THE HIGH COURT

JUDICIAL REVIEW

[2025] IEHC 4

[Record No. 2023 1213 JR]

BETWEEN

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APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Ms. Justice Marguerite Bolger delivered on the 6th day of January 2025

1. This is an application for *certiorari* of a decision of IPAT dated 28 September 2023, refusing the applicant refugee status or subsidiary protection. The applicant's challenge is focused on two paragraphs of the IPAT decision that she says are irrational: 4.14 and 4.15. The parties agree that the following three legal questions address the points raised in the applicant's challenge:

1. Whether the International Protection Appeals Tribunal (hereinafter 'the Tribunal') erred in law in its assessment of the applicant's credibility insofar as its finding at para. 4.14 is irrational in the legal sense?
2. Whether the Tribunal erred in law insofar as its cumulative findings at para. 4.15 are irrational in the legal sense, with the findings made at (i) to (iv) therein said to be irrational?
3. Whether the doctrine of severability in administrative law should apply in the event that any of the findings at the paragraphs identified *supra* are successfully impugned?

Background

2. The applicant is a citizen of Botswana and is married with two children, one of whom is currently a minor. Her husband and children remain in Botswana. The applicant arrived in Ireland on 13 April 2022 and applied for international protection the next day.

3. The applicant was involved in a dispute over land that she had purchased with her husband in 2011 on which they had built houses including one in which they lived. In April 2019, a Mr. M called to the applicant's house and told her that he owned the land. The applicant and her husband went to the police who advised them to go to the Land Office, which they did but secured no satisfaction from them. Ultimately, they went to a lawyer. At that time, Mr. M was calling to the applicant's house and telling her and her husband to move off his land. Eventually, the applicant and her husband left their home in July 2019 and, thereafter, from early 2020, the applicant claims that she encountered difficulties which she believed were caused by Mr. M. She referred to her car windows being broken in April/May 2020 and to receiving text messages from Mr. M. She left Botswana in 2022 to seek protection.

4. The Tribunal accepted that the applicant and her husband are involved in a land dispute with Mr. M. In relation to the applicant's claim that she was threatened and harassed by Mr. M, the Tribunal's decision can be found at paras. 4.13 to 4.16, which I set out below:

> *"4.13 It was the Appellant's claim that after she and her family left the plot and moved back to Mahalapye that she experienced harassment from* [Mr. M]. *She said, in her evidence in chief that they found their car windows broken and a lot of things were happening there and* [Mr. M] *passed in his car. She said that she found the car windows broken and suspected it was* [Mr. M] *as that had not happened before. The Appellant gave evidence that happened at the beginning on 2020. The Appellant said that* [Mr. M] *sent her messages on her phone but she can't find those messages now. The Appellant said that the issue with the car occurred in April/May 2020. When asked if anything else happened to her, the Appellant said that after all that she left it to her lawyers and she is still waiting for the case. When asked about this by the PO, the Appellant said that she moved between the cattle post and Mahalapye. The Appellant said in her section 35 interview, in answer to question 51, that the cattle post is 30km from Mahalapye.*

4.14 When asked by the PO about that period of time and if it was fair to say she had no problems after 2020 the Appellant said that she was always hiding herself. The Appellant was asked about why she thought [Mr. M] *was behind the damage to her car and she referred to the messages she received from him saying that they said that she was running around and talking to a lawyer. The Appellant was asked why she made no mention of those messages at her section 35 interview and she said that they are not on her phone. She did not provide a reasonable explanation for to the introduction of the inconsistency arising from the introduction of the messages at her appeal hearing. Internal inconsistency is a negative credibility indicator.*

4.15 The Tribunal finds that the Appellant's evidence in respect of the claimed threats and harassment after she moved to Mahalapye was vague, without the specificity of detail which the Tribunal would reasonably expect. The Appellant stated that she received messages from [Mr. M] *but that she can no longer find those messages. The Appellant has not explained why she did not make any mention of those messages at her section 35 interview. The Appellant has not explained how it is that the harassment stopped in July 2021 even though she continued to reside between Mahalapye, where she claims* [Mr. M] *harassed her, and the cattle post outside Mahalapye. The Appellant has not explained why it is she was the target of the threats in 2020 save the assertion that* [Mr. M] *thought she was behind the case despite the letter being in the names of both the Appellant and her husband and* [Mr. M] *having dealt with her husband previously, furthermore the Appellant had not explained why she was threatened in 2020 because of her case against* [Mr. M] *when in fact the letter from her lawyer was sent on 16 February 2021.*

4.16 In view of the negative credibility indicators set out above, it is not accepted on the balance of probabilities that the Appellant was threatened by [Mr. M] *after she moved to Mahalapye in 2020."*

5. In relation to para. 4.14, the applicant submits that the Tribunal's rejection of her explanation for not having mentioned the text messages previously, is unfair and irrational.

She says that what she described as "*a singular basis"* for rejecting the overall claim ought not to stand. She condemns the criticism made of her at para. 4.15 for not explaining why the harassment stopped in July 2021 as she says this went to Mr. M's mind and could not be explained by her. She condemns the criticism of her not explaining why she was the target of threats in 2020 despite her husband's involvement in the dispute as an illogical premise that her husband's involvement could not involve a separate targeting of her, and she says the reasons for this conclusion are unclear. Finally, she condemns the criticism of her for not explaining why she was threatened in 2020 because of her case against Mr. M, when the first correspondence from her lawyer to Mr. M was in February 2021, firstly, because it was not put to her to comment on and, secondly, for failing to appreciate that her dispute with Mr. M pre-dated her lawyer's correspondence.

6. The applicant relies on the doctrine of severability in submitting that the Tribunal's decision is materially flawed and should be quashed.

Discussion

7. The applicant must get over what is a high bar test for irrationality, the basis of which is comprehensively addressed by Barr J. in *G.K. v. IPAT* [2022] IEHC 204, at paras. 62 to 64. It is trite law that the court must not step into the shoes of a decision maker to make a 'better' decision. The challenges to the rationality of para. 4.14 relies on caselaw where a single adverse credibility finding was made, a situation as observed by Cooke J. in *I.R. v. Minister for Justice* [2015] 4 IR 144 that "*will not necessarily justify a denial of credibility generally to the claim*" (at para. 11(vii)). However, it is clear from the impugned decision that many more than one negative credibility indicator was identified by the decision maker (see paras. 4.14 and 4.15). The oft cited *I.R.* principles set out by Cooke J., yet again, provide the court with a useful and reliable point of reference in determining credibility. At principle 8, Cooke J. stated:

> "*[A] decision on credibility and must be read as a whole and the court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision maker*…".

At principle 10, he stated:

> "*There was no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons*

stated enabled the applicant as addressee, and the court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached."

Here, the reasons identified by the decision maker enable both the applicant and this Court to understand the basis for the credibility conclusions and the process by which they were reached. The applicant may well not agree with those reasons, but that is, of course, insufficient for a challenge to the decision to succeed.

8. In relation to para. 4.14, the applicant's explanation for not having mentioned text messages that she said she received from Mr. M after 2020 at her section 35 interview was that she no longer had them on her phone. The decision maker found that was not a reasonable explanation. The applicant claimed to have been harassed and threatened by Mr. M during this time but her only evidence of harassment or threats from him was her belief that he was responsible for the damage to her car in April/May 2020. The decision maker was entitled to be concerned at the applicant's omission of any mention of texts from Mr. M at her section 35 interview. The applicant's criticism of para. 4.14 falls well short of the high bar required to establish irrationality.

9. In relation to para. 4.15, the decision maker sets out three further concerns with the applicant's evidence in addition to her failure to mention the texts she said she received from Mr. M. The decision maker was clearly concerned about the applicant's credibility and her evidence about having been harassed after she left her home. The decision maker found the applicant's evidence was vague and lacking in the detail that might be expected. It is sufficiently clear from both paras. 4.14 and 4.15 why the decision maker had those concerns.

10. At para. 4.15 the decision maker referred to the applicant not having explained how the harassment stopped in 2021. Whilst that may be something within the knowledge of the alleged perpetrator, it is clear that the applicant was asked directly about this at her interview. The decision maker was entitled to note the absence of an explanation from the applicant.

11. There is no irrationality or procedural unfairness in not having put to the applicant her failure to explain why she alone was threatened in 2020 even though the legal correspondence was in the name of her and her husband, and Mr. M had previously dealt with her husband. Not every inconsistency or concern about something that was said or was not said by an applicant needs to be put to them. The point at which a failure to put

something to an applicant becomes a breach of the State's duty of cooperation was addressed by me in my recent decision in *H v. IPAT* [2024] IEHC 598 where I said, at paras. 16 to 18:

> *"16. The Tribunal's fatal failures to put something to an applicant in the decisions on which this applicant relies, all involved far more specific matters than what was at issue here, namely the lack of <u>any</u> evidence corroborating the applicant's claim that threats against his life had been made to members of his family in Pakistan. His own account of the threats were second hand versions of what he says he was told by members of his family. He chose not to seek or secure any corroborating evidence, which was a matter for him and his legal advisors. The national authority was not better placed that the applicant to obtain evidence corroborating the applicant's account of threats made to his family members. This contrasts with the situation in X. v. IPAT where the national authority was clearly better placed than the applicant to gain access to up-to-date country of origin information and a medico-legal report on the applicant. The applicant's lack of corroborative evidence is not comparable to a failure by the Tribunal to put it to an applicant that her explanation was not tenable (as occurred in Idiakheua) or the question of whether the applicant was or was not forced to leave her home (Olatunji) or the absence of a marriage certificate (B.W.).*
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> *17. In conclusion on this point, while the absence of evidence corroborating the applicant's version of events seems to have been a matter of substance and significance for the Tribunal, the law and, in particular, the EU duty of the national authority to cooperate, does not extend to something as general as the absence of corroboration -which is entirely different to the tangible pieces of evidence at issue in the case law where decisions were quashed for failures to put specified discrepancies to an applicant. The lack of evidence corroborating this applicant's claim of things he says he had been told were happening to his family in Pakistan, is not something that might have been more easily addressed by the national authority. It is something that could only ever be addressed by the applicant. The Tribunal did not breach its duty of cooperation in not advising the applicant that, in assessing the credibility of his claim, it might rely on the absence of evidence, including, but not limited to, the lack of any affidavit from the family members who*

are alleged to have heard the threats made against the applicant's life. That assessment was properly made by the Tribunal based on the evidence the applicant decides to put before it.

18. The duty of cooperation undoubtedly applies to 'the determination of the facts and circumstances qua evidence' (as confirmed by the CJEU at para. 68 in M.M.), but does not relate to,

> *'...the appraisal of the conclusions to be drawn from the evidence provided in support of the application, when it is determined whether that evidence does in fact meet the conditions required for the international protection requested to be granted.' (at para. 69 of M.M., my emphasis).*

My conclusions in that regard are consistent with and informed by the wording of Article 4 and by the CJEU and domestic case law. No reference to the CJEU is necessary as I am satisfied that the point is acte clair."

The decision maker criticised the applicant for not having explained why she was threatened in 2020 when legal correspondence did not commence until February 2021. The applicant said that whilst she had attended at the Land Office on the advice of the police, she got no satisfaction there and therefore resorted to going to her lawyer. The decision maker was entitled to question the applicant's explanation for having been threatened in 2020 (i.e. that she had taken a case against Mr. M) when the first indication of any such case was not until the applicant's lawyer wrote to Mr. M in February 2021. It was not irrational for the decision maker to have viewed the applicant's account of her dispute with Mr. M prior to the legal correspondence of February 2021, as separate to what the applicant blamed for Mr. M's harassment of her and threats against her, i.e. the fact she had taken a case against him. The applicant may disagree with the decision maker's conclusions, but this falls short of the high bar required to establish irrationality.

12. I have not found any of the findings in paras. 4.14 and 4.15 should be impugned as irrational. It is therefore not necessary to consider whether the doctrine of severability should apply.

13. For the reasons set out above, I refuse the application for *certiorari*.

Indicative view on costs

14. The respondents have succeeded in full and, in accordance with s. 169 of the Legal Services Regulation Act 2015, my indicative view on costs is that the respondents are

entitled to their costs against the applicant to be adjudicated upon in default of agreement. I will put the matter in for 10.30am before me on 4 February 2025 to hear whatever submission either party wishes to make in relation to costs and any other final orders.

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