THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 841 JR]

BETWEEN

E.S.

APPLICANT

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 21st June 2019

Introduction

1. This is the judicial review of a decision of the Refugee Appeals Tribunal, now the International Protection Appeals Tribunal ('the IPAT'), dated 12 October 2016 and made under Regulation 8(22)(a) of the European Union (Subsidiary Protection) Regulations 2013 ('the 2013 Regulations'), then applicable, affirming a recommendation of the Refugee Applications Commissioner ('the Commissioner') that the applicant should not be declared to be a person eligible for subsidiary protection ('the IPAT decision').

2. On 28 November 2016, Mac Eochaidh J granted the applicant leave to apply for various reliefs, principal among which are an order of *certiorari* quashing the IPAT decision and an injunction restraining the Minister for Justice and Equality from taking any further steps on the applicant's international protection claim.

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

4. This is yet another case in which Ireland and the Attorney General have been made respondents to the application, although no relief is sought against either of those juristic persons, nor is any issue raised in which either of them has a direct interest as a matter of law, suggesting the indiscriminate use of scissors and paste pot that is so much a feature of the immigration and asylum list. However, I do not think anything turns on it.

Background

5. While the record of the applicant's international protection claim that has been exhibited on her behalf for the purpose of these proceedings is not entirely complete, the following broad picture emerges from the documentation that is before the court and from the averments of the applicant's solicitor.

6. The applicant is a female national of Algeria, born in 1987, who claims to have left Algeria by sea on 2 July 2014 and to have disembarked at an unknown port in the State at the end of that sea voyage on 12 July 2014.

7. On 24 July 2014, the applicant presented at the Office of the Refugee Applications Commissioner ('ORAC') to apply for refugee status, claiming a well-founded fear of persecution on grounds of religion and membership of a particular social group, if returned to Algeria.

8. On 8 October 2014, the Commissioner recommended that the applicant not be recognised as a refugee on the basis that she had failed to establish that her fear of persecution if returned to Algeria was objectively well-founded or that effective state protection would not be available to her there, in the form of an internal relocation alternative. On 27 July 2015, the Refugee Appeals Tribunal affirmed that recommendation on the basis of the rejection of the credibility of the applicant's claims (based, in part, on the finding that she had lied initially about never having held an Algerian passport) and the conclusion that she had failed to establish a well-founded fear of persecution if returned to Algeria.

9. The applicant then applied under the 2013 Regulations on an undisclosed date for subsidiary protection. The applicant was interviewed on behalf of the Commissioner on 2 October 2015, in accordance with Regulation 5(3) of the 2013 Regulations.

10. The Commissioner's written report on the investigation of the applicant's subsidiary protection claim, required under Reg. 6(1) of the 2013 Regulations, is dated 20 October 2015. It was subsequently referred to by the tribunal as 'the SP report'; 'SP' presumably standing for subsidiary protection. In short summary, it concluded that the applicant had failed to establish the credibility of her claims and had failed to establish substantial grounds for believing that she would face a real risk of suffering serious harm if returned to Algeria. On 5 February 2016, the Commissioner recommended that the applicant should not be declared to be a person eligible for subsidiary protection.

11. The applicant submitted a notice of appeal on 29 February 2016. That appeal was heard on 23 August 2016.

The decision under challenge

12. The IPAT decision is dated 12 October 2016 and was furnished to the applicant under cover of a letter, dated the following day. It concluded that the applicant had failed to establish the credibility of her personal narrative concerning the threat of persecution from her family in Algeria. That conclusion on credibility is not challenged in these proceedings.

13. Having accepted nonetheless that the applicant is a national of Algeria, the IPAT decision went on to consider whether the applicant had shown substantial grounds for believing that, if returned there, she would face a real risk of suffering serious harm, before concluding that she had not.

Procedural history
14. The applicant sought, and was granted, leave to bring these proceedings on 28 November 2016, based on an amended statement of grounds of 24 November 2016, grounded principally on an affidavit of the applicant's solicitor, sworn on 3 November 2016, but supported by a very short verifying affidavit of the applicant, accompanied by an affidavit of an Arabic translator, both sworn on the same date.

15. In his affidavit, the Arabic translator avers that he carefully translated for the applicant the text of the English language affidavit that the applicant was to swear, immediately before the applicant did so; that he was satisfied that the applicant understood its contents; and that the applicant confirmed to him (presumably, in Arabic) that this was so and that she understood it was a sworn document. The jurat to the applicant's affidavit is in the standard form, without any acknowledgment of those matters.

16. The correct procedure for adducing evidence from a witness who does not speak English or Irish was clarified several years ago. In *Saleem v Minister for Justice* [2011] 2 IR 386, Cooke J explained (at 398-9):

> '31. While the question as to the correct procedure for adducing evidence on affidavit from a witness who speaks neither English nor Irish does not appear to have been the subject of direct statutory regulation or provided for in the Rules of the Superior Courts and has not been addressed so far as the Court has been able to ascertain in any modern case law, the correct position in the view of the court would appear to be as follows.
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> 32. In the first place, O. 40, r. 14 of the Rules of the Superior Courts provides (in part) as follows:
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> > "… Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature or mark in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent."
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> 33. The Court has not been informed whether the applicant can read and write any language other than English, but it is clear that he is illiterate so as far as concerns an affidavit in the English language. On that basis alone, the requirement of r. 14 applied in this case and the jurat should have contained an appropriate certificate. That not having been done, the affidavit could not be used unless the Court was satisfied that it had been read over and "perfectly understood" by the applicant. Obviously, this Court could not be so satisfied given the applicant's admission that the affidavit contained an incorrect statement which he did not understand to be there.
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> 34. Secondly, as the applicant appears to have little or no understanding of English, this was not a case in which the affidavit should in any event have been sworn in the English language. The correct approach is that the affidavit should be sworn originally by the applicant in the language he speaks. This should be translated by an appropriately qualified translator and both the original and the certified translation should be put in evidence as exhibits to an affidavit in English sworn by the translator. It is true that there does not appear to be any direct authority in this jurisdiction on this point in modern times. It is also possibly the case that there has been a practice whereby a non-English speaking deponent swears an affidavit in English containing an averment or a certificate in the jurat to the effect that it has been first read over to the deponent in translation and a separate affidavit is filed by the interpreter to that effect. This latter practice appears to have been based upon a precedent in an old edition of *Daniel's Chancery Forms*, but was criticised by Vaisey J. in the English High Court in *Re. Sarazin's Letters Patent* [1947] 64 R.P.C. 51. That judgment approved on the other hand the practice indicated for the swearing of an affidavit in a foreign language in the commentary on O. 41 of the Rules of the Supreme Court (England and Wales) and the note appears to have been continued in all subsequent editions: "When it is desired to file an affidavit in a foreign language the usual course is to obtain a translation by a qualified translator, and to annex the foreign affidavit and the translation as exhibits to an affidavit by the translator verifying the translation. The three documents are filed together".
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> 35. In the view of this Court, a solicitor or Commissioner for Oaths administering an oath for the purpose of taking an affidavit owes a duty to the Court to be satisfied that the deponent is competent to make the affidavit in English. Such a duty is inherent in the nature of the function being performed and the authority conferred by law on such officers to administer an oath for that purpose. If the deponent is illiterate the procedure of r. 14 must be followed and if the deponent does not speak English the affidavit must be sworn first in the foreign language.'

17. Accordingly, in my judgment the applicant's affidavit cannot be used in these proceedings. In this instance, little turns on it because the principal, if not sole, purpose of the applicant's short affidavit is to verify the contents of her – earlier, unamended – statement of grounds, in which no contested assertions of fact appear to be relied upon, but it is worth pointing out, in an attempt to inhibit the innate tendency toward procedural anarchy whereby last week's unchallenged procedural irregularity becomes this week's 'accepted practice in this list', that such affidavits have no evidential value. The practical reason for that, as the facts in *Saleem* demonstrate, is the difficulty in holding such deponents to their own sworn evidence when any discrepancy in it, no matter how fundamental or glaring, can be shrugged off as a miscommunication between deponent and translator. The most effusive averments from translators that they had translated everything fully for the deponent and were quite satisfied that the deponent understood are of limited value in those circumstances. There is no reason and no necessity to permit non-English or Irish speakers to adhere to a looser or less rigorous standard of sworn evidence than English or Irish speakers.

18. The Minister filed a statement of opposition, dated 30 March 2017, joining issue with the applicant on each of the grounds raised. It is supported a verifying affidavit of an officer in the Minister's department, sworn on 30 March 2017.

Grounds of challenge
19. In her amended statement of grounds, the applicant enumerates the following two grounds upon which the IPAT decision is unlawful:

> (i) The tribunal erred in law and in fact in finding that there were no substantial grounds to believe that the applicant was at real risk of serious harm in the form of the risk of prosecution, conviction and sentence in Algeria for the offence of leaving that country without an exit visa, amounting to inhuman or degrading treatment or punishment, where 'torture or

inhuman or degrading treatment or punishment of an applicant in the country of origin' falls within the definition of serious harm under Reg. 2(1) of the 2013 Regulations, transposing Art. 15(b) of Council Directive 2004/83/EC ('the Qualification Directive').

(ii) The tribunal erred in law and in fact in finding that there was not a situation of 'internal armed conflict' in Algeria, as that term is used as part of the wider phrase 'serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict', falling within the definition of serious harm under Reg. 2(1) of the 2013 Regulations, transposing Art. 15(c) of Council Directive 2004/83/EC ('the Qualification Directive').

Analysis

i. risk of inhuman or degrading treatment or punishment for illegal exit from Algeria

20. In material part, the IPAT decision states:

> '[6.3] The [applicant] claims she will be subjected to torture, inhuman or degrading treatment or punishment, if returned, as she has left the country illegally. The Tribunal has assessed the [applicant's] claims as against objective COI.
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> [6.4] The [applicant] claims to have left her country without permission. She states that she will be subjected to arrest and imprisonment on her return and that this would amount to inhuman and degrading treatment. The Tribunal has read the COI on file, in relation to this matter. There is a Refworld Report which states that in 2009, Algeria amended its penal code to add the offence of "irregular exit from its territory". The law sets down the penalty for illegal exit for a citizen is from two months to six months in prison, a fine or a combination of the two. The same article goes on to refer to the case of men who were detained in custody for 12 days, interrogated, threatened and beaten. These men, however were later charged with involvement in a terrorist network.
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> [6.5] The Tribunal notes that the law in relation to irregular exit is a law which applies to people who irregularly leave the country and appears to be used most stringently against people who have links with terrorist groups. The [applicant] does not have any links with terrorist groups nor was this ever raised as an issue.
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> [6.6] On balance, the Tribunal finds that the application of the law does not amount to inhuman and degrading treatment or punishment for people who are not involved with terrorist groups, particularly in circumstances where the prison sentence does not exceed six months and there is also the possibility that the person may only be subjected to a fine. Taking the [applicant's] personal information into account, the Tribunal finds that there is no real risk of her being subjected to serious harm in that regard, if returned to Algeria. The Tribunal has read the previous decision of the RAT (1545424-ASAP-12), but finds that it is different to the case at hand due to the fact that the previous decision dealt with the case of a minor, whose parents had been refused asylum. The facts of that case are substantially distinct form the case at hand. The previous case placed emphasis on the fact that the child was born in Ireland and, therefore, he is in a different position to the [applicant] in this case.'

21. In the section just quoted, the IPAT decision references a document, obtained from the UNHCR *refworld* database, published by the Immigration and Refugee Board of Canada, entitled *Algeria: Treatment of failed refugee claimants returned to Algeria; whether low ranking police officers or members of the security forces would be subject to any reprisals from state authorities* (2007-July 2014). That document explains, in a section headed 'Treatment of Failed Refugee Claimants Returned to Algeria':

> 'In a 2013 migration profile report on Algeria, the Migration Policy Centre (MPC), based at the European University Institute, Florence (MPC n.d.), states that on 25 February 2009, Algeria amended its penal code to add the offence of "irregular exit from its territory for its citizens and foreign residents, as well as the crimes of migrant smuggling and trafficking in persons" (June 2013, 5). Law no. 09-01 of 25 February 2009 provides that the penalty for illegal exit for a citizen or foreign national is from two to six months in prison, a fine, or a combination of the two penalties (Algeria 2009, Art. 175(1)). In correspondence sent to the Research Directorate, a senior fellow at the Centre for International Studies at the University of Cambridge noted that "[a] returnee, therefore, faces a six month prison sentence on these grounds alone if he or she is returned, unless he or she has a valid passport with a valid exit stamp in it" (21 July 2014). In noting that Algerian tribunals have sentenced Algerian citizens for attempting to leave the country illegally, the MPC report describes attempted irregular or illegal exit as those intending "to leave the country without passing through border posts or who lacked an entry visa for the destination country" (June 2013, 5). Further information on the definition of irregular or illegal exit could not be found among the source consulted by the Research Directorate within the time constraints of this Response.
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> The Senior Fellow also added that "additional penalties exist for those connected with armed or terrorist groups" but did not provide details (ibid.). In a 2009 report, the Australia Refugee Review Tribunal (RRT) stated that, according to its sources, "failed asylum seekers may draw the attention of the Algerian authorities," noting that
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> > "particular concerns have been raised about persons suspected of having links to Islamic movements facing hostile treatment on return to Algeria. It has also been reported that a returnee may face hostile treatment on return due to the authorities' perception that the person may have been involved in terrorism." (Australia 18 Nov. 2009, 23)
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> Information about how individuals are profiled as terrorist suspects by the authorities could not be found among the sources consulted by the Research Directorate within the time constraints of this response.'

22. The applicant submits that the tribunal made no adverse credibility finding against her on her claim to have exited Algeria illegally and, indeed, that it 'did not expressly dispute' her claim that she had done so. Thus, she suggests, the tribunal was obliged to accept that part of her narrative as correct in assessing the substantial harm risk. I do not accept that submission.

23. As Art. 4(1) of the Qualification Directive makes plain, while each Member State has a duty to co-operate with the applicant in the assessment of the relevant elements of the application, it is the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. Regulation 10 of the 2013 Regulations transposes that requirement

and, while Reg. 10(3) confirms that the Tribunal shall assess the relevant elements of the application in cooperation with the applicant, Reg. 10(2) provides that, where an applicant appeals against a recommendation of the Commissioner, it shall be for the applicant to show that she is a person eligible for subsidiary protection.

24. Very significantly, under Art. 4(5) of the Qualification Directive, transposed by Reg. 13(4) of the 2013 Regulations, in applying the principle that it is the duty of the applicant to substantiate the application for international protection, aspects of the applicant's statements that are not supported by documentary or other evidence will only be accepted without confirmation where the tribunal is satisfied that a number of conditions have been met, one of which is that the general credibility of the applicant has been established.

25. In its final paragraph on the assessment of credibility (at para [5.20]) the tribunal concluded that it did not accept the applicant's credibility generally. In both her written submissions and in argument at the hearing, it was acknowledged on behalf of the applicant that the credibility findings of the tribunal are not challenged in these proceedings. Indeed, the Tribunal found that the applicant had actively attempted to mislead it in claiming that she had never applied for a passport.

26. Thus, in suggesting that the tribunal should be taken to have accepted her unsupported statement that she left Algeria unlawfully without a passport or exit visa because the tribunal did not specifically and expressly dispute it, the applicant is ignoring both the applicable principles for the assessment of the facts and circumstances of a subsidiary protection claim and the application of those principles to her claim by the tribunal.

27. The applicant submits that the tribunal erred in fact or in law in concluding that, because she had no links to terrorist groups, there was no substantial risk that she would be subjected to inhuman or degrading treatment or punishment if returned to Algeria, but the applicant does not explain the basis for that submission. Further on in her written submissions, the applicant asserts that this amounted to an erroneous assumption on the tribunal's part, again without explanation.

28. But the consistent theme that runs through the COI information that the applicant relied upon in her submissions to the tribunal, and that the tribunal considered, appears to me to be that, whereas persons connected with, or suspected to be connected with, armed or terrorist groups, or with Islamic movements, in Algeria may face a significant risk of such treatment or punishment, the applicant has no such connections and failed to provide any credible information or evidence that would suggest she is, or has ever been, suspected of having any. Thus, the extensive reliance that the applicant seeks to place in her written submissions on cases that deal with the potential torture or ill-treatment of persons convicted, or suspected, of terrorist offences in Algeria – such as *Y.Y. v Minster for Justice and Equality* [2017] IESC 61, (Unreported, Supreme court (O'Donnell J; Denham CJ, MacMenamin, Dunne and O'Malley JJ concurring), 27th July, 2017), or the judgments of the European Court of Human Rights in *Daoudi v France* (App. No. 19576/08) and *H.R. v France* (App. No. 64780/09) – is, in my judgment, misconceived.

29. In a manner emblematic of the sweeping and discursive nature of her criticisms of the IPAT decision generally, the applicant points to the right to leave any country, including one's own, under Art. 13(2) of the Universal Declaration of Human Rights; Art. 12(2) of the International Covenant on Civil and Political Rights ('ICPR'); and Art. 2(2) of Protocol No. 4 to the European Convention on Human Rights ('ECHR'), before baldly asserting that 'to fetter that right is a breach of the applicant's rights.' Disappointingly, the applicant's submission wholly fails to acknowledge that, under Art. 12(3) of the ICPR, the rights under Art. 12(2) may be subject to restrictions provided by law that are necessary to protect national security, public order ('*ordre public*'), public health or morals and the rights and freedoms of others; or that, under Article 2(3) of the ECHR, the right under Art. 2(2) may be subject to restrictions that are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

30. Quite what the purpose of the applicant's rhetoric in that regard is, or how it informs the applicant's argument that the tribunal erred in its assessment of the risk of serious harm to the applicant in Algeria in the form of torture or inhuman or degrading treatment or punishment, has not been made clear.

31. The applicant submits that the tribunal engaged in a selective review of COI concerning the risk of serious harm to the applicant in the event that she is detained in Algeria, presumably in the context of a prosecution under the 2009 law for the offence of irregular exit from the territory of Algeria, but fails to identify any general or specific COI that the tribunal did not consider.

32. In that context, the applicant cites *PBN v Minister for Justice and Equality* [2016] IEHC 316, (Unreported, High Court (Faherty J), 2nd June, 2016). That was a case in which a decision refusing to revoke a deportation order was quashed because the decision-maker had failed to consider whether the risk of prosecution and imprisonment in the Democratic Republic of the Congo for using false documents to exit the country amounted to a breach of the *non-refoulment* provision of s. 5 of the Refugee Act 1996 or of the prohibition on inhuman or degrading treatment or punishment under Art. 3 of the ECHR. This is not such a case. Here, the tribunal expressly considered the question of whether there were substantial grounds for believing that the potential application of the 2009 law to the applicant would amount to inhuman or degrading treatment or punishment before concluding that there were not.

33. Finally on this ground, counsel for the applicant argued that the tribunal erred in its consideration of a previous decision of the RAT, (Recommendation No. 1545424-ASAP-12), relied upon by the applicant as a precedent establishing her entitlement to a subsidiary protection declaration.

34. In *Y.Y.,* already cited, the decision at issue was that of the Minister under s. 3(11) of Immigration Act 1999 to refuse to revoke a deportation order against the appellant, after the Refugee Appeals Tribunal had earlier upheld a decision to refuse the appellant's application for subsidiary protection, on the basis that the appellant was excluded from protection under Reg. 17(b) of the 2013 Regulations, having committed a serious crime, even though there were substantial grounds for believing that he faced a real risk of serious harm if returned to Algeria. The principle upon which the applicant in this case appears to rely by implication is that contained in the following passage from the judgment of O'Donnell J (Denham CJ, MacMenamin, Dunne and O'Malley JJ concurring) (at para. 66) in that case:

> 'While the Refugee Appeals Tribunal, and indeed the asylum process more generally, are not given any specific statutory status in relation to the decision in respect of deportation, nevertheless, the Refugee Appeals Tribunal has a specific expertise in considering risks in countries of origin, and furthermore has a specific fact-finding role. Accordingly, its views must normally be treated with respect. That entails a reasoned explanation of why the decision maker has come to a different conclusion.'

35. By necessary implication, the applicant also relies for the purpose of this argument on the following passage from the judgment of

Geoghegan J (Murray CJ, Denham, McGuinness and Hardiman JJ concurring) in *P.P.A. v Refugee Appeals Tribunal* [2007] 4 IR 94 (at 105):

> 'It is not that a member of a tribunal is actually bound by a previous decision, but consistency of decisions based on the same objective facts may, in appropriate circumstances, be a significant element in ensuring that a decision is objectively fair rather than arbitrary.'

36. The applicant appears to be suggesting that the tribunal failed to provide a reasoned explanation for coming to a different conclusion than that in Recommendation No. 1545424-ASAP-12, such that its decision must be considered arbitrary rather than objectively fair.

37. I do not accept that submission. In my judgment, the tribunal did provide a reasoned explanation for coming to a different decision than the earlier tribunal. Its reason was that the objective facts of the earlier decision were quite different because the appellant in that case was a child, born in Ireland. The tribunal might have added two further grounds of distinction: first, that the case involved a claim for refugee status, rather than subsidiary protection; and second, that the decision recorded that the refugee status claims of the child's parents had already been rejected, so that the sort of crude application of the consistency of decisions principle contended for by the applicant here would most likely have resulted in the summary dismissal of her subsidiary protection claim. Further, no findings of fact are disclosed in the earlier terse decision that would allow the tribunal, or the court, in this case to understand the basis upon which the tribunal in that case concluded that a well-founded fear of persecution in Algeria should be attributed to the child concerned.

38. Accordingly, I reject the first ground put forward on behalf of the applicant.

ii. risk of indiscriminate violence in a situation of internal armed conflict

39. In material part, the IPAT decision states:

> '[6.7] While it is clear that there are terrorist groupings in Algeria, who launch random attacks on civilians, it is not the case that Algeria is in a situation of internal armed conflict. The [applicant] is from Algiers. The Tribunal has assessed all of the information before it and finds that there is no evidence of an internal armed conflict in Algiers nor is there a risk of indiscriminate violence, which would put this [applicant] at risk of serious harm. The Tribunal has read the detailed findings in the SP Report in relation to this part of the claim, along with the written submissions submitted by the [applicant's] lawyer (in particular, page 11, 12 & 13) and it finds that no information was place before it, which would cause it to disturb the findings in the SP Report. The Tribunal, therefore, upholds the finding of the SP Report, in this respect.'

40. The applicant submits that the tribunal erred in law or in fact in finding that she has failed to establish substantial grounds for believing that there was a real risk of a serious and individual threat to her life or person by reason of indiscriminate violence in a situation of internal armed conflict in Algeria.

41. Although there does not appear to have been any argument on this point before the tribunal, the applicant refers to the decisions of the European Court of Justice ('ECJ') in case C-465/07 in *Elgafaji v Staatssecretaris van Justitie* ECLI:EU:C:2009:94 and Case C-285/12 *Diakité v Commissaire général aux réfugiés et aux apatrides* ECLI:EU:C:2014:39.

42. In *Elgafaji*, a case concerning the threat to a civilian's life or person in Baghdad, Iraq in 2006, the ECJ clarified (at para. 43):

> 'Article 15(c) of the Directive, in conjunction with Article 2(e) thereof, must be interpreted as meaning that:
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> – the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;
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> – the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.'

43. In *Diakité*, which concerned the threat to a civilian's life or person in Republic of Guinea between 2008 and 2010, the ECJ provided the following additional clarification (at para. 35):

> '[....] on a proper construction of Article 15(c) of Directive 2004/83, it must be acknowledged that an internal armed conflict exists, for the purposes of applying that provision, if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as 'armed conflict not of an international character' under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.'

44. There is no doubt that, as the applicant submits and as the ECJ made clear in *Diakité* (at para. 26), it is not possible to make eligibility for subsidiary protection under Art. 15(c) of the Qualification Directive, transposed by Reg. 2(1) of the 2013 Regulations, conditional upon a finding that the conditions for applying international humanitarian law have been met.

45. Nor is there any doubt that the more an applicant is able to show that she is specifically affected by reason of factors particular to her personal circumstances, the lower the level of indiscriminate violence required for her to be eligible for subsidiary protection; *Elgafaji* (para. 39), *Diakité* (para. 31).

46. There is nothing in the evidence before me to suggest that the tribunal failed to apply the correct test under Art. 15(c) of the Qualification Directive, whether by wrongly equating a situation of internal armed conflict with one of 'armed conflict not of an international character' under international humanitarian law or in any other way.

47. Similarly, it is clear from the tribunal's conclusion on the applicant's credibility, which the applicant does not challenge for the purpose of these proceedings, that the applicant was unable to show that she was specifically affected by reason of factors particular to her personal circumstances. Thus, it was necessary for her to establish, if her claim was to succeed, that the degree of indiscriminate violence constituted by terrorist activity in Algeria reached such a high level that it amounted to substantial grounds for believing that she would, if returned to Algeria, solely on account of her presence there, face a real risk of a serious and individual threat to her life or person. The tribunal found that she had failed to do so.

48. It is the function of the tribunal and not of this court on an application for judicial review to determine the weight to be attributed to country of origin information on the degree of indiscriminate violence represented by the level of terrorist activity there – certainly, in the absence of any claim of *Meadows* unreasonableness.

49. Hence, the applicant's second ground of challenge to the IPAT decision cannot succeed.

Conclusion
50. The application for judicial review is refused.