

THE HIGH COURT

[2019 No. 202 JR]

BETWEEN

C

APPLICANT

– AND –

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL
AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Mr Justice Max Barrett delivered 14th day of November, 2019.

1. Mr C, an Albanian national, is the husband of Ms B, who has brought separate judicial review proceedings (*B, C (a minor), suing by her mother and next friend, B, D (a minor) suing by his mother and next friend, B, and E (a minor) suing by his mother and next friend, B v. The International Protection Appeals Tribunal and Minister for Justice and Equality*) (2019 No.203 JR) in which the court has also given judgment today (the 'Other Judgment'). The background facts as to what occurred in Albania and how Mr C and Ms B came to be in Ireland are the same. By decision of 06.03.2019 (the 'Impugned Decision'), the International Protection Appeals Tribunal ('IPAT') affirmed the recommendation of the International Protection Office ('IPO') that Mr C should not be given a refugee declaration or a subsidiary protection declaration. Six questions are perceived to arise from the Impugned Decision and are addressed hereafter.
 - A. (a) Did the IPAT fail to give adequate reasons for its finding that, based on Country of Origin Information ('COI'), state protection would be available to the applicants?
(b) Has the IPAT thus acted in breach of constitutional justice and in breach of s.46(5) of the International Protection Act 2015 ('Act of 2015')?
 2. 'Yes' to (a) and (b), *mutatis mutandis* for the reasons offered in the court's answer to Question A in the Other Judgment.
 - B. In deciding that State protection would be available, did the IPAT (a) err in law and (b) act *ultra vires* by failing (I) to apply the state protection test and procedure required by section 31 of the Act of 2015, and (II) to pose the correct question in this regard?
 3. 'Yes' to (a) and (b), *mutatis mutandis* for the reasons offered in the court's answer to Question B in the Other Judgment.
 - C. In assessing state protection, did the IPAT (a) err in law, and (b) fail to consider relevant matters, by failing to assess in light of relevant COI whether state protection might reasonably have been forthcoming had the first applicant made further reports or given further information to the police in Albania?
4. Somewhat unusually, 'yes', *mutatis mutandis* for the reasons offered in the court's answer to Question C in the Other Judgment.

- D. In finding that state protection would be available did the IPAT breach s.28 of the Act of 2015 (a) fail to take into account relevant matters by (b) failing to take into account all relevant facts as they relate to Albania, including laws and regulations of the country of origin and the manner in which they are applied?
- E. In finding that state protection would be available, did the IPAT breach s.28 of the Act of 2015 and fail to take into account relevant matters by failing to take into account and assess the relevance of Mr X's political connections as referred to by Ms B?
5. The IPAT failed to take into account relevant matters by failing to consider/assess the political connections of Mr X, as flagged by Ms B.
- F. Did the IPAT err in law in the manner in which it rejected Convention nexus and, in particular, by failing to consider whether the persecution feared was based on Mr C's membership of a particular social group composed of the family because he was targeted as a husband of a particular woman and/or by failing to give reasons for why a Convention nexus could not be satisfied on this basis?
6. 'Yes'. The court recalls in this regard the decision of the House of Lords in *K v. Secretary of State for the Home Department; Fornah v. Secretary of State for the Home Department* [2006] 3 WLR 733. Fornah has generally attracted the greater commentary because of its significance insofar as victims of female genital mutilation are concerned. However, K is of note in the context of the within proceedings because K had been found by an adjudicator to have a well-founded fear of persecution by virtue of her membership of her husband's family, which was held to constitute a particular social group within the meaning of Article 1A(2) of the Refugee Convention of 1951. On appeal, the House of Lords held, *inter alia*, that the adjudicator was entitled to conclude on the facts that the family of K's husband was a group within the meaning of Article 1A(2), whether applying Council Directive 2004/83/EC or the *UNHCR Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (UN Doc HCR/GIP/02/01, UNHCR, 7th May, 2002). Here Mr C fears persecution due to his being the husband of Ms B, any persecution suffered by him would be suffered because of his membership of Ms B's family; indeed it is not even necessary in this regard that the primary subject of persecution (Ms B) should be suffering persecution for a Convention reason. Mr C's case included the claim that he feared persecution in Albania by virtue of his membership of a particular social group. In the Impugned Decision the IPAT errs by failing to consider whether the persecution feared was based on Mr C's membership of a particular social group composed of the family and by failing to assess why a Convention nexus did not arise on this basis.
7. For the reasons stated above, the court will grant an order of certiorari quashing the Impugned Decision and remitting the within matter to the IPAT for fresh consideration.