THE HIGH COURT

JUDICIAL REVIEW

[2025] IEHC 134

[2023 No. 981 JR]

Between:

P. P.

Applicant

-and-

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL and THE MINISTER FOR JUSTICE

Respondents

and

[2023 No. 982 JR]

Between:

V. S.

Applicant

-and-

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL and THE MINISTER FOR JUSTICE

Respondents

JUDGMENT of The Hon. Mr. Justice Alexander Owens delivered on the 4th day March 2025

1. These applications for judicial review raise an issue of whether the International Protection Appeals Tribunal (the Tribunal) erred in law in the manner in which determined that P.P. and V.S. had "*not submitted any serious grounds for considering [Georgia] not to be a safe country of origin in [their] particular*

circumstances and in terms of [their] eligibility for international protection." As a result of these determinations, the Tribunal refused to recommend that P.P. and V.S. be given international protection declarations.

2. I am satisfied that P.P. and V.S. have provided good and sufficient reasons to justify me in extending the period for bringing these applications.

3. I reject a submission that the Tribunal was not entitled to consider whether or not P.P. and V.S. had sufficiently demonstrated that Georgia did not provide adequate protection to them in making these determinations.

4. The Tribunal was obliged to explain why it decided that claims by P.P. and V.S. that police in Georgia operated in collusion with gangs of money-lending extortionists were not "*serious grounds for considering"* that Georgia was not "*safe*" for them. It did not provide a reasoned conclusion on this issue.

5. It follows that these decisions will be set aside and that the applications of P.P. and V.S. for international protection declarations will be remitted for reconsideration.

6. I am treating this ground as within the first sentence of para. 2 (a) of the grounds on which P.P. and V.S. were given leave to apply for judicial review.

7. A publication of the UNHCR entitled "*Background Note on Safe Country Concept and Refugee Status*" provides useful guidance on the safe country concept in international protection. The UN Refugee Agency expresses a concern that this concept can be misused to raise "*a presumption of non-refugee status which they must, with difficulty, rebut*." A further concern arises where this concept "*is applied, in effect as an automatic bar to refugee status, without resort to procedures. Where, however, an eligibility procedure still applies and where the concept is used in a procedural sense to assign certain applications to expedited or accelerated procedures (e.g. for manifestly unfounded cases), or where its use has an evidentiary function. For example, giving rise to a presumption of non-status rebuttable in eligibility procedures, the above concerns are much diminished."*

8. Provisions in directives of the European Union and Irish legislation giving domestic effect to those directives have been framed in light of these concerns. These provisions restrict the circumstances in which the so-called presumption that a designated safe country of origin is safe can apply.

9. This presumption only applies where, on examination, an application for protection discloses absence of serious grounds for considering that the country of origin is unsafe for that applicant in context of that applicant's eligibility for protection.

10. Section 33 of the International Protection Act 2015 (the 2015 Act) provides as follows: *"A country that has been designated under section 72 as a safe country of origin shall, for the purposes of the assessment of an application for international protection, be considered to be a safe country of origin in relation to a particular applicant only where- (a) the country is the country of origin of the applicant, and (b) the applicant has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her eligibility for international protection*."

11. Section 33 of the 2015 Act transposes para. 1 of Article 31 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (the Asylum Procedures Directive) into Irish law. The three final words of s.33 extend the safe country of origin rules to applications for subsidiary protection.

12. Recital (21) of the Asylum Procedures Directive states as follows:

> "*The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are serious reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her."*

13. Article 31 of the Asylum Procedures Directive provides as follows:

> *"1. A third country designated as a safe country of origin in accordance with either Article 29 or 30 may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant for asylum only if:*
>
> *(a) He /she has the nationality of that country; or*

(b) He/she is a stateless person and was formerly habitually resident in that country;

and he/she has not submitted any serious grounds for considering the country not to be a safe country of origin in his/her particular circumstances and in terms of his/her qualification as a refugee in accordance with Directive 2004/83/EC.

> *2. Member States shall, in accordance with paragraph 1, consider the application for asylum as unfounded where the third country is designated as safe pursuant to Article 29.*
>
> *3. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept."*

14. Paragraph 1 of Article 31 of the Asylum Procedures Directive refers to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (the Asylum Qualification Directive). It follows that s.33 of the 2015 Act must be interpreted in light of any relevant provisions of the Asylum Qualification Directive and in a manner consistent with Article 31 of the Asylum Procedures Directive.

15. The effect of s.33 of the 2015 Act on applications for international protection is to confer a legal presumption that designated safe countries of origin are "*safe"* for applicants who have come from those countries. However, this presumption "*only*" applies in circumstances where an application for protection fails to cross the "*not submitted any serious grounds for considering"* threshold set out in sub-para. (b) of that section.

16. A valid decision that an applicant has failed to submit "*any serious grounds for considering"* covering the matters referred to in sub-para. (b) of s.33 of the 2015 Act preserves a legal presumption, rather than an evidential presumption.

17. If a decision-maker concludes that an applicant from a designated safe country of origin "*has not submitted serious grounds for considering"* then that decision-maker is bound to conclude that the claim for international protection is unfounded. If that decision-maker concludes that an applicant has "*submitted serious grounds for considering"* then the enquiry shifts to whether or not the Tribunal is satisfied that protection "*can be provided*" by that applicant's country of origin and is "*effective*", as set out in s.31(1) and (2) of the 2015 Act.

18. Georgia is designated as a safe country of origin for the purposes of s.72 of the 2015 Act. P.P. and V.S. are Georgian nationals. They are married. They used to live and work in Tbilisi. They left Georgia and came to Ireland in February 2022. When they arrived in Ireland they applied for international protection.

19. P.P. and V.S. stated that in 2016 V.S. got a loan from a private money-lender to open a beauty salon in Tbilisi. This loan carried a very high rate of interest. They claimed that they were unable to meet repayments as a result of the effect of Covid-19 on her beauty salon business. This loan was sold to a gang of extortionists who demanded that they pay large sums of money. One or more of these criminals threatened P.P. and V.S. with physical violence to get them to pay-up. They assaulted P.P. and attempted to run down P.P. and V.S. with a car.

20. P.P. was asked in his questionnaire why he did not make a report to the police. He replied that the criminals threatened him with violence or loss of life to himself and other members of the family. In his P.P. stated in his interview that these criminals were not afraid of the police and told him that they could operate from jail and take revenge through associates if some of them were arrested. He did not report these criminals to the police because they threatened him with physical injury. They threatened him with harm if he or his wife went to the police. He stated that they forcibly took him on a trip in a car and threatened him with harm. He stated that nowadays the police have good connections with some of these criminal organisations and that they are in league with the government.

21. V.S. was asked in her questionnaire why she did not make a report to the police. She stated that the criminals "*warned us that they were bound to the police and that they threatened us with violence towards our children if we made a report*." V.S. stated in her interview that when she told the criminal who mainly interacted with her that she would go to the police he told her he knew people in the police and even if he went to jail his people would be outside. He referred to the fact that she had children. She stated that the criminals had people everywhere and the police would not help her or would make trouble for her. She said that she knew from childhood that police had connections with these criminal gangs.

22. On 18 July 2013 the Tribunal concluded that P.P. and V.S. had not established a "*serious ground for considering that Georgia is not a safe country of origin for [them].*" The Tribunal concluded that they were not refugees or entitled to subsidiary protection and that there were not substantial grounds for believing that if they were returned to Georgia they would face a real risk of suffering serious harm.

23. The Tribunal addressed the test set out in s.33 of the 2015 Act in parts E and F of its two decisions. Part E is captioned "*Analysis of Well-Founded Fear*." Part F is captioned "*Analysis of Serious Harm*."

24. In part E, the Tribunal accepted that P.P. and V.S. had made out a plausible case that they were part of a "*social group*" of debtors being extorted by criminal gangs in Georgia. The Tribunal also accepted that P.P. and V.S. had a well-founded fear of persecution, having regard to past behaviour of debt-extorting criminals towards them.

25. This finding did not address the issue of whether the information provided by P.P. and V.S. relating to the police in Georgia amounted to serious grounds for considering that Georgia was unsafe for them. If there was nothing of substance in whatever they provided to the Tribunal on this aspect of their claim for protection, it would follow that their subjective unwillingness to avail of assistance from police in Georgia would be insufficient to make out their claim.

26. In part E of its decision on P.P.'s application the Tribunal went on to state as follows:

> "*21 With regard to state protection, Georgia is a safe country of origin. The Appellant's submissions referred to country of origin information which his critical of the police in Georgia, both in terms of corruption and performance. The Tribunal does not have a jurisdiction to look behind the designation of the Georgia as a safe country of origin. Instead, under section 33 of the International Protection Act, 2015 a safe country of origin is considered a safe country for an appellant only where '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.'*
>
> *22 The Tribunal must consider the individual circumstances of the Appellant. In his answers to questions 41, 47, 53, and 54 of the section 35 interview the Appellant said that he did not make a report to the police because the criminals threatened him that he was not to do so, and he was afraid of them. He said that the criminals are not afraid of the police. He said that if one criminal is arrested, other criminals could harm him and his family. However, that narrative suggests that the criminals in question, like virtually all criminals, are afraid of the police: if they were not afraid, they would not have threatened the Appellant not to report them to the police. The police are not confined to investigating only one criminal and so the Appellant's belief that if one criminal is arrested, another can harm him is not a serious ground for considering that Georgia is not a safe country of origin for him. The Appellant did not give a reason why he in*

particular would be denied state protection. The Appellant's narrative does not establish a serious ground for considering that Georgia is not a safe country of origin for him."

27. In part F of its decision on P.P.'s application the Tribunal stated as follows:

"*24 For the reasons analysed above in the context of a well-founded fear of persecution, the Tribunal holds that the Appellant…faces such a real risk in the form of inhuman or degrading treatment in Georgia by being assaulted by the criminals to whom his wife owes a debt. However, state protection is available to him because he has not advanced a serious ground for considering Georgia not to be a safe country of origin for him."*

28. In para. 19, part E of its decision on V.S.'s application, the Tribunal repeated the text of para. 21 of its decision in P.P.'s application word for word and went on to state as follows:

"*20 The Tribunal must consider the individual circumstances of the Appellant. She gave three reasons why she did not report the threats to the police. One is because she believes the criminals work together with the police in Georgia. She did not provide evidence of the criminals in her case having a corrupt relationship with any police officer. That reason does not provide a serious ground for considering that Georgia is not a safe country of origin for her. The second reason is that she believed that she had insufficient evidence for a police investigation. It is not immediately apparent that this is so, but in any event that is a matter for the police. The Appellant's speculation as to what the police require to investigate a complaint does not provide a serious ground for considering that Georgia is not a safe country of origin for her. The third reason which she gave is that criminals threatened her that she was not to report them to police. That suggests that the criminals are afraid of the police (notwithstanding the criticisms of police in the country of origin information) which points to Georgia being a safe country of origin for the Appellant. The Appellant did not give a reason why she in particular would be denied state protection. The Appellant has not established a serious ground for considering that Georgia is not a safe country of origin for her."*

29. In part F of its decision on V.S.'s application the Tribunal stated as follows:

"22 For the reasons analysed above in the context of a well-founded fear of persecution, the Tribunal holds that the Appellant faces a real risk of suffering serious harm in the form of inhuman and degrading treatment in Georgia by

being assaulted by the criminals to whom she owes a debt. However, state protection is available to her because she has not advanced a serious ground for considering Georgia not to be a safe country for her."

30. P.P. and V.S. complain that these decisions are inadequately reasoned and do not conform with judicial guidance set out in *N.U. v. International Protection Appeals Tribunal and Minister for Justice and Equality* [2022] IEHC 87.

31. I am obliged to conduct a thorough review of the reasons which led the Tribunal to reject these applications as unfounded: see Hogan J in *R.A. v. International Protection Appeals Tribunal* [2017] IECA 297 at para. 63; Phelan J. *E.S. v. International Protection Appeals Tribunal and Minister For Justice* [2022] IEHC 613 (supra) at para. 35.

32. *E.S.* relates to a decision to refuse subsidiary protection which was not based on a finding by the Tribunal that E.S. had not established serious grounds for considering that her country of origin was not a safe country of origin "*in his particular or her circumstances and in terms of his or her eligibility for international protection."*

33. Obiter dicta in *N.U* provide some guidance on how a tribunal should make an assessment under s.33 of the 2015 Act: see paras. 41 to 47 of the judgment of Phelan J. That judgment related to a decision by the Tribunal which failed to make a clear determination on whether an application for protection passed the threshold test in s.33. If an application passed this threshold, then the fact of the safe country of origin designation could not be determinative or have evidential status when the Tribunal was considering whether the country of origin provided effective protection (the s.31 test).

34. Section 33 of the 2015 Act obliges statutory decision-makers to consider a designated safe country of origin as safe for an applicant, "*only*" where that applicant has "*not*" crossed the "*summitted any serious grounds for considering…"* threshold. These decision-makers must decide whether an applicant from a designated safe country of origin has not crossed that threshold.

35. The phrase "*only where- …the applicant has not submitted…"* in s.33 of the 2015 Act, shows that the starting point for a decision-maker is to take it that "… *serious grounds for considering…*" have been submitted. This remains the position unless and until that decision-maker concludes that the applicant has not submitted an application which is sufficient to cross the "*any serious grounds for considering*" threshold.

36. The words "*in terms of his or her particular circumstances and in terms of his or her eligibility for international protection*" refer to matters which must be established in order to qualify for international protection, as set out in the Asylum Qualification Directive.

37. Para. 1 of Article 33 of the Asylum Procedures Directive envisages that a decision that an applicant has "*not submitted any serious grounds*" may only be taken "*after an individual examination of the application*". This requires that any decision on whether or not an "*applicant has submitted any serious grounds*" must be taken after a full review of any material comprised in the application.

38. These provisions show statutory intent that any conclusion that an applicant from a designated safe country of origin has "*not submitted any serious grounds*" should not be come to lightly. This formulation is almost identical in wording to that used at the conclusion of para. 1 of Article 31 of the Asylum Procedures Directive.

39. P.P. and V.S. argued that because the Tribunal accepted that they had been shown to have a well-founded fear of persecution by a gang of extortionists in Georgia, the Tribunal was obliged to proceed to evaluate their applications on the premise that Georgia was not a safe country of origin for them. P.P. and V.S. argued that any issues of whether or not actors of protection in a country of origin can give effective protection to an applicant for protection may only be considered by the Tribunal in an examination carried out in accordance with s.31 of the 2015 Act.

40. P.P. and V.S. contended that I am obliged by reasoning in the judgment of Phelan J, in N.U. to conclude that because of this finding by the Tribunal of "*well-founded*" fear for the purposes of s.28(6) of the 2016 Act, "*there were serious grounds for considering [Georgia] not to be a safe country in [their] particular circumstances*."

41. With due respect, I do not think that this argument is correct or that the judgment of Phelan J. in *N.U.* obliges me to come to any such conclusion.

42. Any assessment of whether the Tribunal has not been provided by an applicant with "*serious grounds for considering*" a country *"not to be a safe country of origin"* in the " *particular circumstances*" of an applicant for international protection must, of necessity, include an evaluation of any information which that applicant provides on the issue of whether responsible actors of protection in the country of origin are willing and able to provide effective protection to that applicant.

43. If P.P. and V.S. were correct in their contention, it would not matter that the Tribunal would conclude that an applicant from a country of origin which has been designated

as safe has not submitted any serious grounds, or any grounds at all, for considering that such protection might be inadequate.

44. What do the words "*… the country not to be a safe country of origin in terms of his or her particular circumstances and in terms of his or her eligibility for international protection*" mean? The first point worth noting is use of the linking word *"and."* This wording shows that this statutory test is a composite test.

45. Sub-paragraph (b) of s.33 of the 2015 Act requires decision-makers to examine whether an applicant for protection who has come from a designated safe country of origin has or has "*not submitted any serious grounds for considering*" two linked elements. The phrase "*safe country of origin*" governs both of these linked elements.

46. Both of these elements relate to the designated "safe country of origin." The first is "*not to be a safe country of origin in terms of [an applicant's] particular circumstances*." The second is "*not to be a safe country of origin…. in terms of [that applicant's] eligibility for international protection*."

47. This composite test requires that decision-makers with engage with whether an applicant for protection has submitted material which demonstrates one or more "*serious grounds for considering*" that there is a real risk of persecution or harm to an applicant in a country of origin in that applicant's particular circumstances by reason of the fact that actors of protection in that country may give ineffective protection against that harm. That is the sense in which the word "*safe*" is used in Recital (21) to the Asylum Procedures Directive and in Article 31 of that Directive. It is also the sense in which word "s*afe*" is used in s.33 of the 2015 Act.

48. It must follow that if an applicant for international protection wishes to cross the low threshold of showing a plausible case that state protection a country of origin is not adequate in that applicant's circumstances, that applicant must provide sufficient information *to* meet the *"any serious grounds for considering"* test on that issue.

49. Furthermore, I do not agree with a submission that the Tribunal was precluded from having regard to country of origin information in making this assessment. The tribunal was obliged to examine any country of origin submitted by the applicants which had a bearing on matters which it was obliged to consider in making an assessment under s.33 of the 2015 Act.

50. For example, if country of origin information submitted by P.P. an V.S. showed that there were specific problems of police collusion with moneylending extortion gangs in Georgia, the Tribunal would be obliged to take that into account in an assessment

under s.33(b). As it happens, the documentary material relating to Georgia which P.P. and V.S. produced to the Tribunal did not demonstrate anything of that sort.

51. The next question is whether the Tribunal erred in law by failing to show that it gave adequate consideration to any information which P.P. and V.S. provided relating to inadequacy of police protection in Georgia. The issue which the Tribunal was required to examine here was whether or not P.P. and V.S. provided sufficient information to the Tribunal on this topic to meet the test set out in s.33 of the 2015 Act.

52. The Tribunal could only reach a valid conclusion that P.P. and V.S. did not submit serious grounds for considering Georgia not to be a safe country of origin for them and in terms of their eligibility for international protection, if it examined whatever information they submitted and decided that this did not meet that threshold test for a good reason. The tribunal was obliged to state this reason in its decision.

53. These decisions of the Tribunal were short and to the point. Threats by extortionists that their victims and their families will be made suffer if they go to the police are part-and-parcel of demanding with menaces, the world over. Suggestions by extortionists that they are in league with police or that the police will not help them will often be a common feature of demanding with menaces. The view of the Tribunal that extortionists made these threats in order to see-off a perceived risk that the police would interfere with their activities was a fair point.

54. However, I have concluded, that these decisions failed to address one issue which should have been specifically referenced.

55. The law does not entitle participants in the asylum applications and appeals process to a perfect process or to a perfect hearing. The Tribunal is entitled evaluate the strength of any information provided by an applicant. Section 33 of the 2015 Act makes clear that the obligation is on an applicant for protection to "*submit"* grounds which may meet the threshold test. P.P. and V.S. had a self-serving duty to put their best foot forward when they provided explanations at their interviews.

56. In principle, it was open to the Tribunal to conclude that claims by P.P. and V.S. about police collusion with money-lending gangs in Georgia were nothing more than vague and unsupported general assertions which could not amount to serious grounds for considering that Georgia was not a safe country for them. There must be many cases where decision-makers on international protection applications are invited to consider assertions of lack of protection by official agencies such as police in a country of origin which are so frail as not to provide "*serious grounds for considering",* as required by s.33 of the 2015 Act.

57. The issue of collusion between police and money-lending extortionists in Georgia was raised by V.S. in an answer in her questionnaire. This issue re-emerged in the course of answers given by P.P. and V.S. in their responses to questions during their statutory interviews. Their assertions on this issue might be vague to the point of being worthless exaggeration and blather. They might be honest fears about the police which were unsupported by any credible material. They might raise a serious ground by demonstrating as a reasonable possibility that their concerns about the police were justified.

58. The Tribunal was obliged to evaluate these matters by reference to any material which P.P. and V.S. submitted in their applications for protection and statutory interviews.

59. While the Tribunal has a margin of appreciation in deciding whether or not applicants have "*submitted any serious grounds…etc*," it cannot impose an unreasonable requirement of proof. The Tribunal stated that V.S. did not point to a corrupt relationship between the criminals who were harassing her and any police officer who might investigate her complaint. It would be very difficult for any applicant for protection to provide that type of verification.

60. The extent to which the answers given by P.P. and V.S. on this topic were explored or tested during their interviews was determined by the direction of questioning at their statutory interviews. One purpose of questioning at these interviews is to test reliability of an applicant's narrative. An omission by the questioner test or challenge an aspect of this narrative might result in a decision to accept that aspect. The Tribunal could bear this in mind when deciding whether an applicant had not submitted a sufficient level of detail to support this claim as a "*serious ground for considering…"* The Tribunal could also take into account that the questioner did not ask V.S. if she could provide this type of verification.

61. With the exception of the reference to absence of an allegation of any corrupt relationship between the extortionists and local police, the Tribunal's decisions did not refer to answers by P.P. and V.S. at interview which raised the issue of collusion between criminal extortion gangs and police in Georgia. The Tribunal was obliged to express a reasoned view on whether or not P.P.'s and V.S.'s answers to the questioner on this issue amounted to "*any serious grounds for considering"* because this point went to the core of the issue whether Georgia was "*safe*" for them.

62. It follows that the Tribunal erred by omitting to demonstrate in its reasoning that it gave due consideration to whether allegations by P.P. and V.S. of police collusion with extortion gangs provided "*any serious grounds for considering",* and also by treating

these allegations as unsubstantiated in the case of V.S. because she did not point to any specific corrupt relationship between her extortionists and local police.

63. This judgment is being delivered electronically. As P.P. and V.S. have succeeded in their applications for judicial review, my provisional view is that they should be awarded their costs of these applications, including any reserved costs and the costs of one set of legal submissions, with any adjudications in default of agreement to take place together. My reason for this is that these applications arise from one set of facts and are virtually identical. They could have been brought in one set of proceedings. In absence of any notification of objection to this course within 21 days of the date of delivery of this judgment an order of this Court will issue which reflects this. I will arrange an oral hearing if either side notifies a wish to make submissions on this issue.