THE HIGH COURT

JUDICIAL REVIEW

[2023] IEHC 535

[Record No. 2022 / 915 JR]

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

AND

IN THE MATTER OF THE INTERNATIONAL PROTECTION ACT 2015

BETWEEN:

N.G.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Ms. Justice Siobhán Phelan delivered on the 29th day of September 2023.

INTRODUCTION

1. In these proceedings the Applicant challenges a decision to refuse his application for subsidiary protection on the basis that the Internationl Protection Appeals Tribunal [hereinafter "the Tribunal"] erred in law in determining that it had been shown that the Applicant faces a real risk of serious harm in his country of origin but that the claim be refused because State protection was available. In so deciding it is contended that the Tribunal failed to properly

apply ss. 2, 28(6), 31 and 33 of the International Protection Act, 2015 (hereinafter "the 2015 Act"]. To preserve the anonymity of parties named in the application and the decision under review, exact dates are not recited in this judgment and initials are used instead of the actual names provided by the Applicant.

BACKGROUND

2. The Applicant is a national of Albania. The Applicant's claim for international protection relates to threats that the Applicant states were made to him arising from his work in a business in Albania. It is claimed that in the Summer of 2017 there was a disagreement between the owners of the business about money. One of the owners, Y, alleged money was missing from the business and accused his business partner, X. In addition to this Y was angry about a relationship between his business partner and his sister. The Applicant was present for an argument between X and Y and was driven home afterwards by X. Due to his perceived association with X, the Applicant began to receive threatening phone calls from Y and two named employees aligned with Y alleging that the Applicant had taken the missing money from the business. The Applicant received death threats and demands that he return the money. In addition, the men approached the Applicant's father and told him that the Applicant must return the money to the business.

3. The Applicant denied having the money and claims that he may have been framed by Y to distract from having taken the money himself. The Applicant did not return to work due to fear for his own safety but continued to receive threatening telephone calls on a daily basis. He was not approached by any of the men. X was murdered in December, 2017 and Y was arrested by Albanian authorities for the murder, tried in court, convicted and sent to prison. The Applicant saw reports of the conviction on television. He continued to receive threatening calls from Y's named associates after the conviction and until he left Albania in June, 2018.

4. The Applicant says that he did not consider reporting the threats to the police because he felt it would be pointless as he did not trust the police and was afraid to make a report. The Applicant felt that the Albanian police would not protect them as the Albanian police are corrupt and that there was nowhere in Albania where he could safely relocate to avoid persecution or serious harm at the hands of Y and his associates. The Applicant's mother was

frightened by the threats and advised him to leave Albania, borrowing money in order to facilitate travel for the Applicant.

5. The Applicant claims to have left Albania in June, 2018 travelling to Greece where he stayed for approximately one year. The Applicant's says that he then travelled to Italy for a month before travelling to Belgium where he stayed for one year. The Applicant did not seek international protection in Greece, Italy or Belgium before arriving in the State in June, 2020 where he applied for international protection.

6. Following an initial interview pursuant to s. 13(2) of the 2015 Act, the Applicant submitted a completed International Protection questionnaire in support of his application and was further interviewed in September, 2021. In February, 2022 the Applicant was notified by the International Protection Office [hereinafter "the IPO"] that it was recommending that the Second Named Respondent should neither declare him to be a refugee nor to be eligible for subsidiary protection, finding that the Applicant had not established a well-founded fear of persecution and that Albania was a safe country of origin. The notification enclosed a report pursuant to s. 39 of the 2015 Act, along with other material comprising his application.

7. The Applicant appealed the IPO's finding to the Tribunal. An oral hearing took place in July, 2022 at which the Applicant was legally represented. By way of decision dated the 3rd of October, 2022, the Tribunal affirmed the recommendation that the Applicant should neither be given a refugee declaration nor be eligible for subsidiary protection. This decision was communicated to the Applicant under cover of letter dated the 4th of October, 2022 and is the decision challenged in the within proceedings.

PROCEEDINGS

8. Leave to proceed by way of judicial review was granted by Order of Meenan J. on the 21st of November, 2022. In these proceedings the Applicant seeks, *inter alia*, an Order of *Certiorari* quashing the decision of the First Named Respondent dated the 3rd of October, 2022 (the "Impugned Decision") made under s. 46 of the 2015 Act. It is contended that the decision is legally flawed by reason of error of law on several grounds in circumstances where the First Named Respondent accepted the material facts of the Applicant's claim and specifically found

(at paragraph 7.4 of the decision) that *"substantial grounds have been shown that the appellant faces a real risk of serious harm in his country of origin"* but refused international protection on the basis that State protection was available.

9. It is contended in the first instance that the concepts of "*well-founded fear of persecution*" and "*real risk of serious harm*" are autonomous EU law concepts which are not established if State protection is available. It is maintained on behalf of the Applicant that it is therefore not open to the First Named Respondent to find both that the Applicant has a real risk of serious harm in his country of origin but that the claim for protection fails because State protection exists. It is further contended that the Tribunal failed to correctly apply s. 28(6) of the 2015 Act (reflecting the 4(4) of the Qualification Directive) which in its terms creates a rebuttable presumption that a finding of past serious harm is a serious indication of a real risk of future serious harm. In addition, it is maintained that the Tribunal erred in taking into account the fact that Albania had been deemed a safe country of origin by the Irish Authorities by virtue of the International Protection Act 2015 (Safe Countries of Origin) Order 2018 (S.I. No. 121/2018) without having carried out an analysis pursuant to s. 33 of the 2015 Act.

10. The Respondents oppose the proceedings on the basis that the Tribunal lawfully arrived at a decision that the Applicant was not entitled to subsidiary protection. They maintain that this decision was arrived at on the basis of a proper application of s. 28(6) of the 2015 Act, the Tribunal considered the possibility of future risk with proper regard to the fact that Albania had been deemed a safe country of origin by the Irish authorities and having engaged in an assessment "*in the round*" of the materials and information available in reaching a lawful conclusion that State protection was available to the Applicant.

DISCUSSION AND DECISION

11. I propose to address each of the substantive grounds of complaint advanced sequentially.

Real Risk of Serious Harm and State Protection

12. Section 2 of the 2015 Act defines a person eligible for a subsidiary protection as:

"person eligible for subsidiary protection" means a person—

(a) who is not a national of a Member State of the European Union,

(b) who does not qualify as a refugee,

(c) in respect of whom substantial grounds have been shown for believing that he or she, if returned to his or her country of origin, would face a real risk of suffering serious harm and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country, and"

13. Section 2 of the Act mirrors the language used in Article 2(e) of Directive 2004/83/EC [the 'Qualifications Directive'] which provides for the definition of a person eligible for subsidiary protection as:

"'person eligible for subsidiary protection' means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;"

14. It is the Applicant's position that the Tribunal erred in law as to the significance placed on the finding that the Applicant had established a well-founded fear of persecution/serious harm. It is contended that such a finding placed a requirement on the Tribunal to then conclude that the Applicant was entitled to subsidiary protection as a fear of serious harm is not well-founded where State protection exists. Reliance is placed on the wording of s. 2 of the 2015 Act and specifically the words '*owing to such risk'* which it is contended should be interpreted as meaning that where the Applicant's real risk of serious harm has been established, then the

Applicant has an entitlement to subsidiary protection because the risk of harm has been determined to be "*real*". In other words, it is the Applicant's case that the Tribunal can only arrive at a finding of real risk of serious harm having first considered the availability of State protection. On the Applicant's case if State protection is available then the risk cannot be considered real. I have been referred to the decision of the Court of Justice in *Case C-720/17 Mohammed Bilali v Bundesamt für Fremdenwesen und Asyl.* and *Case-255/19 Secretary of State for the Home Department v. OA.* In *Case-255/19 SSHD v. OA* the Court observed (at para. 57):

> *"A third country national who is in fact protected against acts of persecution within the meaning of that provision cannot, for that reason, be regarded as having a well-founded fear of persecution."*

15. The Respondents do not accept the Applicant's contention submitting that it is an incorrect understanding of s. 2 of the Act (transposing Article 2(e) of the Qualifications Directive). It is submitted that s. 2 provides for an assessment of the Applicant's circumstances and evidence available to the Tribunal *'…in respect of whom substantial grounds have been shown for believing that he or she, if returned to his or her country of origin, would face a real risk of suffering serious harm….'* before an assessment of the availability of State protection *'…and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country…'.* It is submitted that the use of the word '*and*' in s. 2 requires that in assessing an application for subsidiary protection that the decision maker must first assess the evidence available as to the Applicant's narrative and circumstances, before continuing to perform an assessment of the availability or otherwise of State protection.

16. In *X.S. and J.T. v the International Protection Appeals Tribunal* [2022] IEHC 100 Ferriter J. considered the structure of regime of international protection in a case which also concerned Albania in circumstances where a well-founded fear of persecution was established and conclusions regarding State protection reached in strikingly similar terms to this case. He held that (at para. 36):

> *'The structure of the regime for international protection is such that in order to qualify for protection it is not sufficient for an applicant to establish that they have a well-founded fear of persecution on one of the*

Convention grounds without more; it is necessary also for the applicant to demonstrate that state protection for the type of persecution feared by them would not be available if returned to their country of origin. In addressing that question, the authorities make clear that there is a presumption of state protection, absent a situation of complete breakdown of the State apparatus: see decision of Birmingham J. (as he then was) in ABO v. Minister for Justice, Equality and Law Reform [2008] IEHC 191. The onus rests with the applicants to rebut the presumption of state protection. Albania has been designated by the Minister for Justice and Equality as a safe country of origin pursuant to s. 72 of the 2015 Act. The onus was, therefore, on the applicants to submit " serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances" in accordance with the provisions of s. 33 of the 2015 Act.'

17. I reached a similar conclusion in *E.S. v the International Protection Appeals Tribunal* [2022] IEHC 613 albeit in circumstances where the point of law now urged was not argued or considered. In that case I held (at para. 49):

'49. It was accepted by the Tribunal in this case that the Applicant had suffered harm and was at risk of future harm. It is clear that a finding that State protection was available, rather than a failure to establish a future risk of harm, underpinned the Decision to refuse both refugee and subsidiary protection status. It is also clear from the statutory scheme that a risk of harm does not give rise to a right to subsidiary protection, where it is properly concluded that State protection is available.'

18. The precise argument which has been urged on behalf of the Applicant was given careful consideration in *T.A. v. IPAT & Ors.* [2023] IEHC 390, a case decided after the written submissions were prepared in this case (therefore referred to in oral submissions only). Notwithstanding what he described as the sophisticated argument made in that case, Heslin J. squarely rejected the Applicant's argument that (i) fear of persecution / real risk of serious harm; and (ii) State protection are the same, not different concepts, for the purposes of the 2015 Act and the Directive. Noting at para. 63 of his judgment that well–founded fear is certainly an element of the definition of refugee status, he found that it was only one element which had

to be considered together with several other elements including being unable or unwilling due to a well-founded fear to avail of State protection. He then stated (at paras. 66-68 of his judgment):

> *"66. In other words, the concepts of (i) fear of persecution and (ii) protection are certainly "intrinsically linked" (to cite OA), but this is a close linking of distinct elements making up a unitary definition. In the impugned decision, both these elements were considered by the IPO and I cannot accept that it is permissible for this Court to take issue with the clear and logical approach taken by the IPO when carrying out this consideration. In other words, I can identify nothing in the definition of refugee which entitles this court to hold that the IPO fell into error insofar as its careful consideration was concerned.*
>
> *67. Similar comments apply in respect of the definition of a "person eligible for subsidiary protection". Again, distinct elements of a unitary definition are linked by use of the word "and". It seems to me that the concepts of "risk" and "protection", whilst elements of a single definition, amount to distinct concepts.*
>
> *68. I do not accept that the 'proper' interpretation of the words used in the 2015 Act/Qualification Directive mean that (i) fear of persecution / real risk of serious harm; and (ii) State - protection are the same, not different, concepts (as opposed to being closely linked but distinct elements of a definition, which elements the decision maker considered in a careful and logical fashion)."*

19. I am bound by this recent decision of the High Court in *T.A. v. IPAT & Ors.* [2023] IEHC 390 as I have not been persuaded that there is any proper basis for departing from the reasoned conclusions arrived at by Heslin J. Furthermore, I agree with Heslin J. that in deciding on a protection claim the decision maker must consider, as separate elements, both whether the kind of harm apprehended could constitute persecution or serious harm were it to come to pass and also whether the State is safe and there exists effective State protection. The fact that an applicant demonstrates a justified apprehension of a risk of treatment which would constitute serious harm were it to occur does not alone establish an entitlement to international protection. It is also necessary to demonstrate that there is no effective State protection in respect of the said apprehended serious harm before an entitlement to protection is triggered.

20. In my view there was no error of law in the decision maker approaching an analysis of these distinct but intrinsically related elements incrementally. The question of State protection only becomes a relevant consideration where a threshold risk of harm (be it persecution or serious harm) capable of triggering an entitlement to protection is found to exist. Furthermore, the nature of the apprehended risk requires to be established in order to properly assess whether effective State protection exists or might reasonably be accessed by an applicant as whether such protection exists may well depend on the particular risk established. Indeed, as recognised by Heslin J. in reliance on the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection in *T.A. v. IPAT & Ors.* [2023] IEHC 390 (at para. 70) "*well-founded*" fear involves both a subjective and objective element and whether a person is in fear subjectively is wholly distinct from an analysis of such State protection as may or may not exist. In this case, however, the Tribunal found the fear to be "*objectively*" well founded. I understand this to mean that the Tribunal concluded that the apprehended harm as disclosed in the Applicant's narrative was at a level which constitutes persecution or serious harm and the risk of such harm had been established making the fear "*well-founded*" in the sense of being a reasonably held fear. Such well-founded fear of harm does not give rise to an entitlement to international protection if effective State protection is available.

21. The Tribunal ordered its consideration in the logical fashion approved by the Court in both *B.A. v. IPAT* [2020] IEHC 589 and *T.A. v. IPAT & Ors.* [2023] IEHC 390. It is clear from the structure and terms of the decision in this case that in deciding that the Applicant had a well-founded fear of persecution, the Tribunal had not yet considered the availability of State protection. The Tribunal went on to do this in the next part of the decision. A similar approach was taken to the assessment of an entitlement to subsidiary protection in finding substantial grounds for believing that if returned to his country of origin he would face a real risk of suffering serious harm on the basis identified before then considering whether effective State protection was available. I am not satisfied that the question of entitlement to international protection was decided other than in accordance with the correct legal test. The Applicant's case in this regard must be rejected.

Proper Application of the Rebuttable Presumption under s. 28(6) of 2015 Act

22. It is the Applicant's assertion that the Tribunal failed to apply a rebuttable presumption of future risk of persecution or real risk of suffering in breach of s. 28(6) of the Act (transposing Article 4 of the Qualification Directive 2004/83). Section 28(6) of the 2015 Act provides as follows:

> *"The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such serious harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."*

23. Section 28(6) of the Act therefore provides that where there has been a finding of persecution or serious harm, as was made in the impugned decision, this provides a serious indication that the Applicant has a well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated. It is contended that once it was accepted (as it appears to have been – see paragraphs [4.2] and [5.1]) by the Tribunal that there were direct threats of persecution/serious harm, the Tribunal was required to consider positively and expressly whether there is/was good reason to consider that there would be no future risk. Reliance was placed in submissions on my decision in *N.U. v. IPAT and Anor.* [2022] IEJC 87 and the decision of Burns J. in *I.L. v. IPAT & Anor.* [2022] IEHC 106 which endorsed a requirement to demonstrate an application of the special evidential burden provided for under s. 28(6) of the 2015 Act in the terms of the decision. Reference was also made to my decision in *E.S. v. IPAT & Anor.* [2022] IEHC 613 where I affirmed the creation of a rebuttable presumption but went on to clarify my view that there is no requirement to specifically refer to a rebuttable presumption in the decision so long as the decision is couched in terms which reflect that the decision maker is aware of a significant evidential benefit which supports a finding of future fear of or risk of persecution or harm unless good reasons are identified to explain why the past event is not a valid indicator of future risk.

24. A similar argument to that urged on behalf of the Applicant was also advanced in *T.A. v. IPAT & Ors.* Heslin J. rejected the argument following scrutiny of the decision in that case

observing with reference to the findings made and the terms of that decision (at paras. 88-90) as follows:

> *"88. Thus, in the context of past events, the decision–maker accepted that there was a reasonable chance of future persecution and came to a positive finding insofar as the Applicant was concerned.*
> *89. A similar analysis was undertaken by the decision–maker at s. 7.1 of the impugned decision where, again, on the basis of accepted facts which speak to past events, the decision–maker went on to find that the Applicant would face a real risk of future harm (see analysis from p. 22 onwards).*
> *90. The Applicant has not established that there was a failure on the part of the decision maker to afford him what was described as the "evidential advantage" which flows from s. 28 (6) of the 2015 Act (reflecting Article 4.4 of the Qualification Directive 2004/83/EEC)."*

25. Careful scrutiny of the terms of the decision in this case leads me to a similar conclusion. In arriving at its decision in this case, the Tribunal (at para. 4.2 of its Decision) broadly accepted the material facts of the case, which it assessed to be:

- that the Applicant was threatened by work colleagues who accused him of taking money that he did not take;
- the Applicant's boss, X, was murdered on a date in 2017 in connection with the missing money and the Applicant's other boss, Y, was convicted of the murder;
- Between a date before the murder in 2017 and the middle of 2018, the Applicant was threatened by his work colleagues on a daily basis by telephone.

26. In assessing the Applicant's personal circumstances, the Tribunal found that the Applicant had established a well-founded fear of persecution and that the kind of harm feared by the Applicant should he be returned to Albania constituted persecution. After an assessment of the facts, the Tribunal concluded that the Applicant had not established a nexus to a convention ground. While it is the Applicant's case that the Tribunal failed in its duty to positively and expressly consider whether there is/was good reason to consider that there will be no future risk to the Applicant should he be returned to his country of origin, I must reject

this argument in the light of the terms of the Decision. At paragraph 5.2 of the impugned decision, the Tribunal concludes in express terms that the Applicant would face a well-founded fear of harm on the basis of past events, stating:

> *'[5.2] There is a lack of evidence on the questions of whether Y remains in prison. Nevertheless, the Tribunal find that there is a reasonable chance that if the appellant was to be returned to Albania, he would face a well-founded fear of harm at the hands of W and F and possibly also Y.'*

27. Thus, in the context of past events, the Tribunal accepted that there was a reasonable chance of future persecution and came to a positive finding insofar as the Applicant was concerned in finding that there is a reasonable chance that if he were "*returned to Albania he would face a well-founded fear of harm*". A similar analysis was undertaken by the Tribunal (at para. 7.3 of the decision in adopting its reasoning at para. 5.2 and finding that substantial grounds have been shown that the Applicant "*faces a real risk of serious harm) when it went on to find that the Applicant would face a real risk of future harm*"). As I concluded in *E.S.* where the Tribunal finds that there is a future risk of harm based on previous occurrences, such a finding reflects an application of s. 28(6) of the 2015 Act. Even if it could be concluded that s. 28(6) had not been not been overtly applied (a conclusion I do not reach) it cannot be the case that there has been a breach of a right to the benefit of the rebuttable presumption or evidential advantage in deciding on the risk of future harm because this issue was decided in the Applicant's favour. As in *E.S.*, the application in this case did not fail because it was concluded, despite the rebuttable presumption under s. 28(6), that the Applicant has not demonstrated a risk of harm but because it was concluded that State protection is available.

28. Applying the same reasoning adopted in *E.S.*, the Applicant's claim that the rebuttable presumption created by s. 28(6) of the 2015 Act was not expressly considered is without merit. Just as was the case *T.A. v. IPAT & Ors.* and for similar reasons, the Applicant has not established that there was a failure on the part of the Tribunal to afford the Applicant the benefit of the evidential advantage which flows from s. 28(6) of the 2015 Act.

Safe Country Analysis and Section 33 of 2015 Act

29. The Applicant complains that the Tribunal erred in law in relying on the fact that Albania had been deemed a safe country of origin by the Irish Authorities by virtue of S.I. 121 of 2018 without, apparently, having carried out an analysis pursuant to s. 33 of the 2015 Act which provides:

> *"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."*

30. It is contended that in this case, the Applicant had submitted serious grounds for considering the country not to be a safe country of origin in his particular circumstances but the Tribunal failed to carry out any analysis under s. 33. It is further contended that the Tribunal (at para. 5.11) incorrectly or incompletely set out or paraphrased the test for State protection in s. 31 of the 2015 Act. In this regard I have been referred to *BC v. IPAT* [2019] IEHC 763 (para. 10), where Barrett J. asked whether the decision maker answered the following relevant questions:

> "*(1) Does the State in question take reasonable steps to prevent the persecution or suffering of the serious harm feared by a particular applicant?*
>
> *(2) Do such steps include the operating of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm?*
>
> *(3) Is such protection effective and of a non-temporary nature?*
>
> *(4) Does the particular applicant have access to such protection?*"

31. The Applicant maintains that the Tribunal failed to engage adequately or at all with the relevant test/questions as established through the case law. In relation to the test and/or (3) and (4) of the above questions, it is contended that the Tribunal failed to engage adequately with

whether the protection would be effective and non-temporary and whether the Applicant has access thereto and/or whether the State is willing and able to provide effective protection. Specific reliance is placed on the fact that the Tribunal did not consider adequately the Applicant's complaint that the police were corrupt and/or ineffective, and/or the COI in question. Despite the arguments urged on me, I am not satisfied that any failure to properly consider the question of State protection has been demonstrated on behalf of the Applicant.

32. It is manifest from the terms of the decision in this case that the Tribunal engaged in a lengthy examination of the Applicant's narrative and evidence in extending the benefit of the doubt and accepting the material facts of the Applicant's claim (at para. 4.3 of the Decision) before continuing on to perform an analysis of well-founded fear. The Tribunal arrived at the conclusion that there was a reasonable chance that the Applicant would face a well-founded fear of harm at the hands of the individuals involved in the criminal activities in Albania (at para. 5.2 of the Decision) before concluding that the type of harm feared by the Applicant should he be returned to Albania would constitute persecution (para. 5.4 of the Decision). The Tribunal went on to assess whether a nexus to Convention grounds existed in relation to the persecution feared by the Applicant should he be returned to Albania, finding that a convention nexus had not been established (para. 5.9 of the Decision).

33. The Tribunal then examined the question of State protection and engaged with the country-of-origin information (hereinafter "COI") in some considerable detail over four pages of the Decision beginning:

> *'[5.10] Even if the appellant had been able to establish a nexus with a Convention ground, the Tribunal finds that his claim would, for the reasons that follows, fail in any event on the basis that state protection is available to him in Albania.*
>
> *[5.11] In assessing the availability of State protection, it must be considered whether reasonable steps are taken by the authorities in Albania to prevent the kind of persecution at the centre of the appellant's claims. This includes assessment of whether Albania operates an effective legal system for the detection, persecution and punishment of acts constituting persecution.'*

34. In further considering the availability of State protection to the Applicant the Tribunal engaged with recent COI relating to Albania first examining the US Department of State, Country Reports on Human Rights Practices for 2021 in Albania, April 2022, concluding:

> *'[5.13] Looked at in the round, the Tribunal regards this COI as presenting a mixed picture. On the one hand, difficulties within the Albanian police force and judiciary are identified, however the COI also details government measures that address these difficulties.'*

35. The Tribunal proceeded consider Freedom House, Freedom in the World 2021, Albania, March 2022, before concluding:

> *'[5.15] Again, looked at in the round, the Tribunal regards this COI as presenting a mixed picture. One the one hand, difficulties with Albanian prosecutors and members of the judiciary or identified. However, the COI other details government measures that address these difficulties.'*

36. The Decision reflects that the Tribunal examined the COI submitted by the Applicant finding (at para. 5.16 of the Decision):

> *'[5.16] …The tribunal evaluates this COI has been broadly in line with the COI considered above: each piece of COI identify some issues with corruption in the Albanian police and state power structures but also describes various measures in place that are designed to address those issues.'*

37. The Tribunal refers to the designation of Albania as a safe country of origin as follows:

> *'[5.17] The Tribunal also takes account of the fact that Albania has been deemed a safe country of origin by the Irish authorities by virtue of S.I. 121 of 2018.'*

38. This reference does not occur in isolation. While the Tribunal records Albania's status as a safe country it does so in the context of its conclusions on State protection based on a further analysis of COI. Notably, the fact that Albania has been designated a safe country of origin is recorded as a fact but is not relied upon to obviate an analysis of the possibility of

State protection by applying the information assessed in the COI to the Applicant's account of his difficulties in his home country. Having considered the COI, the Tribunal observed:

> *'[5.15] Again, looked at in the round, the Tribunal regards this COI as presenting a mixed picture. On the one hand, difficulties with Albanian prosecutors and members of the judiciary are identified. However, the COI also details government measures that address these difficulties.*
>
> *[5.16] The Tribunal has assessed the COI relied upon by the appellant, including: Report by GAN, August 2020; Institute for Democracy and Mediation (IDM) publication, 28th January 2022; and Report of the Organised Crime and Corruption Reporting Project, 31st March 2021. The Tribunal evaluates this COI as being broadly in line with the COI considered above: each piece of COI identifies some issue with corruption in the Albanian police and state power structures but also describes various measures in place that are designed to address those issues.'*

39. I am satisfied from the terms of its Decision that the Tribunal assessed the Applicant's narrative as it related to the availability of State protection in his particular circumstances. The Tribunal noted that the Applicant had not reported his difficulties to the Albanian authorities and so would not have been in a position to assess the reaction of the State apparatus to his complaints (at para. 5.17 of the decision). The Tribunal further noted that the Applicant was questioned by the Presenting Officer in relation to his testimony that Y was a known criminal before he began to target the Applicant. The Applicant agreed that Y has been arrested, prosecuted, convicted and sentenced in respect of several crimes over a number of years. The Tribunal noted that the Applicant did not disagree with the proposition that the arrest and subsequent successful prosecution and imprisonment of Y by the Albanian authorities was how one would expect a criminal to be treated in a country with a functioning police service (at para. 5.19 of the Decision). The Tribunal referred to the fact that under further questioning the Applicant also agreed that Y had been arrested, convicted and sentenced for the murder of X and furthermore that the Applicant agreed that he has no reason to believe that Y had been released from prison (at para. 5.20 of the Decision). In arriving at a conclusion on its assessment of whether State protection would be available to the Applicant should he be returned to Albania, the Tribunal made clear that all matters had been assessed expressing its conclusion in the following terms (at para. 5.21 of the Decision):

'[5.21] Taking everything into consideration, including the individual factors in the appellants claim, the Tribunal is satisfied by recent, pertinent, COI that reasonable steps are taken by the authorities in Albania to prevent the kind of persecution at the centre of the appellants claim. Therefore, the Tribunal concludes that adequate state protection would be available to the appellant should he be returned to Albania.'

40. I am satisfied that the Tribunal properly engaged in an assessment of the Applicant's narrative and evidence available to it, as provided for in the 2015 Act and the Qualifications Directive, before assessing the availability of State protection in the Applicant's country of origin and reached a lawful conclusion based on information and evidence available to it. The Applicant has failed to establish any error of law on the part of the Tribunal in this regard.

CONCLUSION

41. While an application for a preliminary reference pursuant to Article 234 EC was intimated on behalf of the Applicant, no proper basis has been established for such a reference. There is no necessity for such a reference before proceeding to give judgment in this matter.

42. I am satisfied that the Tribunal adopted a logical approach to its consideration of the Applicant's entitlement to protection in a manner which ensured that each intrinsically linked element of the test was properly considered. In so doing the Tribunal considered the separate issues of fear of persecution and/or real risk of serious harm as well as the question of State protection. No error of law has been demonstrated in respect of the approach adopted. Indeed, the approach adopted stands endorsed by the Court in other cases.

43. It is further my view that the Tribunal determined the State protection issue on the basis of an application of the correct legal test in a reasoned manner and in circumstances in which the Applicant's entitlement to the evidential benefit provided for under s. 28(6) of the 2015 Act was respected. The decision recorded is one which it was open to the Tribunal to make on the evidence available.

44. In the circumstances I must refuse the reliefs sought.