THE HIGH COURT
JUDICIAL REVIEW

[2018 No. 541 J.R.]

BETWEEN

I.G. (ALBANIA)

APPLICANT

AND

THE CHIEF INTERNATIONAL PROTECTION OFFICER AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

NOTICE PARTY

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 17th day of September, 2018

1. The applicant arrived in the State on 19th September, 2015, and applied for asylum two days later. That application was rejected. She then appealed to the Refugee Appeals Tribunal. On 31st December, 2016, on the commencement of the International Protection Act 2015, the application was required to be remitted to the International Protection Office for determination of the subsidiary protection aspect of the claim. On 6th June, 2018, that application was rejected by the IPO. On 26th June, 2018, the applicant appealed the subsidiary protection and asylum decisions to the International Protection Appeals Tribunal, which is due to hear the appeal on 24th September, 2018. On 4th July, 2018, the present proceedings were filed, in which the primary relief sought is *certiorari* of the IPO decision. On 10th September, 2018 the applicant sought a stay on the IPAT hearing pending the determination of test cases dealing with the technical point as to whether the IPO are entitled to use contractors in assessing protection claims. After an *inter partes* hearing, I dismissed the stay application: *N.A. v. Chief International Protection Officer* [2018] IEHC 499 (Unreported, High Court, 10th September, 2018).

2. Mr. Paul O'Shea B.L., on behalf of the applicant, now comes back one week later and seeks a very similar relief, namely a stay on the hearing before the IPAT pending an appeal to the Court of Appeal against my refusal of a stay pending the determination of the test cases. Had that application been made a week ago it could have been dealt with in the presence of Senior and Junior counsel for the respondents and for the Refugee Appeals Tribunal, whose submissions I refer to in my judgment in *N.A.* However, counsel are not currently available. Mr. Dara O'Loughlin, solicitor, appeared on behalf of the respondents and simply adopted the submissions made by Ms. Nuala Butler S.C. on the previous occasion and stated that he supported the reasoning of the judgment in *N.A.*

3. As to why the present application was not made at the conclusion of the previous application a week ago, Mr. O'Shea simply said that he "*should have thought of that but didn't*". I will assume for the purposes of the present application that an appeal to the Court of Appeal properly lies in the absence of seeking to activate the certification procedure. The question of what is the procedural role of appellate courts in the stay context in certificate cases possibly could be teased out in greater detail in some future case, but as I say, for present purposes I will assume in Mr. O'Shea's favour that his proposed appeal properly lies and will consider the current belated stay application on its merits.

4. As regards those merits, the reasons that I set out in the judgment of 10th September, 2018 in *N.A.* all apply to the present application. Indeed, in his submissions Mr. O'Shea did not really offer any meaningful reason why those findings did not apply. Rather he sought to contend that those findings were incorrect. That seems to be a questionable procedure in the context of an application brought by the same applicant. The judgment in *N.A.* sets out at para. 4 the various factors and I can set those out with Mr. O'Shea's responses to them as follows.

5. Firstly, I took into account the harm to the applicants by virtue of the possibility that their challenges might become moot. In submissions, Mr. O'Shea argues that the proceedings would not be moot even if an IPAT hearing takes place. I do not necessarily agree with that, but if Mr. O'Shea's submission is correct, that is virtually determinative against the grant of a stay because on that logic the applicant is not seriously harmed in legal terms by the refusal of a stay. His next point under this heading was that if he was wrong about that, refusing a stay would be in breach of art. 47 of the Charter on Fundamental Rights. However, this is a fundamental misunderstanding of EU law. There is no endless right to effective remedies by way of a legal hall of mirrors (*M.N. v. Refugee Appeals Tribunal* [2015] IEHC 831 para. 23). Mr. O'Shea has already had an effective remedy from the decision of the tribunal to proceed with the hearing. The fact that one has been unsuccessful does not mean that one has not had an effective remedy. There is no right either under EU or Irish law to an effective remedy against an effective remedy. Nor is the right to an effective remedy to be equated with a right to win one's case.

6. Secondly, I took into account the benefit to applicants in not having their appeals delayed for a lengthy period. Mr. O'Shea's submissions simply do not engage with that point. He made the spurious complaint that the applicant might be required to either amend proceedings, bring further proceedings or abandon her claim. It seems to me that is quite a specious characterisation of the applicant's position. If the appeal has merit, presumably the tribunal will so find.

7. Thirdly I took into account the benefit to the legal system and the people of Ireland in enabling the 2015 Act to operate in the manner envisaged by the Oireachtas. Mr. O'Shea claims that this prejudges the substantive hearing, but unfortunately that submission fundamentally misunderstands the point I was making in the *N.A.* judgment. By "*manner envisaged*" I meant the procedure that IPO decisions would be dealt with by appeal to the IPAT. I was not referring to the question of whether the IPO went about their business correctly or not in terms of the engagement of contractors.

8. The fourth, fifth and sixth points in the *N.A.* judgment are related and are the benefit to the tribunal itself in organising its business, in ensuring that it is not prevented from determining a substantial number of cases and in avoiding a large backlog when the test cases are finally decided. Mr. O'Shea's submission does not seriously challenge those benefits to the tribunal but claims they are outweighed by other factors. They are not so outweighed.

9. He also claims that if the test case is stayed his case ought to be as well, on the basis of equality. That point could have been made on 10th September, 2018 and no valid reason whatsoever is put forward as to why it was not. While equality is of course important, there is a legitimate distinction here, which is the point I made in *N.A.*, namely that the whole nature of the test case is such that it is singled out for separate treatment. The selection of certain cases as test cases is an objective reason to deal with them differently.

10. So for those reasons I will refuse a stay on the IPAT hearing.