologist.*
44. *There is no child psychologist report or similar on file, exploring the source of the child's mental health issues. The Tribunal is unwilling to hypothesise in this regard, and (quite properly) was not asked to do so by the Appellant's representative. The Tribunal, however, considers that this evidence is in line with the Appellant's account that her son experienced stress due to the family's situation in Georgia. This has a slight positive impact on credibility.*

Consistency

45. *The Appellant's claim has changed throughout the international protection process. She initially claimed (s.13 interview) that she left Georgia as her partner owed a large sum of money to banks and moneylenders and could not pay it back.*
46. *In her questionnaire, the Appellant said she and her partner were additionally at risk due to a car accident her partner had had and their involvement with the UNM party. Both of these matters significantly expended on her claim as originally expressed.*
47. *The Appellant said she only mentioned moneylenders in her first interview due to stress. Given the moneylender problem is derivative of the car crash and related extortion, it is not considered reasonable that the Appellant would fail to mention the source of the problem. The Appellant's claim has evolved throughout the course of the international protection process. This has a negative impact on her credibility.*

Detail, clarity, coherence

48. *The Appellant's account, taken as a whole, lacked a credible level of detail in the Tribunal's assessment. This is partially explicable by the fact that the claim is derivative of another person's claim (her former partner) who would be presumed to have more detail. However even making allowance for the second-hand nature of some of the core facts, the Appellant's account was scant in terms of detail given.*
49. *The Appellant's central claim is that she is a risk on account of a car accident that her former partner was in. She had little detail to flesh out this claim. Given the Appellant states that she and her children were in danger as a result of this matter,*

it is not considered reasonable that she had [not] sought fuller details from her partner. At interview, notably, the Appellant had even less detail than at the hearing; she could not name the man involved, said to be the person she was in fear of. It is not considered reasonable she would fail to recall the name of the person involved in the accident, from whom all her troubles had come. As above, at her first interview she made no mention of this matter whatsoever.

50. *The Appellant was vague in relation to the money owed by her partner to banks and moneylenders. She was unclear on the amounts involved. Again, as this part of her account is derivative, she may reasonably lack the full details on this matter. However the fact remains that her account is vague and lacking in detail when considered as a whole. She was also vague on the matter of who exactly was harassing her partner – her initial account to the IPO at interview was that it was moneylenders (Q.16), but she subsequently changed this to it being the men her partner crashed into (Q.20). She failed to be specific on this matter at the hearing. This matter is at the core of her account. Her lack of clarity on this casts doubt on her credibility.*
51. *When asked questions about the UNM party at interview, the Appellant was unable to answer them. She did not provide any additional evidence on this topic at hearing. The Appellant appears to have very little knowledge about the UNM party. Her claim to support this party is undercut by her distinct lack of information about it. This has a negative impact on her credibility as regards this aspect of her claim, and more generally. It appears the Appellant may have sought to exaggerate her claim by asserting it had a political element. She did not logically explain the asserted political element, either to the IPO or at the hearing, in the Tribunal's assessment.*
52. *The Appellant stated at the hearing that she is suspicious of the DT told her and does not believe she has been given the full picture. The account she relates is second-hand, and is one in which she herself professes not to have full confidence. This does not give the Tribunal confidence that it can rely on the Appellant's account of matters she was told by DT,. The Appellant's account, taken as a whole, lacks coherence, clarity and detail. This fundamentally undermines her account.*

Immigration history

53. *The Appellant has poor immigration history, having lived illegally in the United Kingdom, on her account, for a substantial period of time: from 2008 – 2013. The Appellant was aware her actions in overstaying her tourist visa were in breach of immigration laws. She did not offer any reasonable explanation for this conduct. The Appellant has demonstrated that she is willing to knowingly contravene immigration laws to stay in the country of her choosing. This has a slight negative impact on her credibility as regards this claim.*

Documentary evidence

54. *The Appellant has provided no documentation to support the disputed elements of her claim. The Appellant's former partner provided a court document, which he IPO had regard to in the s.39 report. The Appellant's representative asked the Tribunal to disregard this document entirely, as it was not helpful to the Appellant's account. The Tribunal has done so.*
55. *The Appellant has produced two birth certificates for her children. On one no father is named. On the other, DT is named as the father. This is in line with her account. These documents fall short of establishing the Appellant's own identity, and are peripheral to the core facts in dispute.*
56. *In the absence of documentary evidence as to the disputed core facts, the focus for the Tribunal's credibility assessment is the Appellant's own account. The account was problematic for the reasons discussed herein.*
13. The Tribunal concluded with the following paragraph (under the heading "*Conclusions on credibility*"):
- "The Tribunal has made a holistic assessment of credibility. The appellant has not established her credibility. No findings of fact are made on foot of her account."*
14. The Tribunal proceeded then to affirm the recommendation of the IPO that the applicant not be given a refugee declaration or a subsidiary protection declaration.

The parties' submissions

Applicants' submissions

15. Counsel for the applicants submitted that the first and second grounds of challenge were closely linked. The essential basis of the challenge enshrined in the first ground is that the Tribunal unlawfully engaged in conjecture and/or acted unreasonably (in the *O'Keeffe* sense) in its findings at paragraph 50 of the Decision. She submitted that it was improper conjecture and/or irrational on the part of the Tribunal to rely on the fact that the applicant was not in a position to identify who was harassing her partner, and in finding that this matter lay at the core of her account and finding that her lack of clarity on this issue "cast doubt on her credibility".
16. It was further submitted that the applicant was effectively being penalised for not having a sufficiently good recall of events which she had not herself experienced and where she was necessarily only relaying a second-hand account received from her partner of what had happened to her partner. It was submitted in this regard, as reflected in the applicant's second ground of challenge to the Decision, that the operative part of the Decision on the credibility issues as reflected in paragraphs 50, 51, and 52 focussed on matters which were really matters that occurred to her partner and which she could not have reasonably been expected to be in a position to give full and clear evidence in relation to.
17. In support of her first two grounds, and the impermissible conjecture allegedly engaged in by the Tribunal and/or the irrationality into which the Tribunal fell, the applicants rely on

points five and six of the ten points synthesised by Cooke J. in *IR v. The Minister for Justice* [2009] IEHC 353 ("IR") (at paragraph 10), as follows:

- "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.*
- 6) *The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given."*

18. The applicants also rely in this regard on dicta to similar effect (as to the impermissibility of relying on conjecture as opposed to the cogent reasoning from facts) on the decision of Peart J. in *Memishi v. The Refugee Appeals Tribunal & Ors.* (unreported High Court, Peart J., 25 June, 2003) ("*Memishi*").
19. The applicants also assert that improper reliance on conjecture/the irrational approach of the Tribunal is borne out by the contents of paragraphs 51, 52 and 54 of the Decision.
20. In paragraph 51 of the Decision, the decision maker referenced the first named applicant's lack of knowledge about the UNM party and stated that "*her claim to support this party is undercut by her distinct lack of information about it. This has a negative impact on her credibility as regards this aspect of her claim, more generally.*" It is submitted that this was another example of the Tribunal engaging in conjecture in circumstances where it was her husband, and not she, who had been involved in the party.
21. Similarly, the applicants submit that the Tribunal fell into error in noting, on the one hand, at paragraph 52 of the Decision, (correctly) that the applicant's account was second hand and "*is one in which she herself professes not to have full confidence*" but on the other hand relying on that fact to hold that "*this does not give the Tribunal confidence that it can rely on the appellant's account of matters she was told by DT*". Again, it was submitted that it was improper to seek to rely on the applicant's inability to substantiate second hand accounts in arriving at an adverse credibility finding.
22. The applicant also sought to criticise the fact that the IPO sought to question her on documents from her partner's international protection file, to which he was given access. It should be noted that an alleged inappropriate use by the IPO of material from her partner's file did not form part of the case which she was given leave to make in these proceedings. In any event, it is clear from the terms of paragraph 54 of the Decision that the Tribunal entirely disregarded the relevant document relied upon by the IPO in its decision (being a court document relating to DT's involvement in a court case relating to a car crash in Georgia). As reflected in paragraph 54 of the Decision, this document was properly disregarded by the Tribunal as requested by the applicant's representative on the basis it was not helpful to the applicant's account.

23. In relation to the applicants' third ground of challenge, it was submitted that the Tribunal erred in law in failing to consider the specific risks to the minor children, in particular to X, the eldest child and second named applicant, which arose separate to those of his mother. It was submitted that appropriate medical evidence was before the Tribunal (in the form of correspondence with X's GP, including a referral by the GP to the Community Psychology Services of the HSE) evidencing X's physical manifestations of stress, including tearing his hair out which had led to a bald patch appearing on his scalp. It was submitted that the Tribunal having held at paragraph 44 that this evidence was "*in line with the appellant's account that her son experienced stress due to the family's situation in Georgia. This has a slight positive impact on credibility*" erred in thereafter failing to separately weigh this in favour of a self-standing assessment of well-founded fear in respect of the second named applicant, and instead fell into error by holding (at paragraph 62 of the Decision), that: -

"There is no basis for a separate assessment in relation to the appellant's children – her fears on their behalf derive from her own fears, which had been found not to be credible".

24. In this regard, counsel for the applicants submitted that the facts of this case were readily distinguishable from the situation which obtained in the case of *J.O. v. The Minister for Justice & Anor.* [2009] IEHC 478 ("JO") where Cooke J. held as follows (at paragraph 10):

"It must be borne in mind that the function and duty of the Commissioner is to examine the application, to interview the applicant, to carry out any enquires that might be appropriate to verify the claim made and then to report on this to the Minister with the recommendation as to whether the applicant has or has not established the ingredients of refugee status. In circumstances where this three-month old child's claim is identical to and dependent upon the claim made by the mother, it is difficult to envisage what further investigation or enquiry might have been carried out into the child's claim, nor has any been illustrated or suggested on her behalf."

Respondents' Submissions

25. The respondents, for their part, submit that there was no conjecture or irrationality involved in the impugned findings of the Decision, as the Decision was clearly based on evidence before the Tribunal (including evidence found in the original s.13 interview, the AIPQ questionnaire and the s.35 interview). It was submitted that on a careful and non-selective reading of the relevant parts of the Tribunal's decision, the findings were based on facts which bore a legitimate connection to the adverse findings and were findings which it was manifestly open to the Tribunal to make.

26. The respondents point out that the Tribunal, at paragraph 48 of the Decision, having stated that "*the appellant's account, taken as a whole, lacked a credible level of detail in the tribunal's assessment*" went on to fairly record that "*this is partially explicable by the fact that the claim is derivative of another person's claim (her former partner) who would be presumed to have more detail. However even making allowance for the second-hand*

nature of some of the core facts, the appellant's account was scant in terms of detail given". It was pointed out that the finding, at paragraph 49 of the Tribunal's decision, that "it is not considered reasonable that she [the first named applicant] had not sought fuller details from her partner" was a perfectly reasonable finding for the Tribunal to make in circumstances where the first named applicant had spent a number of years with her partner in Georgia between 2014 and 2017 and where (after an apparent break-up meantime) the applicant and her former partner had got back together when he fathered her third child in Ireland.

27. It was further submitted that, in any event, on the evidence before the Tribunal the first named applicant had sought in fact to assert quite specific detail in relation to various aspects of her claim at earlier stages of the process which did involve her former partner. These details were then absent when she came to give evidence at the Tribunal hearing itself.
28. In relation to the ground of challenge to the effect that the Tribunal fell into error in not assessing the children's claims on a self-standing basis (and in particular, the claims of X), it was submitted that the applicants were confusing cause with effect. This was not a situation where, to use the example given by counsel on behalf of the respondent at the judicial review hearing, a mother was advancing a claim for international protection based on a fear of persecution in the form of e.g. sexual violence in the event she was returned to her country of origin, and where a child was advancing a separate type of claim (e.g. that a boy child feared the risk of being pressed into service as a boy soldier if returned to the country of origin). It was submitted that the Tribunal's determination, at paragraph 44 of the Decision, was unimpeachable as it correctly noted that *"there is no child psychologist report or similar on file exploring the source of the child's mental health issues. The Tribunal is unwilling to hypothesise in this regard and (quite properly) was not asked to do so by the appellant's representative."*
29. It was submitted that the reality of the position was, as ultimately found by the Tribunal, that the children's claims of fear of persecution if returned to Georgia derived from the very same events which were the subject of the mother's claims i.e. the fear of a lack of protection from a well-founded fear of persecution (in the form of potential physical violence or kidnapping) in the event they were returned to Georgia.

Discussion

30. In my view, the respondents are correct in their submission that there was a perfectly valid basis in the evidence before the Tribunal to permit the Tribunal to make the findings it did as to lack of credibility.
31. The evidence demonstrates that in fact the applicant changed her account during the course of the process as can be seen from the following material.
32. In her initial s. 13 (2) interview the applicant stated that the reason she was seeking international protection was because:

"Her partner left because he owed money (approx. \$100,000 USD) to banks and also money lenders which he could not pay back completely even with the proceeds of sale of their house. The partner fled to Ireland and the applicant and her children went to live with her mother but were found by the people that the money was owed to and she was threatened with her children being kidnapped to pay the outstanding amount owed but she could not pay so she left with her children. Her son has stress related nervousness as a result of these threats".

33. However, in her AIPQ, in answer to question 62 (being the question inviting the applicant to set out the reasons and circumstances why she and her dependants are seeking international protection), the applicant stated that:

"In 2014 my partner got in the car accident. He crashed into the car of high ranking policeman xxx xxxx's car's value was about \$100,000 and this person, as I know, was asking my partner to fully pay him the value of his car. Because of that, we sold the house and the shop, that my partner owned, it was the only income in our family. It was still not enough; we took the loan from the various banks. We managed to collect around 60,000 but we were asked to fully cover the value of the car. We had no means left to cover the difference. After that the threats came towards our family. My partner was detained and given conditional sentence, to restrict him to leave the country. He was threatened that if he did not pay the entire sum of money he would end up in prison. We reported the matter to law enforcement agencies, they got acquainted with the case and when they found out who we had a problem with, they advised and instructed us to pay the balance. At the same time, my partner and his family were members of political party United National Movement of Georgia. I also became an active supporter of the above named party and as you might be aware the members and the supporters of the United National Movement of Georgia are persecuted in Georgia. Of course law enforcement knew about our collaboration in the party. My partner often experienced being under pressure physically and morally. I witnessed numerous times threatening phone calls and/or visits in our house. Because of all of this, my partner decided to leave Georgia and to come to Ireland. After his departure they started to visit and threaten me and my children. I reported the matter in the UNM party office in my region. They helped me to organise a peaceful protest in front of the police department in xxx region. It did not have any results. The police officers of xxxxx police department came to me and categorically warned me that all my efforts were pointless and to pay the money and partner to return back as soon as possible or his children would be in more danger. They specifically threatened that they would kidnap the child and it would force my partner to come back and pay the money he owed. After this I have noticed these two police officers at my children's school. I got frightened and stopped taking them to school."

34. It might be noted here that the applicant was able to name the "high ranking policeman" who was the apparent source of the threats. She also said that she "became an active supporter" of the United National Movement of Georgia, arranged with them to organise a

peaceful protest in front of the police department and that she was then specifically threatened by two police officers from that department including threats of kidnapping.

35. In answer to a later question (question 65b), the applicant stated that she reported [the incident] to *"the police department of my region. But the person by whom me and my children were threatened and persecuted was high ranked police official and my report was considered groundless."*
36. In supplemental sheets appended to the AIPQ, the applicant stated that *"we assure that it was not only to the value of the damaged car. We believe that our involvement in the United National Movement of Georgia is a significant motive as well. Our party members had been unlawfully persecuted and there are lots of cases proving that"*.
37. In her answers in her s.35 interview, the applicant gave answers inconsistent to those given by her at the earlier stages. In these interviews, she said that the people who were harassing herself and her husband were *"private lenders and we had to borrow money from the bank as well"*. She stated that *"people were harassing me and coming to my house and they were asking me to repay my husband's loan. They were private money lenders."*
38. She then stated, apparently inconsistently with that, that the *"people who were harassing me, they were the people whose car was broken and because we couldn't repay them we took money from the bank and from other people as well"* and when asked further said that the people who were harassing her were not the moneylenders. In relation to the identity of the person whose car her husband had crashed into, which was the apparent source of the problem, she stated *"I knew that this guy had a high position somewhere in the police but I can't remember the name or surname of him. I didn't want to be involved in that case but when my husband left they started coming to me and disturbing me"* and said that it was *"this policeman and his friends as well"* who were threatening her.
39. She maintained that there was a potential alteration of a court document on the basis that, potentially, her husband and his family *"were acting members of the Georgian National Movement and they took participation in their manifestations and demonstrations and maybe somebody had a private problem with them"*. She stated that she went to the United National Movement to organise a protest outside a police station and that this was the only protest that was organised, though appeared to change her answer on that when questions were put to her about a separate protest which her husband had said he had been involved in organising. She stated in the s.35 interview that she was *"quite active as well"* (as her husband) in the UNM and when asked whether she was a member or supporter stated *"I was an active supporter. My husband was a member"*.
40. When the applicant came to give evidence at the Tribunal, she said (as recorded at paragraph 25 of the Tribunal's decision) that she was threatened by two men *"unknown to her"*. She stated that these men *"warned her to be careful saying that she might get hit by a car one day"*. This was an apparently new allegation of the nature of the threats she had faced.

41. In my view, it cannot be said, within the meaning of *IR* or *Memishi*, that the Tribunal's impugned findings were based on conjecture or were irrational. The Tribunal correctly noted at paragraph 45 that "the appellant's claim has changed throughout the international protection process". This was a finding which was undoubtedly open to the Tribunal to make. It was further undoubtedly open to the Tribunal to make the finding (set out at paragraph 50 of the Decision) that "*she was also vague on the matter of who exactly was harassing her partner – her initial account to the IPO at interview was that it was moneylenders (Q.16), but she subsequently changed this to it being the men her partner had crashed into (Q.20) and she failed to be specific on this matter at the hearing. This matter is at the core of her account. Her lack of clarity on this cast out on her credibility*".
42. In light of the evidence before it, it was also manifestly open to the Tribunal to arrive at the position it did as to the lack of credibility of the applicant's claims in relation to the UNM party (at paragraph 51 of the Decision) and to reach the findings made in relation to the identity of the persons behind the threats (at paragraph 49 of the Decision).
43. It is of course not the role of the Court on a judicial review application to substitute its view for the merits of the matter, but rather to review the lawfulness of the process engaged in by the decision maker. In my view it simply cannot be said, in light of the totality of evidence given by the applicant at various stages of the international protection process, that the findings as to lack of credibility were not open to the Tribunal to make. In the circumstances, the Tribunal's finding that "*the appellant's account, taken as a whole, lacks coherence clarity and detail. This fundamentally undermines her account*" (Decision paragraph 52) cannot be said to be irrational or vitiated by error of law as being based on conjecture or speculation.
44. In relation to the applicants' third ground of challenge, to the effect that the Tribunal erred in failing to consider the specific risks to the to her minor children (and in particular X) as distinct from those which the mother faced, in my view, the facts here were such as to be within the rubric of the principles set down by Cooke J in the JO case.
45. While the Tribunal fairly accepted that the medical evidence showed that the second-named applicant was suffering from stress-related difficulties, in my view it was not irrational, or otherwise unlawful, for the Tribunal to hold that there was no basis for a separate assessment in relation to the first named applicant's children. The point is well made on behalf of the respondents that the medical documentation tendered on behalf of X didn't identify or establish the source of his stress in a way which would have merited his claim being considered on a self-standing basis separate from that of his mother.
46. It was open to the Tribunal to conclude that "her fears on their behalf derive from her own fears". The relevant fears in question were fears as to the apprehended persecution all of the applicants would face if returned to Georgia which all rested on the first named applicant's narrative as to the threats of violence and abduction which they all faced if returned to Georgia.

47. The finding by the Tribunal that the medical evidence tendered in support of the fact that the second-named applicant was suffering mental health issues and that this "has a slight positive impact on credibility" was not a "make or break" finding on credibility which obliged the Tribunal to thereafter find in favour of all of the applicants or either or both of the children.
48. The applicant submitted, in reply, that it was not a question of a binary position where the children's claims needed to be under a distinct and separate heading from those of their mother; rather, it was the question of their being a spectrum of matters which could rise to an obligation for a self-standing assessment. However, in my view, the applicants are here confusing effect with cause. It was not suggested that the second named applicant's mental health issues were caused by a ground of feared persecution if returned to Georgia which was separate to the persecution feared by his mother. In the circumstances, it was open to the Tribunal to do as it did and characterise the children's claims as being dependant on the mother's claims and that where the mother's claims were rejected on credibility grounds, for their claims to consequentially fall also.

Conclusion

49. In the circumstances, I refuse the relief sought.