THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 136 J.R.]

BETWEEN

X.E.,

M.E. AND A.E. (minors suing by their mother and next friend X.E.),

APPLICANTS

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE AND EQUALITY,

IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr Justice David Keane delivered on the 4th July 2018

Introduction

1. The applicants, a mother and her two daughters, seek judicial review of a decision of the Refugee Appeals Tribunal, now the International Protection Appeals Tribunal ('the IPAT'), dated 27 January 2016 and made under s. 16(2)(a) of the Refugee Act 1996, as amended ('the Refugee Act'), affirming a recommendation of the Refugee Applications Commissioner ('the commissioner') that the first applicant (and, presumably, by implication the second and third applicants) should not be declared to be refugees ('the IPAT decision').

2. On 18 April 2016, Faherty J gave the applicants leave to apply for certain reliefs, principally an order of *certiorari* quashing the IPAT decision and an order remitting their appeal for a fresh determination before a separate member of the tribunal.

3. The grounds upon which the applicants seek those reliefs are threefold. The first is that the tribunal's analysis of the credibility of their refugee status claim is tainted by certain specified errors of fact and law. The second is that the tribunal's decision is vitiated by its failure to have appropriate regard to the applicant's evidence concerning the first applicant and certain country of origin information ('COI'). The third ground is that the tribunal erred in its approach to, or assessment of, the COI that had been placed before it.

4. At the time when leave was granted, the International Protection Appeals Tribunal was known as the Refugee Appeals Tribunal. When s. 71(5) of the International Protection Act 2015 ('the Act of 2015') came into force on the 31st December 2016, the former was substituted for the latter in these proceedings by operation of law.

Background

5. The first applicant presented at the Office of the Refugee Commissioner ('ORAC') on 23 December 2013 to make an application for refugee status on her own behalf and on behalf of each of her two daughters and was interviewed, pursuant to s. 8 of the Refugee Act 1996, as amended ('the Refugee Act'), on that date. The first applicant completed a refugee status questionnaire on 4 January 2014, which was received by ORAC on 6 January 2014. The applicant underwent a further interview with an authorised officer, pursuant to s. 11(2) of the Refugee Act, on 25 February 2014.

6. The commissioner produced a report, dated 9 April 2014, pursuant to s. 13 of the Refugee Act, containing a recommendation, dated 11 April 2014, that the applicants should not be declared to be refugees. That decision was furnished to the applicants under cover of a letter to the first applicant, dated 6 May 2014. The applicants submitted a notice of appeal, dated 16 May 2014, against that decision.

7. The applicants' appeal was heard on 19 October 2015. In a written decision dated 27 January 2016, the tribunal affirmed the recommendation of the commissioner that the applicants not be declared to be refugees. That decision was furnished to the first applicant by the tribunal under cover of a letter dated 28 January 2016, which the applicant avers she received on 1 February 2016.

An extension of time

8. The respondents have raised the issue that the application for leave to seek judicial review was brought out of time under s. 5 of the Illegal Immigrants (Trafficking) Act 2000, as substituted by s. 34 of the Employment Permits Act 2014 ('the Act of 2000'). Insofar as is material to these proceedings, s. 5 stipulates that a person shall not question the validity of a decision of the tribunal under s. 16 of the Refugee Act other than by way of judicial review and that an application for leave to apply for judicial review for that purpose shall be made within 28 days of the date on which the person was notified of the decision.

9. The respondents rely on the acknowledgment by the first applicant that she received notification of the decision, and a copy of the decision itself, on 1 February 2016. Thus, they submit, the application for leave was made some seven weeks outside the permitted 28-day period on 18 April 2016.

10. In response, counsel for the applicants asks the court to note that their statement of grounds is dated 2 March 2016 and that the grounding affidavit of the first applicant was sworn on the same date. Counsel for the applicants is instructed – and, despite the absence of any evidence directly on the point, I have no reason to doubt – that the application was mentioned before Stewart J on 2 March 2016 who deemed it to have been opened before adjourning it into the Asylum List where it was ultimately heard on 18 April 2016. The order made by Faherty J does not include a recital that the application had first come before the court on 2 March 2016. However, the curial part of the order extends the time limit for seeking leave right up to the date of the order, before going on to grant leave.

11. That last observation entirely disposes of the respondents' preliminary objection. Presumably, Faherty J extended the time limit in exercise of the discretion to do so conferred on the court by s. 5(2) of the Act of 2000, as amended. That is the end of the matter. I have no jurisdiction to revisit the issue of whether there was good and sufficient reason to extend the time limit for seeking leave, at least in the absence of any allegation of bad faith or fraud on the part of the applicants in bringing or pursuing that application. As I understand the position, the respondents make no such allegation.

12. Counsel for the applicants submits that, in *E.M. v Refugee Appeals Tribunal & Ors* [2008] IEHC 192, Birmingham J granted an extension of time of several weeks beyond the 14-day period permitted under the Act of 2000, as it then stood, on the basis that the intervention of the Christmas holiday and a delay in obtaining advice from the Refugee Legal Advice Service amounted to good and sufficient reason for doing so. For the reason I have given, it is unnecessary for me to consider whether I should do something similar in this case and, if so, on what basis, since the decision on whether to extend time does not fall to me, having already been made by Faherty J on 18 April 2016

The applicants' claim for refugee status
13. The applicants' claim is based upon the following narrative. The first applicant was born in Malawi in 1973 and is a national of that country. She had fourteen years of formal education there, after which she was employed for 16 years variously as a dental nurse, a general nurse and a sales assistant. The first applicant married a Malawian man in that country in 2002 but her husband died in a road traffic accident in September of the following year. The applicant was six months pregnant with their child, the second applicant, at the time of her husband's death. After the birth of the second applicant, the family of the first applicant's husband attempted to force the first applicant into a second marriage with a much older man who was already married with nine children.

14. The first applicant fled, living in various different parts of Malawi until, having raised enough money to do so, she travelled to the United Kingdom in 2006. In 2007, the first applicant returned to Malawi for the unveiling of her deceased husband's tombstone, leaving her daughter, the second applicant, with her sister in the city while she travelled on to her deceased husband's village. After the ceremony, the first applicant was forced to stay with the man who her deceased husband's family wanted her to marry. When she refused to sleep with him, a number of the women from her deceased husband's family used a blade to cut her genitals as a punishment. The first applicant later escaped and made her way to the airport, where she managed to board a flight back to the UK.

15. When the first applicant returned to the UK, she received a phone call from her sister who informed her that her deceased husband's family had abducted her daughter, the second applicant. The first applicant's sister travelled to the husband's village but could not locate the second applicant. The second applicant was missing for two years before the first applicant's sister managed to locate her in a remote area near the Mozambique border with the assistance of some other members of the deceased husband's family and bring her back to the city. The first applicant states that the second applicant was neglected, ill-treated and sexually abused during that period and that it had been intended that she should marry the boy who was abusing her when she turned 13 years old.

16. The first applicant had a student visa for the UK valid from 2006 to 2010. However, she moved to Ireland in 2009, having re-established contact – and resumed a relationship - with an old boyfriend from Malawi who was then living here, and her second daughter, the third applicant, was born in Ireland in September 2009. The first applicant's sister brought the second applicant to Ireland in December 2009. The first applicant's new partner returned to Malawi in Autumn, 2010 and, in October 2013, the first applicant discovered that he had deceived her and was married with a family in that country.

17. The applicants claim a well-founded fear of persecution based on their membership of a particular social group. Specifically, the first applicant fears that, if she returns to Malawi, she will be forced into marriage or subjected to physical harm if she refuses. In addition, she fears that may be coerced into unprotected sex and exposed to the risk of HIV infection. The first applicant fears that the second applicant will be subjected to the same risks if she returns to Malawi, as well as the risk of female genital mutilation.

The decision under challenge
18. The IPAT decision runs to 19 pages. The applicants' claim failed because, for various stated reasons, the tribunal concluded that the first applicant's evidence concerning the conduct of her husband's family was not credible and because the tribunal was satisfied that, even if that were not so, the COI before it was such that the applicant had failed to establish an objectively justified or reasonable (and, hence, well-founded) fear of persecution.

The first ground of challenge
19. The first ground upon which the applicants challenge the IPAT decision is that the central finding that the first applicant's account was not credible is tainted by each of six separate asserted errors of law or fact. Counsel for the applicants' abandoned any argument in respect of one of those asserted errors at the trial of the application. I will address each of the remaining five in the order in which counsel raised them.

i. failure to consider explanation for inconsistency in evidence about reports to police
20. It is common case that the first applicant gave evidence before the tribunal on her own behalf and that of her two daughters, the second and third applicants. The IPAT decision notes (at paras. 2.18 and 2.19) that, in the questionnaire that she completed on 4 January 2014, the first applicant claimed that she had reported her fears concerning the attempts of her deceased husband's family to force her into a second marriage to the police in November 2005, but that they had advised her to go instead to the 'traditional authorities' because the latter dealt with traditional marriage issues.

21. The IPAT decision goes on to record (at para. 3.2) that, when the applicant was asked if she had ever reported the threatening notes she claimed to have received from her deceased husband's family to the police, she responded that she did so at a police station in early 2004. The IPAT decision continues (at para. 3.2):

> '[T]he [first applicant] was asked not to guess but to provide an approximate time frame if she could, she thought about her answer and confirmed that she did report in early 2004. She was then asked if this was the only time she reported to the police prior to moving to England in January 2006, she confirmed that it was. The [first applicant] was then asked why she had stated in her [q]uestionnaire that she had reported in November 2005, the [first applicant] thought about her answer and then stated that that was correct and that she must have made a mistake, that it was in November 2005. She was asked why she had stated that she reported only once – early 2004 – prior to going to the UK. She then stated that she did go in 2004, that she had forgotten about this and maybe had too many things to write down in the [q]uestionnaire. She was asked why she had forgotten to mention reporting in November 2005 today, she stated she must have forgotten.'

22. Section 5 of the IPAT decision is headed 'Analysis of Credibility'. Section 5.1, which is the subject of the applicants' first complaint, states:

> 'The appellant completed what is perhaps the most extensive questionnaire I have seen to date, with supplemental pages appended to cover all the information that she wished to put before ORAC. In that [q]uestionnaire in answer to a specific question regarding reports made to the police she responded that she reported in November 2005. There was no mention of a report in 2004. At the hearing, she stated that the only report that she made prior to leaving for the UK in 2006 was the report that she made in early 2004. While I can accept that perhaps one might not remember exact dates, I do expect one to remember how many times one reported to the police prior to a significant event, leaving the country, particularly if that was 2 times as opposed to so many that one might not remember each and every one. I do not believe the [first applicant's] explanation for (a) failure to mention the 2004 report in her questionnaire, particularly given the extensive nature of the information provided; and (b) failure to mention at hearing that she had reported in November 2005 (as well as early 2004). This inconsistency is material, it goes to the heart of her claim to fear serious harm in respect of which state protection is available.'

23. In oral argument, counsel for the applicants accepted that the tribunal had considered the relevant evidence and had given reasons for concluding that it demonstrated a material inconsistency that went to the first applicant's credibility, before submitting that, nonetheless, the reasonableness of that aspect of the tribunal's decision is a matter for this court. As no particular argument for unreasonableness was put forward on behalf of the applicants and as I can identify no unreasonableness in this part of the tribunal's reasoning or consideration of the evidence, applying the test identified by the Supreme Court in *Meadows v Minister for Justice* [2010] 2 IR 701, this part of this ground must fail.

ii. the 'complete discounting' of a medical report

24. In their statement of grounds, the applicants assert that, at paragraph 5.3 of its decision, the tribunal 'completely discounted' the medical report considered there, and failed to consider that it was *prima facie* capable of providing objective support to the [first] applicant's testimony. Paragraph 5.3 of the tribunal decision states:

> 'Subsequent to [the] hearing, by letter dated 28th October 2015, a brief report from a Doctor Judith Murray, dated 23rd October 2015 was also submitted. It records that the [first applicant] attended Dr Murray on 23rd October 2015 requesting a genital exam, this report notes that the [first applicant] has an old and well healed 1.5cm scar on the lower left labia, otherwise the genital exam was normal. The [r]eport does not provide an opinion as to how this scar was or might have been caused. I take into account that the [first applicant] has a scar on one of her labia that could have been caused in any number of ways.'

25. I am satisfied that the tribunal considered the report and its contents. I can see no evidence for the proposition that the tribunal 'completely discounted' it, or failed to consider the *prima facie* objective support that it was capable of providing for the first applicant's testimony. Rather, it seems to me that, having considered the report and its contents, the tribunal concluded that the existence of an old and well healed scar provided only limited or equivocal support for the applicant's testimony because, while that scar might have been inflicted in the manner she alleged, equally it could have been caused in any number of other ways. I can see nothing irrational or unreasonable in that assessment.

26. As Birmingham J put it in *E(M) v Refugee Appeals Tribunal* [2008] IEHC 192, when considering the argument that a very similar finding by a tribunal presented with a very similar type of medical report was not properly open to it, 'the assessment of whether a particular piece of evidence is of probative value, or the extent to which it is of probative value, is quintessentially a matter for the tribunal member.' I respectfully agree with that analysis and, on that basis, this part of this ground must also fail.

iii. decision tainted by conjecture or speculation

27. The applicants contend that the tribunal's assessment of the first applicant's testimony is tainted by conjecture, speculation or the tribunal's own views. The relevant portion of the decision states:

> '5.4. The [first applicant's] explanations for her failure to follow up with the police in relation to the physical injury she claims to have suffered at the hands of the in-laws (especially given that the April 2007 report that she submits advised [the first applicant] to report to the police) or the disappearance of her daughter are difficult to believe. The [first applicant] is a well educated woman, she is by her own admission self-sufficient, it is not acceptable to make a claim on the one hand that the police will not help and on the other to say that the reports were not followed up on or charges pressed as [the first applicant] did not want to bring trouble on herself. Again, this must be seen in the light of her evidence that the in-laws never approached her personally at her home or work, simply leaving notes and messages.
>
> 5.5. It simply stretches the bounds of credibility to expect one to believe that a mother, who cares deeply for the welfare of her child as [the first applicant] claims she does, would remain in the UK for 2 years during which time her daughter was allegedly missing in Malawi, without either (a) contacting the authorities herself to ascertain what could be done to locate her daughter; or (b) returning to assist in the search herself. Her explanation for not returning is likewise difficult to believe, she stated that she feared for her own safety and she "had to maintain her status in the UK", this is not the reaction of a [m]other whose child is missing and in danger from persons [the first applicant] claims are capable of grievous bodily harm. The [first applicant] does not ask us to believe that she is an unconcerned or nonchalant [m]other, quite the contrary, thus this behaviour runs counter to what she would have us believe and what we commonly expect from mothers, unconditional love, care and concern for the welfare of their children.
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> 5.6 The [first applicant] could have had her sister corroborate her story, her sister could have submitted a statement explaining how her niece disappeared and was found and who was responsible, no corroborative evidence is offered. The police report presented can only state that a missing persons's report was made. I point out that anyone can make a missing person's report. The [first applicant] claims that they did inform the police that her daughter had been found and she [did] not want to press charges and accordingly there is no evidence that the in-laws were involved apart from her own testimony which I have good reasons to doubt.
>
> 5.7. I do not believe that if the [first applicant] experienced what she claims she did in 2007 that she would not have applied for asylum upon her return to the UK, her explanation that she would be unable to have her daughter join her if she did so is neither supported nor believable, I also point out that she claims that her daughter was missing at that point in time.'

28. The applicants submit that the foregoing assessment of credibility falls foul of one of the fifth of the ten principles governing the assessment of credibility identified by Cooke J in *IR v Minister for Justice* [2009] IEHC 353, namely that:

> '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.'

29. Birmingham J addressed the same principle in his *ex tempore* judgment in *Sibanda v RAT* (Unreported, High Court, 15th January, 2009):

> 'There is no doubt that a Tribunal member must not base a decision on speculation, but this does not mean that a Tribunal member is expected to put their ability to reason to one side. The standard direction to a jury in a criminal case, that they should avoid speculation but are free to draw inferences or make deductions, is one that comes to mind. It seems to me that what the Tribunal member did here was to draw deductions and make deductions. It also seems to me that the conclusions drawn or the deductions made were ones that were reasonably open….'

30. In my judgment, the tribunal in this case was drawing inferences and making deductions that were reasonably open to it, rather than engaging in unfounded conjecture or speculation.

31. Without any accompanying argument on explanation, the applicant's written legal submissions on this point invoke the decision of Stewart J in *KFD (Togo) v Refugee Appeals Tribunal* [2015] IEHC 788, a case in which the applicant was represented by the same counsel as those who represent the applicants here. It concerned a challenge to an adverse decision made on a 'papers only' appeal to the tribunal. Presumably, the applicants pray in aid that decision because, in it, Stewart J invoked that portion of the decision of Cooke J in *IR* that includes the following passage:

> 'It is correct, as counsel for the respondents submitted and as is confirmed by the case law summarised at the beginning of this judgment, that a decision-maker is not obliged to mention every argument and deal with every piece of evidence in an appeal decision so long as the basis upon which the lack of credibility has been found can be ascertained from the reasons given. However, in the view of the Court, that proposition is valid only when the other arguments and additional evidence are ancillary to the matters on which the substantive findings are based and could not by themselves have rendered that decision unsound or untenable if shown to be correct or proven.'

32. In *KFD*, Stewart J was satisfied that the decision-maker failed to engage directly with detailed explanations set out in the applicant's notice of appeal (in that 'papers only' appeal), thus, in effect, breaching the tenth principle identified by Cooke J in *IR*, whereby:

> '[T]here is no general obligation in all case to refer in a decision on credibility to every item of evidence and every argument advanced, provided the reasons stated enable the applicant as addressee, and the Court in the exercise of its judicial review function, to understand the basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached.'

33. I can find no comparable failure by the tribunal, as decision-maker, in this case.

34. Counsel for the applicants spent considerable time in argument analysing the inferences drawn from the evidence in the portion of the IPAT decision just quoted and urging that the decision should be quashed on the basis that those inferences were by no means inevitable or unavoidable, or on the basis that they were simply wrong. But that is not the test by which I must consider the lawfulness of the IPAT decision. Birmingham J dealt with this point also in *EM*, already cited, when he observed:

> 'I am forced to conclude that in complaining that the decision was based on conjecture, what the applicant is really saying is that the Tribunal Member should not have reached the view that she did. While the Tribunal Member may have arrived at conclusions that are unwelcome to the applicant, this is not a court of appeal. In the light of the foregoing, I am satisfied that the conclusions reached by the Tribunal Member were ones which were open to her, and in the circumstances I am bound to refuse leave.'

35. I respectfully agree. The test is not whether this court would have drawn the same inferences as the tribunal; this is not a court of appeal. The test is whether the inferences drawn were open to the tribunal. I am satisfied that they were. Hence, this part of the first ground must fail.

iv. a conclusion contradicted by the evidence?

36. At paragraph 5.8 of the decision, the tribunal addressed the first applicant's asserted fear that her daughter, the second applicant, might be subjected to female genital mutilation ('FGM'), if returned to Malawi. The tribunal concluded that this claim lacked credibility because, according to the first applicant's evidence, the second applicant had been under the control of the first applicant's in-laws for two years, yet was not subjected to such treatment during that period.

37. The applicants submit that the reasoning that led to this conclusion is contradicted by the COI that was before the tribunal. Specifically, they point to the following extract from a United States of America Department of State Country Report on Human Rights Practices in Malawi for 2014 ('the US State Department Report') in the section headed 'Discrimination, Societal Abuses and Trafficking in Persons' under the heading 'Children' (at page 21):

> 'Female Genital Mutilation/Cutting (FGM/C): The law does not specifically prohibit FGM/C. A few small ethnic groups practiced FGM/C. In most cases FGM/C was performed on girls between 10 and 15 years old.'

38. The applicants rely on the first applicant's evidence that her daughter, the second applicant, was born on 30 December 2003; was abducted from school by the first applicant's in-laws on 10 May 2007 (when she would have been only 3 years old); and was not located and rescued until June 2009 (at which time she would have been no more than 5 years old). However, the first applicant also gave evidence that, when the second applicant was rescued, she had bruises, scars and open wounds; was malnourished; and had been sexually abused by an older boy with the complicity of the first applicant's in-laws, who viewed this activity as preparation for an arranged marriage with that boy.

39. The applicants submit that the US State Department Report contradicts the tribunal's conclusion on the credibility of the fear of FGM/C because there was no reason to suppose that the second applicant was at risk of such abuse during the two-year period of her captivity by the first applicant's in-laws since was then aged between 3 and 5 years old and 'in most cases, FGM/C was performed on girls between 10 and 15 years old.'

40. The difficulty with that argument is that it ignores both the qualifying words - 'in most cases' - used in the US State Department Report and the evidence of the first applicant that her in-laws had treated the second applicant as someone for whom sexual activity

between the ages of 3 and 5 years with an older boy who she was later expected to marry should be considered normal or appropriate, although in almost all societies, including our own, it would amount to the most appalling sexual abuse. It is against that background that the tribunal had to consider the credibility of the first applicant's expressed fear that the second applicant, who had not been subjected to FGM/C in the dreadful circumstances alleged, would be subjected to it if she returned to Malawi.

41. As Peart J explained in *Tabi v Refugee Appeals Tribunal* (Unreported, High Court, 27th July, 2007):

> 'The whole of the decision must be read and considered in order to reach a view as to whether, when the decision is read in its entirety and considered as a whole, there was no reasonable basis for the decision maker reaching that conclusion.'

42. Reading the portion of the IPAT decision that is the subject of this complaint in the context of the decision in its entirety and as a whole, I cannot discern any error of fact or law in it. This part of the first ground of challenge is not made out.

v. conclusion that no objective evidence of threat from in-laws was wrong in fact
43. At paragraph 5.9 of its decision, the tribunal noted the first applicant's evidence that her in-laws never approached her personally but simply left (by necessary implication, threatening) letters or notes for her at her place of work, before observing that no such letter or note was submitted in evidence, nor any report to the police concerning any such threat, so that there was, in summary, no objective evidence of the alleged threatening conduct on the part of the first applicant's in-laws.

44. The applicants submit that this conclusion was factually incorrect because the first applicant had produced a Malawian police report, dated 10 May 2007, confirming that the first applicant's sister had on that date reported that the second applicant was missing and that she suspected the second applicant may have been abducted by the first applicant's in-laws.

45. However, that 'missing person' report is directly and specifically addressed at paragraph 5.6 of the IPAT decision, already quoted. As that part of the IPAT decision discloses, the tribunal had considered that police report, but had attributed little evidential weight to it for a number of reasons. The first reason was that the first applicant's sister had not provided a corroborating statement. The second was that anyone can make a 'missing person' report. The third was that, even taking that report at face value, there was no evidence of any involvement by the police in the search for the second applicant after they received it; no evidence of any involvement by the police in the alleged rescue of the second applicant; and no evidence of any subsequent investigation by the police of the alleged abduction of the second applicant, which the first applicant claimed was because she did not want to press charges. The reported suspicion of the first applicant's sister that the second applicant had been abducted by the first applicant's in-laws is not objective evidence of threats made by those in-laws.

46. It seems to me that it was perfectly open to the tribunal to conclude, as it did, that the applicants had presented no objective evidence of a threat from the first applicant's in-laws. For that reason, this part of the first ground of challenge to the tribunal's decision also fails.

The second and third grounds of challenge
47. In the written legal submissions filed on their behalf, the applicants state that their second and third grounds of challenge to the IPAT decision relate to the failure of the tribunal to consider all of the COI reports that were before it and 'the preferential regard' it had to the COI reports that it did rely upon.

48. Those written submissions do not elaborate upon that argument. In oral argument at the hearing, counsel for the applicants submitted that the tribunal's decision was vitiated by a failure to have any, or any proper, regard to the extract from the US State Department Report already quoted, in contrast to the reliance placed by the tribunal on an extensive extract from the same section ('Discrimination, Societal Abuses and Trafficking in Persons'), which includes the following paragraph under the heading 'Women' (at page 18):

> 'Female Genital Mutilation/Cutting (FGM/C): The law does not specifically prohibit FGM/C. According to press reports from 2011, some cases of FGM/C were prosecuted as unlawful wounding. A 2014 UN Human Rights Committee report expressed concern over the existence of FGM/C in some regions of the country.'

49. It seems to me that, as one might expect when dealing with two extracts from the same document, the portion of the text from the US State Department report just quoted complements, rather than contradicts, the different portion of the same text already quoted at paragraph 37 above. That is quite unlike the situation that confronted the court in *D.V.T.S. v Minister for Justice* [2008] 3 IR 476, in which selected material from certain COI reports was relied upon to the exclusion of what Edwards J described in that case as 'overwhelming evidence' to the contrary, giving rise to a clear conflict of COI that could only be resolved through rational analysis and not through the assertion of an arbitrary preference for certain information over other contradictory information. Nothing of that sort arises on the facts of the present case.

50. At paragraph 6.4 of its decision, the tribunal, which had consulted the National Documentation Package on Malawi (July 2015), compiled by the Immigration and Refugee Board of Canada, and which had offered the applicants' legal representatives an opportunity to address it on that material without response, was careful to record the rejection by Malawi of a recommendation made by Italy in the context of the Universal Periodic Review process conducted by the Human Rights council of the UN General Assembly that it undertake all necessary social, educational and legal measures towards the complete elimination of FGM (on the basis, the Working Group report discloses, that Malawi did not consider that recommendation applicable to the situation in the country in that it did not accept that female genital mutilation had ever been practiced there), before going on to note that recommendations on the rights of the child, gender equality and the strengthening of efforts to address violence again women had been fully implemented according to that review.

51. Contrary to the applicants' submission, in light of the material to which the tribunal made reference just described this is clearly not a case in which, in assessing the first applicant's credibility, it merely engaged in an omnibus listing of the COI that had been laid before it or merely included a rote recital that it had taken the COI into account, either of which undoubtedly would have been an inadequate approach unless preceded or followed by a rational analysis of that information insofar as it was relevant to the applicants' claim; *U.I. v Refugee Appeals Tribunal* [2007] IEHC 72 (Unreported, High Court (Murphy J), 23rd January, 2007).

52. Although the particular argument was never developed at the hearing of these proceedings, in the written legal submissions filed on behalf of the applicants it was asserted that there was an unspecified breach of Regulation 5 of the European Communities (Eligibility for Protection) Regulations 2006, whereby the tribunal, as the protection decision-maker, was obliged to take into account, amongst other matters, 'all relevant facts as they relate to the country of origin' and 'the relevant statements and documentation presented by the protection applicant.' I can find nothing in the terms of the IPAT decision or in the evidence adduced for the

purpose of the present application to suggest, much less establish, that the tribunal failed to comply with either of those obligations.

53. For these reasons, I reject the applicants' second and third grounds of challenge to the IPAT decision.

54. That really should conclude the present judgment but, with the skill of an experienced advocate, Mr Conlon deftly ended his submission with an argument that does not appear to have been presaged in the applicants' statement of grounds or in the written legal submissions filed on their behalf. Mr Conlon suggested that the tribunal had misidentified or misapplied the proper test on the availability of adequate state protection. As Clarke J stated in *Idiakheua v Minister for Justice* [2005] IEHC 150, 'the true test is whether the country concerned provides reasonable protection in practical terms.' Mr Conlon submitted that it might be inferred from the tribunal's decision, though nowhere expressly stated in it, that a 'best endeavours to protect' test had been wrongly applied in substitution for the required 'provision of reasonable protection in practical terms' one. I do not accept that it would be correct to draw any such inference concerning the rationale underpinning the decision, just as I do not accept the applicants are entitled to raise that ground of challenge, when leave to do so was neither sought from, nor granted by, Faherty J.

Conclusion
55. For the reasons I have given, the application is refused.