

Between:

S

Applicant

– and –

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

AND THE MINISTER FOR JUSTICE AND EQUALITY

Respondents

**JUDGMENT of Mr Justice Max Barrett delivered on 24th July, 2019.**

1. Mr S is a national of Albania challenging an IPAT decision of 16.11.2018 affirming a recommendation that he be given neither a refugee declaration nor a subsidiary protection declaration (the 'Impugned Decision'). The essence of Mr S's claim before the IPAT was as follows:

- ☐ his eldest brother, who was involved in Albanian politics, was declared a refugee in Ireland in 2003 and is now an Irish citizen.
- ☐ Mr S is at real risk of suffering prosecution in Albania because of the political opinion imputed to him arising from his family's opposition to the Socialist Party and longtime opposition to the Communist Party.
- ☐ Mr S is at real risk of suffering persecution due to membership of a particular social group, comprising his family and/or members of an Albanian family involved in a violent land dispute and/or a violent land dispute with someone connected with the Albanian Socialist Party. As part of this dispute, Mr S: has been subjected to a notably savage attack in which three masked men broke into his house at night and beat him into unconsciousness, causing serious injuries that included a broken ankle; he has also been threatened with a gun.

2. Two legal issues arise for the consideration of the court in relation to the Impugned Decision and are considered hereafter.

**3. Issue 1: In deciding that there was "no objective basis for finding that the applicant would be in continuing danger in Albania if he were to move to and live in a different part of the country", did the IPAT err in law or act ultra vires by relying on an internal protection finding but failing to apply the internal protection test and procedure required by s.32 of the [International Protection] Act of 2015?**

4. In the Impugned Decision, para.5.9, the IPAT states as follows:

*"While the injuries to the Appellant were clearly serious, and were followed up by a death threat, the Tribunal has not seen any persuasive evidence that this violence would be continued or repeated if the Appellant were to be returned to Albania. As the dispute is about land, which is by definition local, there is no objective basis for finding that the Appellant would be in continuing danger if he were to move to and live in a different part of the country. No doubt that may make it difficult for him to pursue any claim (not as yet commenced in any event) against [Named Persons]...but it is difficult to see how his position in this respect would be any more difficult than if he were to reside as a refugee in Ireland. Having determined that there is no credible evidence of an actual threat to the Appellant's life or safety, the Tribunal finds that there is no objective basis for the Appellant's claimed fear of persecution."*

5. Unfortunately, four difficulties present in the foregoing:

- (1) there is a degree of circularity in the reasoning: while the issue of internal relocation does not arise if there is no well-founded fear of persecution, the IPAT relies on an internal relocation finding to conclude that there was no well-founded fear of persecution;
- (2) as to the suggestion by the respondents that internal relocation has no logical part to play if there is no Convention nexus, that is not true for the subsidiary protection dimension of Mr S's claim;
- (3) as to the contention by the respondents at hearing that Mr S does not come within the definition of a person eligible for subsidiary protection because he cannot show the necessary "serious harm" (International Protection Act 2015, s.2), given that the truth of every substantive aspect of Mr S's claim, including the notably savage beating that he suffered in Albania, appears to be accepted by the IPAT, the court respectfully struggles with how this contention can convincingly be made, especially when one has regard to limb (b) of the definition of "serious harm" in s.2.
- (4) as to the above-quoted finding that "the Appellant would be in continuing danger if he were to move to and live in a different part of the country" the IPAT regrettably erred in law and acted ultra vires by relying on an internal protection finding without applying the requisite test/procedure as considered in *AA (Pakistan) v. IPAT* [2018] IEHC 497.

**6. Issue 2: Did the Tribunal err in law by assessing the applicant's eligibility for subsidiary protection by reference only to whether the applicant is at risk of serious harm from state actors of serious harm and failing to assess whether he would face such a risk from non-state actors?**

7. As is clear from s.30 of the Act of 2015, which transposes Art.6 of the Qualification Directive (Directive 2004/83/EC), the concept of "actors of persecution or serious harm" includes, in defined circumstances, "non-state actors". Mr S criticises the Impugned Decision for its want of express consideration as to any risk presenting *vis-à-vis* non-state actors in the context of the violent land dispute which Mr S claims led in part to his flight from Albania. However, it is clear from, e.g., para.8.2.3 of the Impugned Decision, that all the facts and circumstances touched on in para.4 of same were again considered in this regard before the IPAT reached its conclusion that "there is no evidence of any serious harm or evidence of any subsisting threat of serious harm to the Appellant".

The court respectfully does not accept the contention of Mr S at hearing that the information at para.4 appears to pertain only to State actors; on the contrary it is focused mainly on the land dispute and non-State actors. So the IPAT clearly considered the non-State actor dimension of matters and properly arrived at the conclusion it reached in this regard.

*Conclusion*

8. Given all of the foregoing, the court considers itself coerced as a matter of law to grant the order of *certiorari* sought and remit the within matter to the IPAT for fresh consideration.