

THE HIGH COURT

[2022] IEHC 204
[Record No. 2021/496/JR]

BETWEEN:

G.K.

APPLICANT

AND

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE
AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered electronically on the 1st day of April, 2022.

Introduction.

1. The applicant is a 25 year old Georgian national. He is single and has no children. He arrived in Ireland in October 2018 and sought international protection from the International Protection Office (hereafter; "the IPO"). The IPO denied this request, and the applicant appealed this decision to the first named respondent.
2. The applicant seeks to set aside the decision of the first named respondent to affirm the recommendation of the IPO that the applicant be given neither a refugee declaration nor a subsidiary protection declaration.
3. The applicant challenges this decision on several grounds, which are set out in detail later in the judgment. In essence, the applicant submits that five findings in the Tribunal's decision were irrational, in that they were findings that were not open to the Tribunal to make on the evidence before it.
4. The respondent submitted that the applicant's challenge should be dismissed, because it was made out of time and no good reason had been put forward as to why the time period should be extended. On the substantive aspect, the respondent submitted that all the findings made by the Tribunal were supported by the evidence before it.

Background.

5. As previously stated, the applicant is a national of Georgia, who is 25 years old, having been born on 7th May, 1996. He is a single man with no children. He left Georgia on 25th October, 2018 and arrived in Dublin Airport on 28th October, 2018, having travelled through Vienna, Austria.
6. The applicant made an application for international protection, pursuant to s. 15 of the International Protection Act 2015 (hereafter; "the 2015 Act"), on or around 30th October, 2018 at Dublin Airport. This claim was made on the basis of his membership of a particular social group on account of his sexuality. On 13th December, 2018, the applicant submitted the Application for International Protection Questionnaire (hereafter, "the Questionnaire") to the IPO, after a preliminary interview.
7. The applicant was further interviewed by the IPO on 1st August, 2019, pursuant to s. 35 of the 2015 Act. The answers given by the applicant during the course of this interview will be elaborated upon later in the judgment.
8. On 19th November, 2019, the IPO issued a report pursuant to s. 39 of the 2015 Act, which recommended to the Minister for Justice and Equality that the applicant should not be given a refugee declaration, nor any subsidiary protection declaration.

9. In this report, the IPO, in assessing the credibility of the applicant, found that the applicant had given contradictory accounts of his relationships and he made adverse findings in relation to the applicant's knowledge, or lack thereof, of Identoba, the high-profile, pro-LGBT group, which organised the demonstration that he attended on 17th May, 2013. The report also found no grounds upon which to base the fear of persecution held by the applicant, should he be returned to Georgia. On the basis of the foregoing, the IPO found the applicant had not established a well-founded fear of persecution in order to acquire refugee status, as required by s. 2 of the 2015 Act.
10. Further, the IPO found that the applicant would not face a real risk of torture/inhuman treatment or punishment/degrading treatment or punishment if returned to his country of origin, on the basis of information available about Georgia, which was to the effect that Georgia was a safe country for people of the applicant's sexual orientation. On that basis, the IPO refused to recommend any subsidiary protection declaration in respect of the applicant.
11. The applicant submitted a Notice of Appeal, pursuant to s. 41 of the 2015 Act, to the first respondent on 3rd December, 2019. Although it was initially recommended that the hearing of the appeal be completely paper-based, a decision was subsequently taken by the first respondent to hold an oral hearing of the appeal, which took place on 21st October, 2020.
12. The first respondent, in a decision dated 8th March, 2021 and issued to the applicant on 9th March, 2021, affirmed the recommendation of the IPO that the applicant be given neither a refugee declaration, nor a subsidiary protection declaration. It is this decision that the applicant seeks to have quashed by this court.
13. A preliminary objection raised by the respondent to the hearing of this action was that the applicant was out of time to challenge the decision of the first respondent. Pursuant to s. 5 of the Illegal Immigrants (Trafficking) Act 2000 (as amended), an applicant has 28 days within which to bring a challenge to a decision of the Tribunal. Section 5 also provides that such time may be extended where the court "*considers that there is good and sufficient reason for extending the period within which the application shall be made.*"
14. The applicant received the decision of the first respondent on or around 9th March, 2021. The applicant's statement of grounds was filed on 27th May, 2021. The parties were agreed that the application was made outside the prescribed time frame, although they did not agree on the extent of the delay.

Submissions on behalf of the Applicant.

15. Mr. Phillip Moroney BL, on behalf of the applicant, submitted that the delay in the initiation of the proceedings was excusable and that there was good and sufficient reason for the court to extend the time period within which the application could be made. It was submitted that the delay had been caused by other commitments of counsel.
16. Counsel submitted that the dicta of Keane J. in *NN v Minister for Justice and Equality* [2017] IEHC 99, indicated that the issue of delay should be determined in accordance

with the merits of the particular case. It was submitted that it was clear that the court must consider the merits of the substantive action when deciding whether there is good and sufficient reason to extend the time period. Counsel also relied on *GK v Minister for Justice, Equality and Law Reform* [2002] 2 IR 418 in that regard.

17. Counsel submitted that the diligence of the applicant should be considered in deciding whether to extend the time period, relying on *GK v Minister for Justice, Equality and Law Reform* and *CS v Minister for Justice, Equality and Law Reform* [2005] 1 IR 343 in support of this submission. In the present case, it was submitted that the applicant had indicated to his solicitor on 10th March, 2021, one day after receiving the decision of the first respondent, that he wished to challenge the decision.
18. Counsel accepted responsibility for the delay and submitted that the applicant had not been at fault. Further, counsel submitted that the period of delay fell within the Easter vacation of 2021.
19. Turning to the substantive issues in the case, the applicant challenged five of the findings of the respondent in its report of 8th March, 2021. Firstly, counsel submitted that the respondent had erred in law in its finding at para. 4.9 of its report, insofar as the finding was irrational in the legal sense. In this paragraph, the respondent made an adverse credibility finding against the applicant on the basis that he could not name Identoba, as the organisers of the pro-LGBT protest that he had attended on 17th May, 2013.
20. Counsel submitted that there was no obvious reason the applicant should have known who the organisers were, nor did the respondent explain why that may be the case. Thus, it was submitted, the finding was based on slim or no evidence; and/or based on irrelevant material; and/or devoid of reasons or reasoning, contrary to law.
21. Counsel relied on several UK cases including *Piggott Bros and Co Ltd v. Jackson* [1992] ICR 85, *R. v. Secretary of State for Home Affairs, ex parte Zakrocki* [1996] COD 304 and *R. v. Newbury DC, ex parte Blackwell* [1988] COD 155, in support of his submission that the respondent had erred in law in failing to provide an evidential basis as to why the applicant must be taken to have known who organised the protest. Counsel submitted that the finding was, therefore, “unreasonable in the *Wednesbury* sense” and a manifest error of law.
22. Counsel submitted that the respondent erred in law in its finding on the basis that it failed to provide reasons as to why the applicant was disbelieved about his attendance at the protest, if that was the conclusion that had been reached, simply because he could not name the organisers of the protest. Counsel relied on *K. & Ors. v. Minister for Justice & Equality & Ors.* [2013] IEHC 339 and *A.A. v. Refugee Appeals Tribunal* [2009] IEHC 445 to substantiate this submission.
23. The second finding challenged by the applicant was that at para. 4.13 of the report, wherein the respondent had made an adverse credibility finding against the applicant. The report stated therein that the applicant confirmed in oral evidence at the hearing before the Tribunal, that he had been enrolled in a full-time course of study at Tbilisi Theological Academy, but failed to mention that he was also engaged in part-time work

in the evenings during the same period, until he was asked about the contradiction. The report stated that although this was possible, the respondent did not accept the applicant's credibility on this point.

24. Counsel submitted that the respondent had failed to proffer a reason as to why the applicant's credibility was not accepted, and therefore the finding was irrational. Counsel submitted that the irrationality was not saved by para. 4.14, which stated that the applicant failed to mention this course of study in his International Protection Questionnaire in the first instance. Counsel made that submission on the basis that the relevant question of the Questionnaire, being question 19, asked for the applicant's educational qualifications, and because he had not yet completed the course at Tbilisi Theological Academy, it was understandable that he had not included it.
25. On this basis, counsel submitted that the finding at para. 4.13 was based on slim or no evidence; and/or based on irrelevant material; and/or devoid of reasons or reasoning, contrary to law and accordingly, should be set aside.
26. The third finding challenged by the applicant was that at para. 4.7 of the report, wherein the respondent made an adverse credibility finding against the applicant in light of inconsistent statements about previous relationships. At the oral hearing, the applicant had stated that he had had two same-sex encounters, occurring when he was aged 16 and 21, respectively. However, in his s. 35 interview, the applicant had referred to going on dates and holding hands in public since the age of 16. When this inconsistency was put to him, he repeated that he had only had two same-sex encounters.
27. It was submitted that, because q.27 of the s. 35 interview had been "*When you were in a relationship with men, would you go on dates in public, hold hands, etc?*" (emphasis added), it was clear that these activities were confined to when the applicant was in a relationship. Question 28 then followed; "*When did you start to do that?*", to which the applicant answered; "*When I was sixteen*". It was submitted that the statements could only be taken to mean that his first sexual encounter was at age 16 and he had engaged in these activities during such encounter. It was submitted to be irrational of the respondent to have read the interview response as being indicative of the applicant going on regular dates or having held hands in public with men, from age 16. On this basis, counsel for the applicant submitted that this finding was irrational and/or in breach of fair procedures and/or natural and constitutional justice, and, therefore, should be set aside.
28. Fourthly, the applicant challenged the finding at para. 4.16 of the respondent's report. That finding was as follows:

"Taken as a whole the Appellant's evidence was lacking in detail and specificity. It was not indicative of a genuine personal experience by someone with the Appellant's particular individual characteristics."
29. It was submitted that, although the respondent had been entitled to have regard to the level of detail and specificity provided by the applicant in reaching their determination, it

was not entitled to dismiss a claim on that basis alone, without providing reasons for same. Counsel submitted that the respondent was not open to simply assert vagueness, or a lack of specificity, without an explanation of that characterisation.

30. Counsel noted the existence of diverging opinions of the High Court on this matter, between Barrett J. in *V.H. v. International Protection Appeals Tribunal & Ors.* [2020] IEHC 134 and Humphreys J. in *N.P.B.K. v. International Protection Appeals Tribunal & Ors.* [2020] IEHC 450. However, it was submitted that the dicta of Barrett J. were supported by many other authorities. In that regard, counsel relied on *N.M. (Togo) v. Refugee Appeals Tribunal & Anor.* [2013] IEHC 436; *A.T. (Georgia) v Refugee Appeals Tribunal & Ors* [2013] IEHC 482 and *K. & Ors. v. Minister for Justice and Equality & Ors.* [2013] IEHC 339.
31. It was submitted that in absence of an explanation and examples of the vagueness asserted, the finding at para. 4.16 should be set aside on the grounds that it was irrational and/or in breach of fair procedures and/or natural and constitutional justice.
32. Finally, the applicant challenged the respondent's finding at para. 4.17 of its report, wherein the respondent noted that although the applicant had travelled to Ireland via Vienna, Austria, he had not applied for international protection there. It was submitted to be a well-settled principle in asylum law that a short stopover on the journey to the intended sanctuary cannot forfeit the protection to be afforded to an applicant. It was submitted that the decision-maker, in considering any exclusion from protection on the basis of a stopover, should consider the length of stay in the intermediary country and an applicant's reasons for staying there. It was submitted that neither of those factors arose for consideration in the present case, due to the brief nature of the applicant's stopover.
33. Counsel relied on the dicta of O'Keeffe J. in *K (A Minor) v. Refugee Appeals Tribunal & Ors* [2012] IEHC 479, as subsequently cited in *F.T. v. Refugee Appeals Tribunal & Anor* [2013] IEHC 167, who stated that the fact that an asylum seeker did not apply for asylum in the nearest safe country, was not necessarily inconsistent with a genuine fear of persecution.
34. In that regard, counsel submitted that para. 4.17 of the report should be set aside as irrational and/or in breach of fair procedures and/or natural and constitutional justice.
35. Counsel submitted that if the applicant were to be successful in his application to have all five findings of the respondent set aside, the decision of the respondent to deny the applicant refugee status, or other subsidiary protection must be set aside in its entirety. Counsel made that submission on the basis that the decision was not capable of surviving, if the weight of the impugned findings were removed. Counsel relied on *B.W. v. Refugee Appeals Tribunal* [2017] IECA 296 and *E.S. v. Refugee Appeals Tribunal* [2014] IEHC 374, in that regard.

Submissions on Behalf of the Respondent.

36. As previously mentioned, counsel for the respondent, Ms. Sarah Cooney BL, raised a preliminary objection to the hearing of this action on the basis that the applicant was out of time to challenge the respondent's decision.

37. Counsel submitted that, given the fact that the applicant received the tribunal decision on 9th March, 2021 and filed his statement of grounds on 27th May, 2021, the applicant was 51 days outside the statutory window available to him to challenge the decision. It was submitted that there was no good and sufficient reason to extend the time for the bringing of the challenge.
38. It was submitted that in order to satisfy the court that there was good and sufficient reason to extend the time for the bringing of the challenge, the onus lay with the applicant to explain the reasons for the delay. As no fulsome explanation for the delay had been averred to in any affidavits, it was submitted that the applicant's action should be struck out as being out of time. Counsel relied on the cases of *G.K. v Minister for Justice, Equality and Law Reform* and *G.M. (Georgia) v The International Protection Appeals Tribunal* [2020] IEHC 32, to that effect.
39. In addressing the substantive aspects of the applicant's claim, it was submitted that the respondent was open to make the finding that it did at para. 4.9 of its decision. It was submitted that the respondent made an adverse credibility finding on this point, because the applicant had claimed not to know Identoba, the pro-LGBT group, which had organised the protest in 2005, at his s. 35 interview; but subsequently stated in his evidence-in-chief at the oral hearing, that he hadn't remembered Identoba at the interview, because he was not being open and the interpreter's Georgian had not been adequate.
40. It was submitted that the respondent had not fallen into conjecture on this point, as stated by the applicant, but rather it had been open to the Tribunal to make an adverse credibility finding against the applicant on the basis of the conflicting evidence before it.
41. In relation to para. 4.13 of the respondent's decision, it was submitted that it was open to the Tribunal to make an adverse credibility finding in relation to the applicant's study at Tbilisi Theological Academy, whilst also working as a fitness administrator. It was submitted that the respondent had not accepted the applicant's answer, or reaction to the question on this contradiction as credible, as was open to it as decision-maker. Counsel submitted that the court's role was not to substitute a more favourable view than that which was taken by the original decision maker (as per Cooke J. in *I.R. v. Minister for Justice* [2015] 4 IR 144).
42. Further, counsel submitted that the contradiction arose because the applicant had not mentioned this course of study in his initial interview; or in the Questionnaire; or in his s. 35 interview; or in his appeal submissions. It merely arose at the oral hearing, which the respondent found lacked credibility. This was stated by the respondent at para. 4.15 of the decision.
43. It was submitted that the applicant's challenge to para 4.7 of the report, relating to the past relationships of the applicant, was merely an attempt to re-run a point that had already been made at the oral hearing before the respondent, as well as in the Notice of Appeal. Again relying on *I.R. v Minister for Justice*, it was submitted that the court cannot be concerned with the merits of the decision, but only with the lawfulness of the process by which the decision was reached.

44. Further, it was submitted that the applicant could not isolate a small portion of the s. 35 interview in order to bolster his claim. The interview should be viewed as a series of related questions. It was submitted that it was not appropriate to isolate q. 27 as relating only to the relationship which he had had at age 21, and then to isolate q. 28 as a reference to one encounter at age 16.
45. Counsel submitted that the applicant must satisfy the principles established in *O’Keeffe v. An Bord Pleanála* [1993] 1 IR 39 and *Keegan v. Stardust Compensation Tribunal* [1986] IR 642, in order to persuade the court that the finding was irrational or unreasonable in the legal sense. It was submitted that both of those decisions established that the court should be slow to interfere with decisions of specialist tribunals. It was submitted that the respondent gave this point careful consideration, and it did not meet the high bar of unreasonableness, necessary to set it aside.
46. In relation to para. 4.16 of the decision, which the applicant challenged on the basis that the respondent could not draw its finding on a lack of credibility generally without providing specific reasoning, counsel submitted that this finding could not be viewed in isolation to the decision of the respondent as a whole, which was set out in detail in its report.
47. Further, it was submitted that the respondent is not obliged to tediously address every element of the applicant’s case in reaching its conclusion, but can make decisions on the evidence cumulatively. In that regard, counsel relied on *O.M.A. (Sierra Leone) v. Refugee Appeals Tribunal* [2018] IEHC 370; *M.E.O. (Nigeria) v IPAT*; *U.O. (Nigeria) v IPAT* [2018] IEHC 782 and *A.F. (Nigeria) v Refugee Appeals Tribunal* [2016] IEHC 430.
48. Finally, counsel submitted that the respondent’s adverse credibility finding at para. 4.17 of the decision, which noted that the applicant did not apply for protection in Vienna before reaching Ireland, was not unlawful. It was submitted that the respondent was entitled to note this point, and that no undue weight was placed on this point in reaching its decision.

Conclusions.

49. Section 5(2) of the Illegal Immigrants (Trafficking) Act 2000, as amended, is as follows:

"An application for leave to apply for judicial review under the Order in respect of any of the matters referred to in subsection (1) (hereafter in this section referred to as an 'application') shall be made within the period of 28 days commencing on the date on which the person was notified of the decision, determination, recommendation, refusal or making of the order concerned unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made".

50. It is clear that the applicant was out of time to make an application for leave to apply for judicial review when his statement of grounds was filed on 27th May, 2021. The court accepts the submission of counsel for the respondent that the applicant was 51 days outside this window, meaning the statement of grounds was filed 79 days after the decision of the respondent. Although counsel for the applicant suggested that the Easter

vacation fell within the 28-day period to bring a challenge, by the court's calculations, the period actually expired before the vacation began.

51. The court must now assess whether there is good and sufficient reason to extend the time within which the applicant made his application. In that regard, the dicta of Costello J. in *O'Donnell v. Dun Laoghaire Corporation* [1991] ILRM 301 is of relevance:

"The phrase 'good reasons' is one of wide import which it would be futile to attempt to define precisely. However, in considering whether or not there are good reasons for extending the time I think it is clear that the test must be an objective one and the court should not extend the time merely because an aggrieved plaintiff believed that he or she was justified in delaying the institution of proceedings. What the plaintiff has to show (and I think the onus under O. 84, r. 21 is on the plaintiff) is that there are reasons which both explain the delay and afford a justifiable excuse for the delay."

52. That judgment was subsequently quoted with approval in *Dekra Eireann Teoranta v The Minister for the Environment and Local Government* [2003] 2 IR 270 and *M.O'S. v The Residential Institutions Redress Board & Ors.* [2018] IESC 61. Those cases make clear that the court must consider whether the reasons provided by an applicant to explain and justify the extent of the delay, are sufficient to satisfy the court that it should exercise its discretion to extend time.

53. The court must also consider, as stated by Finlay Geoghegan J. in the M.O'S. case, "all the relevant facts and circumstances, which include the decision sought to be challenged, the nature of the claim made that it is invalid or unlawful and any relevant facts and circumstances pertaining to the parties, and must ultimately determine in accordance with the interests of justice whether or not the extension should be granted." Particularly, in that regard, the court is conscious of the consequences for the applicant should his claim fail on grounds of delay. It is possible that in certain cases, an applicant may be returned to a country where his fundamental rights are not vindicated, which is obviously of great significance to him.

54. In engaging in this balancing exercise, the court ought also consider any fault of the applicant in the delay of proceedings. In *Re Article 26 of the Constitution & section 5 & section 10 of the Illegal Immigrants (Trafficking Bill) 1999*, Keane C.J. stated that:

"Moreover, the discretion of the court to extend the time to apply for leave where the applicant shows "good and sufficient reason" for so doing is wide and ample enough to avoid injustice where an applicant has been unable through no fault of his or hers, or for other good and sufficient reason, to bring the application within the fourteen day period."

55. Ms. Cristina Stamatescu averred in her affidavit of 26th May, 2021 that the applicant had contacted his solicitor the day after he received the decision of the respondent, seeking to challenge the decision. However, it was averred that counsel for the applicant had not been in a position to furnish the pleadings until 26th May, 2021. It must be said that the reason given to explain and justify the delay is considerably lacking in detail.

56. Although there are potential significant consequences for the applicant, he is bound by the actions of his agent. He was legally represented at all points of his application for international protection, and those legal advisors must be taken to have known the relevant time periods within which to bring a challenge to the decision of the respondent. In considering this, the court has had regard to the extent of the delay. The delay is not merely a small number of days outside the 28-day window, but the 51-day delay represents significant delay on the part of those agents. This is particularly so, given that their client had expressed to them that he wanted to challenge the respondent's decision.
57. If the court were to grant an extension on the basis of the explanation given by the applicant in this case, it would render the legislative time limit near ineffective, as any applicant could claim that their counsel had 'other commitments' to attend to.
58. There is a significant importance placed on time limits in administrative proceedings, for good reason. This court would be slow to depart from the time limit imposed by the Oireachtas in s. 5(2) of the 2000 Act on the basis of a short, one-sentence explanation for a significant delay. On the basis of the foregoing, the court refuses to grant an order extending the time within which the applicant's challenge was brought, on the basis that there is no good or sufficient reason to do so.
59. The above finding of the court essentially brings the proceedings to a conclusion. However, lest the court is wrong in its finding on the delay issue, the court will proceed to deal with the substantive issues in the case.
60. Each of the five findings challenged by the applicant are challenged on the basis that the finding was irrational in the legal sense. Three of those findings are also challenged as a breach of fair procedures and/or a breach of constitutional justice. The classic test for irrationality was set out by Henchy J. in *Keegan v. Stardust Compensation Tribunal* [1986] IR 642, wherein he stated on p. 658 that:
- "I would myself consider that the test of unreasonableness or irrationality in judicial review lies in considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense."*
61. The test was further elaborated upon by Finlay C.J. in *O'Keeffe v. An Bord Pleanála* [1993] 1 IR 39, wherein he stated at p. 72:
- "I am satisfied that in order for an applicant for judicial review to satisfy a court that the decision-making authority has acted irrationally in the sense which I have outlined above so that the court can intervene and quash its decision, it is necessary that the applicant should establish to the satisfaction of the court that the decision-making authority had before it no relevant material which would support its decision."*
62. This sets an obviously high bar for applicants in judicial review proceedings to have decisions of public authorities set aside on the grounds of irrationality on the part of the decision-maker. The court should be slow to set aside decisions made by specialist

tribunals as irrational (see: dicta of Binchy J. in *Abbas v. Minister for Justice* [2021] IECA 1).

63. Having considered the finding made by the respondent at para. 4.9, the court accepts the submission of counsel for the respondent that the Tribunal was referring to the contradiction between the applicant's comments about the organisers of the protest at his s. 35 interview and at the oral hearing. At his s. 35 interview, the applicant was asked at q. 37 if he knew who had organised the protest, to which he answered "*I don't know. I just found out it was happening and went there.*" However, at the oral hearing before the respondent, the applicant stated that he had not remembered Identoba, because he had not been open and that he found it hard to speak about his personal life. Further, he stated that the interpreter was Georgian, which made him uncomfortable and that the interpreter's Georgian had not been good. There is an obvious contradiction between the two statements.
64. It is clear that the respondent was not suggesting the applicant must have known who organised the protest, as suggested by counsel for the applicant. The respondent merely noted this contradiction and made an adverse credibility finding on that basis. This finding falls short of the high bar for a finding of irrationality. It was an entirely lawful conclusion for the respondent to have drawn on the evidence before it.
65. The court also accepts the submissions of counsel for the respondent in relation to para. 4.13. It was open to the respondent to make an adverse credibility finding against the applicant on the basis of his response to the question posed to him. The respondent had asked him to explain how he was enrolled at Tbilisi Theological Academy whilst also working as a fitness administrator. He had responded that he had worked in the evenings whilst studying during the day. Although that was possible, the respondent had not accepted his credibility on that point. The respondent also noted at para. 4.15 that the applicant had not mentioned this course of study at any point prior to the hearing before it.
66. It is not the role of the court to step into the shoes of the respondent and make a different, 'better' decision. This long-standing principle was set out by Cooke J. in *I.R. v. Minister for Justice* [2015] 4 IR 144, wherein he stated at p. 151:
- "The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision maker."*
67. It is possible that the court may have held differently on the same point, were it the primary decision-maker, but that does not render the conclusion reached by the respondent irrational in the legal sense. The court holds that the finding was not irrational, as it was open to the respondent to draw that conclusion, on the basis of the applicant's response and reaction to the questions asked of him.
68. In a similar vein, the finding of the respondent at para. 4.7 of the report was not irrational in the legal sense. It was permissible to make an adverse credibility finding against the applicant on the basis of what the respondent saw to be conflicting statements given at the oral hearing and at the s. 35 interview. This conclusion falls

short of the high bar for a finding of irrationality as set out in *Keegan v. Stardust Compensation Tribunal*, as it does not fly in the face of fundamental reason or common sense.

69. Similarly, this finding was not a breach of the applicant's right to fair procedures. Counsel for the applicant did not disclose the exact basis upon which a breach of fair procedures was being alleged against the respondent. However, on the court's examination, there is no breach to be found within this finding of the respondent. On that basis, the court holds that finding to be lawful.
70. The court accepts the submission of counsel for the respondent in relation to para. 4.16 of the report, that is that particular finding in relation to an overall lack of credibility, cannot be looked at in isolation to the rest of the report. It is clear that the respondent was making a general comment in relation to the evidence as a whole, having dealt with many points of evidence in detail, earlier in the report.
71. In *O.M.A. (Sierra Leone) v. Refugee Appeals Tribunal* [2018] IEHC 370, Humphreys J. stated at para. 8:

"It is not necessary to tediously list every element of an applicant's case and reject it point by point. A court or a tribunal or other decision-maker is entitled to reject the evidence of a witness or a party generally."

Applying that principle, the court finds that the respondent was not obliged to deal with every point of evidence in minute detail. It was entirely lawful for the respondent to have made a general comment in relation to the evidence before it. This falls far below the bar of irrationality, nor does it represent a breach of the applicant's right to fair procedures. Therefore, the court finds this finding to be lawful.

72. Finally, the court accepts the submissions of counsel for the respondent regarding para. 4.17 of the report. That paragraph is as follows:

"In addition to all of the foregoing the Tribunal notes that the Applicant travelled do [sic] this country via Vienna, Austria. However, the Appellant did not apply for international protection in Austria."

73. The court finds that the respondent did not place undue weight on this fact, it was clear that this finding did not form the entire basis for the overall conclusion reached by the defendant. This is particularly so, given that the respondent expressly stated that they were merely "noting" this fact.
74. Counsel for the applicant relied on the dicta of O'Keeffe J. in *K (A Minor) v. Refugee Appeals Tribunal*, wherein he stated as follows at para. 39:

"As a matter of basic principle, the failure of an asylum seeker to apply for asylum in the nearest safe country or in the first safe country to which he flees is not a bar to refugee status per se and is not necessarily inconsistent with a genuine fear of persecution."

75. In that case, the Refugee Appeals Tribunal made an adverse credibility finding against the applicant on the basis that if he had been in genuine fear of persecution, he would have sought asylum in Iran or Turkey, through which he had passed on his journey to Ireland. The applicant had argued that it was difficult to obtain asylum in those countries. The asylum systems in both Iran and Turkey were carefully examined in that case, and the court found that the applicant had established that the finding of the Tribunal was not substantiated by the country of origin reports available on Iran and Turkey. The court set aside the Tribunal's finding on that basis.
76. The court is of the view that that case can be distinguished from the present case. Here, the court was not furnished with details as to why the applicant could not or did not, apply for protection in Vienna. The finding of the respondent is not unsubstantiated, as Austria is an EU member state and is considered a safe country. This finding of the respondent was, therefore, not irrational, nor a breach of the applicant's right to fair procedures.
77. The issue of severance or the survival of the decision does not arise, as the court has found all the findings of the respondent to be lawful. The decision survives in its entirety.
78. In light of the foregoing, the court refuses all the reliefs sought by the applicant in his notice of motion.
79. As this judgment is being delivered electronically, the parties will have two weeks within which to furnish brief written submissions on the terms of the final order and on costs and on any other matters that may arise.