

HIGH COURT

JUDICIAL REVIEW

IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS

(TRAFFICKING) ACT 2000 (AS AMENDED)

[2025] IEHC 30

Record No. 2023 1063 JR

BETWEEN

Z.P.

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT OF Ms. Justice Siobhán Phelan, delivered on the 22nd day of January, 2025

INTRODUCTION

1. In these proceedings the Applicant challenges a deportation order made in his case following consideration of the prohibition on *refoulement* under s. 50 of the International Protection Act, 2015 (hereinafter “the 2015 Act”). He challenges the Deportation Order by reason of a failure to consider information submitted after the Order was made but before notifying him of the making of the Deportation Order. The Applicant

contends that there is a duty on the Minister to consider new information submitted pursuant to s. 50(3) of the 2015 Act, under which provision is made for the submission of information in respect of a relevant change in circumstance, before proceeding to serve a deportation order already made before the information was received. The Applicant relies, in the alternative, on the doctrine of legitimate expectation.

BACKGROUND

2. The Applicant is a 44-year-old Georgian male who applied to the International Protection Office (“IPO”,) for international protection on the 20th of September, 2021. He claimed that he had been involved in a car accident on the 3rd of June, 2020, in which his friend was killed. The driver was imprisoned but the family of the deceased blamed the Applicant for his death. The Applicant claimed that the victim's father had assaulted him and once attacked him with a knife. He stated that this man has made threats against his life, and he fears that he will be killed if he is returned to Georgia.
3. An International Protection Officer investigated and considered the application. The International Protection Officer recommended that the Applicant should be given neither a refugee declaration nor a subsidiary protection declaration. Accordingly, his application for international protection was denied for the reasons set out in the IPO's *Report pursuant to Section 39 of the International Protection Act 2015*, issued on the 17th of August, 2022. The Applicant was also informed on that date that the Minister had refused him permission to remain under s. 49(4) of the 2015 Act. He was advised of a right to appeal against this finding and of the possibility of a review of the decision on appeal, on the basis of information submitted within five days of notification of the outcome of any appeal considered relevant to the decision to refuse permission to remain had it been in possession of the Minister (s. 49(9)(a) of the 2015 Act) and any change of circumstances “*as soon as you become aware*” (s. 49(9)(b) of the 2015 Act).
4. The Applicant unsuccessfully appealed the s. 39 recommendation to the International Protection Appeals Tribunal (hereinafter “IPAT” or the “Tribunal”). Following his appeal to the Tribunal, the Minister reviewed the previous permission to remain recommendation under s. 49(7) of the 2015 Act and in this context received and

considered submissions made by the Applicant under section 49(9) of the 2015 Act.

5. On the 25th of November, 2022, the IPO issued its “*Review under Section 49(7) of the International Protection Act 2015*” which affirmed the s. 49(4) decision of the 17th of August, 2022, that the Applicant should not be given permission to remain in the State.
6. Next, the Applicant made representations with respect to *refoulement* in the “*Section 49 Review Form*” which he submitted on the 30th of November, 2022, claiming that if returned to Georgia, he would be subjected to serious issues regarding his safety due to a blood feud tradition where he could be a victim of threatening behaviour towards him on the grounds relied upon in advancing his failed claim for international protection.
7. While the Applicant’s s. 49 *refoulement* review application was under consideration, the Applicant’s wife and son arrived in the State and made applications for international protection on the 28th of December, 2022. The Applicant did not, at that time, seek to expand on his submissions with respect to *refoulement* which remained under consideration.
8. In June, 2023, a decision on the s. 49 review application was made on the basis of the opinion formed that repatriating the applicant to Georgia was not contrary to s. 50 of the 2015 Act, in this instance, for the reasons given. In the consideration of the review application, reference was made to all of the relevant information, photographs, posts and documentation presented by the Applicant and his legal representatives, including statements made by him at preliminary interview and information presented for the purpose of the Tribunal appeal under s. 21(6) of the 2015 Act in the protection process up to that point, and it was stated that these had been carefully and fully considered in this consideration. It was further stated that:

“the applicant submitted information under this heading in accordance with Section 49(9), the statements submitted repeat the information previously submitted and no new evidence in support of these statements has been

provided. Therefore the consideration previously undertaken remains valid and requires no additional consideration.

Therefore for the purposes of this consideration the applicant is considered to be a failed asylum seeker.

The applicant is a national of Georgia, which has been designated by the Minister for Justice and Equality as a safe country of origin under section 72 of the International Protection Act, 2015, and the International Protection Act 2015 (Safe Countries of Origin) Order 2018 (No. 121 of 2018).

The applicant submitted evidence in relation to a medical matter and this was considered under Section 49(3) (b) of the International Protection Act, 2015, where it was found that it did not breach either Article 3 or Article 8 ECHR.

The United States Department of State Human Rights Report: Georgia 2022 states, "the law provides for freedom of internal movement, foreign travel, emigration, and repatriation of citizens, but de facto authorities and Russian occupying forces limited this freedom in Abkhazia and South Ossetia" (Ref 1).

The Applicant is not from Abkhazia or South Ossetia; internal relocation would anyway be possible; and Country of Origin Information does not indicate that there are any barriers to the applicant's return to his country of origin."

9. On the 10th of July, 2023, the Minister wrote to the Applicant in respect of his status in the State informing him, *inter alia*, that he no longer had permission to remain in the State and was under an obligation to return voluntarily to his country of origin or be deported. This letter was accompanied by a Notice under s. 48(3) of the 2015 Act. The Applicant was given 5 days to notify the Minister of his intention to return on a voluntary basis. The Applicant was advised:

"If you decide not to return voluntarily to your country of origin, or if you do not let the Minister know within the required timeframe that you have decided to return

voluntarily, the Minister will make a Deportation Order in respect of you under section 51 of the 2015 Act. Once this is made and served it will require you to leave the State and remain out of the State Indefinitely.”

10. In the absence of any response from the Applicant in respect of his intention to return on a voluntary basis or face deportation, on the 26th of July, 2023, the IPO made the decision that repatriating the Applicant to Georgia was not contrary to s. 50 of the 2015 Act. The reasons for arriving at this conclusion were set out in a document of the same date entitled “*Report of the consideration under section 50 of the International Protection Act 2015 (prohibition of refoulement)*” (hereinafter the “Section 50 Report”).

11. In the Section 50 Report, it was acknowledged that the Applicant had made further representations with respect to *refoulement* in the Section 49 Review Form dated the 30th of November, 2022, claiming that his safety would be at risk due to a blood feud. The IPO found that, although he had “*submitted information under this heading in accordance with Section 49(9)*” the statements:

“repeat the information previously submitted and no new evidence in support of these statements has been provided. Therefore the consideration previously undertaken remains valid and requires no additional consideration.”

12. In its Section 50 Report, the IPO referred to the designation of Georgia as a safe country of origin under s. 72 of the 2015 Act by the International Protection Act, 2015 (Safe Countries of Origin) Order 2018 (No. 121 of 2018). The IPO had regard to the United States Department of State’s *Human Rights Report: Georgia 2022* section on freedom of movement, which was limited in Abkhazia or South Ossetia. As the Applicant was not from these areas, and internal relocation would be possible, the IPO found that Country of Origin Information (hereinafter “COI”) did not indicate any barriers to his return.

13. Having considered the information available before it at that time, the IPO was of the opinion that repatriating the Applicant to Georgia was not contrary to s. 50 of the

2015 Act. As appears from the s. 50 decision, the determination made by the IPO in respect of prohibition of *refoulement* was expressed in simple terms as follows:

“I have considered the prohibition of refoulement in light of all the facts of this case including the applicant's personal circumstances together with relevant current country of origin information in respect of Georgia and I am of the opinion that repatriating the applicant to Georgia is not contrary to section 50 of the International Protection Act 2015, in this instance, for the reasons set out above.”

14. A deportation order was signed pursuant to s. 51(1) and (2) of the 2015 Act on the 26th of July, 2023, on foot of the said Section 50 Report.
15. Unaware that a deportation order had already issued on the above date, on the 2nd of August, 2023, the Applicant's solicitors furnished submissions under s. 50 of the 2015 Act, setting out that “*important information*” had not been put before the Minister prior to the s. 49 review application i.e. that the Applicant's wife and child had fled Georgia and had submitted international protection applications in the State. The said applications had been made on the 28th of December, 2022. The Applicant's solicitors furnished the Ministerial Decisions Unit (hereinafter “MDU”) of the Department of Justice with additional supporting documents, including a statement from the Applicant's wife in which she described threatening behaviour that she and her son experienced following the Applicant's departure from Georgia, leading to her subsequent decision to travel to Ireland with her son to claim international protection. Supporting documentation included the Applicant's wife's IPO card which confirmed that she had made a protection application on the 28th of December, 2022, and a birth certificate and marriage certificate.
16. In essence, the Applicant's wife's statement set out that after her husband had left Georgia, she had been pressed to disclose his whereabouts. Harassment increased when the mother of the car accident victim passed away, and the father swore revenge. This man and his associates came to her home, told her they had broken into her message account and were aware that she was in contact with the Applicant.

The father of the deceased demanded she disclose the whereabouts of her husband. She claims that on the 3rd of December, 2022, they tried to kidnap her child from school, but that a teacher called the police. She claims that she left Georgia with her child thereafter and travelled through Italy and the U.K. before arriving in the State on the 26th of December, 2022. A translated letter from the Ministry of Internal Affairs which confirmed receipt of the teacher's statement in respect of the attempted kidnapping of the child on the 3rd of December, 2022, as well as confirmation of the child's attendance with a psychologist, was also submitted.

17. The Minister was requested to consider this information when making the s.50 decision.

18. The MDU acknowledged receipt of the additional documents on the 2nd and 3rd of August, 2023, in four separate emails.

19. The first email was sent on the 2nd of August, 2023, in which the Applicant's Solicitors stated:

"We wish to acknowledge receipt of your email dated 02/08/2023 regarding section 50 of the International Protection Act, 2015 [Name and I.D. No. of Applicant]. We will be in touch in due course if this is a query that relates to the Ministerial Decisions Unit.....If your query is not related to the MDU no further response will issue to you and no further action will be taken on your query."

20. In a further email also sent on the 2nd of August, 2023, the Applicant's solicitor was advised in an email signed by the IPO Customer Service Centre that if the correspondence was relevant to this office, it would be saved to the file and forwarded to the "*appropriate section for attention*".

21. In a third email sent on the 3rd of August, 2023 from the MDU, the Applicant's solicitor was advised:

"I am directed by the Minister for Justice to refer to your email received in

this office on 02/08/2023, the contents of which are noted. Your email has been forwarded to the relevant unit for their attention.”

22. In the fourth email also sent on the 3rd of August, 2023, receipt of documentation was again acknowledged, but the Applicant’s solicitor was advised that the office did not appear to have received the written consent of the Applicant.

23. On the 8th of August, 2023, the MDU again acknowledged the correspondence and again requested a letter of authority from the Applicant. The authority was subsequently provided by the Applicant’s Solicitors on the 11th of August, 2023.

24. By separate letter dated the 8th of August, 2023, copied to the Applicant’s previous solicitors (and not the solicitors who made the more recent submissions), the Applicant was issued with the Deportation Order dated the 26th of July, 2023. The letter stated:

“In making the deportation order the Minister has satisfied herself that the provisions of section 50 (prohibition of refoulement) of the International Protection Act 2015 are complied with in your case. The Minister is also satisfied that section 48(5) (option to voluntarily return to country of origin) of the International Protection Act 2015 does not apply in your case.”

25. By the terms of the letter, notice was given that the Applicant was required to leave the State by the 8th of September, 2023, or report to the Garda National Immigration Bureau ("GNIB") on the 4th of October, 2023, to *“make arrangements for your removal from the State.”* The Deportation Order expressly stated that *“the provisions of section 50 (prohibition of refoulement) of the International Protection Act 2015 are complied with in the case of [name of Applicant].”* The Section 50 Report accompanied the Deportation Order made of the 26th of July, 2023. Both were served for the first time on the 8th of August, 2023, and this was the first notice given to the Applicant that a decision under s. 50 had already been made when supplemental information was submitted in support of his application.

26. Notwithstanding the communication of the making of a deportation order, on the 11th of August, 2023, the Applicant's then solicitors submitted additional supporting documents, which it wished the Minister to consider when arriving at an opinion under s. 50 of the 2015 Act. Receipt was acknowledged on that date, and they were informed that the MDU would be in touch if the query related to that unit. The Minister further acknowledged receipt on the 14th of August, 2023.
27. An application for leave to proceed by way of judicial review was opened before the High Court on an *ex parte* basis on the 3rd of October, 2023, and adjourned to the 15th of January, 2024.
28. On the 4th of October, 2023, the Minister sent the Applicant's solicitors email correspondence stating that it was unclear from the correspondence of the 2nd of August, 2023, whether the new information submitted was in support of a s. 3(11) revocation application and requesting them to complete an attached Form 3(11)
29. By letter in reply on the 5th of October, 2023, the Applicant's solicitor referred to judicial review proceedings which were then listed for a leave application on the 15th of January, 2024, and pointed out that their correspondence of the 2nd of August, 2023, had not been intended to amount to an application for revocation and that the Applicant had not been aware that a Deportation Order had been signed in respect of him on the 26th of July, 2023, until "*he was served with same on the 8th of August, 2023*". This email also stated that the Applicant would be submitting a s. 3(11) revocation application without prejudice to contemplated judicial review proceedings. The Minister was invited to provide an undertaking not to deport the Applicant pending a determination of judicial review proceedings.
30. On the 19th of October, 2024, the Minister issued the Applicant with an undertaking that no steps would be taken to remove him from the State whilst judicial review proceedings were pending.
31. As at the date of swearing of a replying affidavit grounding the Minister's

opposition to these judicial review proceedings in April, 2024, no application for revocation of the Deportation Order under s. 3(11) of the 1999 Act had been received by the Minister.

PROCEEDINGS

32. By *Ex Parte* Order (Hyland J.) made on the 15th of January, 2024, leave to proceed by way of judicial review was granted giving leave to challenge the s. 50 decision and consequential deportation order as unlawful for failure to consider information submitted under s. 50(3) of the 2015 Act, either in breach of the requirements of s. 50(3) and/or the doctrine of legitimate expectations.
33. In Opposition papers filed in April, 2024, the Minister opposed proceedings on the basis, *inter alia*, that all specific submissions advanced in respect of the prohibition on *refoulement* which were to hand at the time of making the decision were considered when making the s. 50 decision. In respect of the Applicant's reliance on the "principle of legitimate expectation", the Minister denied making any representations to the Applicant that she would consider the additional information sent by the Applicant's solicitors on the 2nd of August, 2023, and/or the 11th of August, 2023, in the course of the deportation process of the Applicant.

STATUTORY FRAMEWORK

34. In accordance with s. 50(1) of the 2015 Act, a person shall not be expelled or returned in any manner whatsoever to the frontier of a territory where, in the opinion of the Minister:

(a) the life or freedom of the person would be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion, or

(b) there is a serious risk that the person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

35. In forming his or her opinion of the matters referred to in subsection (1), the Minister shall have regard to—

- (a) the information (if any) submitted by the person under subsection (3), and*
- (b) any relevant information presented by the person, including any statement made by him or her at his or her preliminary interview and any information presented for the purpose of an appeal by the person under section 21(6).*

36. Section 50(3) states a person shall, where he or she becomes aware of a change of circumstances that would be relevant to the formation of an opinion by the Minister under this section, inform the Minister forthwith of that change.

37. Section 50(4) states that a person who, but for the operation of subsection (1), would be the subject of a deportation order under s. 51 shall be given permission to remain in the State.

38. Section 51(1) of the 2015 Act provides for the making of a deportation order in the following terms:

(1) Subject to section 50 and subsection (1A), the Minister shall make an order under this section (“deportation order”) in relation to a person where the Minister—

(a) has refused under section 47 both to give a refugee declaration and to give a subsidiary protection to the person, and

(b) is satisfied that section 48(5) does not apply in respect of the person, and

(c) has refused under section 49(4) to give the person a permission under that section.”

39. Section 51(3) of the 2015 Act requires that where the Minister makes a deportation order, he or she shall notify the person specified in the order of the making

of the order and of the reasons for it and, where necessary and possible, the person shall be given a copy of the notification in a language that the person understands.

40. Section 51(4) of the 2015 Act deems a deportation order made under s. 51 to be a deportation order made under s.3(1) of the Immigration Act, 1999 (hereinafter “the 1999 Act”), and accordingly subject to a power of revocation as prescribed under s. 3(11) of that Act.

41. Under s. 3(11) of the 1999 Act, the Minister may by order amend or revoke a deportation order.

42. Section 72 of the 2015 Act provides for the designation of safe countries of origin. In exercise of powers under s. 72, the Minister introduced the International Protection Act 2015 (Safe Countries of Origin) Order 2018 (No. 121 of 2018) designating certain countries as safe countries of origin. Georgia is one of these countries. In deciding to make such an order, the Minister must be satisfied that, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally, and consistently, no persecution, no torture or inhuman or degrading treatment or punishment, and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

43. At all times material to the decisions under challenge, Georgia was and remains designated as a safe country of origin.

DISCUSSION AND DECISION

44. Two net issues of law present at the heart of these proceedings.
45. Firstly, whether the Minister acted unlawfully in continuing to rely on a deportation order in exercise of powers under s. 51 of the 2015 Act following her determination on a consideration of s. 50(1) of the 2015 Act that no *refoulement* issues arose in circumstances where additional information was submitted by the Applicant pursuant to s. 50(3) of the 2015 Act before notification of the making of a deportation order occurred but after the decision was made.
46. A second issue arises as to whether the Applicant is entitled to rely on the doctrine of legitimate expectations to require the Minister to withdraw a decision made under s. 51 of the 2015 Act and reconsider *refoulement* issues under s. 50(1) with reference to new information submitted by the Applicant.
47. While additional grounds of challenge were identified in the pleadings, notably the failure to reason the decision under s. 50(1) of the 2015 Act in the light of the new material, these were not pursued at hearing in circumstances where it is common case that the new material was not considered in the decision to make the Deportation Order. The core and determinative issue must therefore be whether the Minister was lawfully entitled to proceed to serve the Deportation Order without conducting a fresh s. 50(1) consideration of the prohibition of *refoulement* which had regard to the additional information submitted pursuant to s. 50(3).

Whether the Minister acted unlawfully in continuing to rely on a deportation order made under s. 51 of the 2015 Act

48. The Applicant contends that by notifying him of the making of a deportation order and maintaining reliance on that order, the Minister fails to have regard to relevant information furnished by the Applicant under s. 50(3) of the 2015 Act, contrary to the requirements of s. 50(2)(a) of the 2015 Act.
49. Reliance is placed on *M.A.K v. Minister for Justice and Equality* [2018] IESC

18, to contend that both the Deportation Order and Notice of Deportation must issue before the Deportation Order can take effect and therefore that the Minister should not have proceeded to notify the making of the order and specify the period within which the Applicant was required to leave the State, without first considering the additional information submitted in forming an opinion in relation to *refoulement* under s. 50(1). The Applicant maintains that rather than give Notice of Deportation and serving the Deportation Order, the Minister ought to have either revoked the unserved Deportation Order upon receipt of additional, relevant information or withheld the Deportation Order and taken additional time to consider the information and make a fresh decision under s. 50(1) before taking any action in respect of the Deportation Order which had been made before the information was submitted.

50. The Applicant also relies on *Y v. Minister for Justice and Equality* [2021] IEHC 82, where Barrett J. found that the Minister had erred in the process of assessment of *refoulement* by failing to provide any reasoning on newly received information. In respect of the option to seek revocation of the deportation order as an alternative to the within challenge, the Applicant refers to *J.I.D. v. Minister for Justice* [2024] IEHC 164 and the lack of suspensive effect of an application under s. 3(11) of the 1999 Act.

51. For her part, the Minister stands over the decision to make a deportation order on the basis of the information before her when the decision was made. She relies on *S.M. v. Minister for Justice* [2022] IEHC 611 as authority for the proposition that a failure to consider and weigh material which the Applicant had not put before the Minister at the time the decision was made does not render the decision liable to be quashed.

52. The Minister also refers to the delay on the part of the Applicant in putting new information before her, in circumstances where some eight months had passed between the refusal of leave to remain in November, 2022, and the making of the Deportation Order in July, 2023. It is pointed out that while there is an onus on the Applicant to notify the Minister of new information, he waited until the 2nd of August, 2023, to advise the Minister of information pertaining to the making of a protection application by the Applicant's spouse and child in December, 2022. The Minister contends that the construction of s. 50(2) urged on behalf of the Applicant is one which would place

a never-ending obligation on the Minister to reconsider her decision under s. 50 if an applicant sends in further information after a decision is made.

53. None of the authorities cited by the Applicant establish an entitlement to quash a decision to make a deportation order on the basis of information submitted after that decision was made.
54. Specifically, in *J.I.D. Minister for Justice*, the proceedings were not addressed to a situation where new information had been put before the Minister after the decision to make a deportation order was made, but rather there had been a failure to properly consider information available before the Minister when the decision was made. It is notable that Bolger J.'s finding in *J.I.D.*, that it was reasonable to pursue proceedings notwithstanding the availability of an application under s. 3(11) of the 1999 Act in respect of the unserved deportation order under challenge in those proceedings, was made in the materially different factual and legal context of a costs application in moot proceedings involving a child.
55. Likewise, in *Y v. Minister for Justice and Equality* [2021] IEHC 82, it was fundamental to the Court's ruling in that case that the "new" documentation in issue in that case (a membership card and a *fiche d'adhésion*) was documentation which was contained in the review application and was before the Minister when making a decision under s. 49(7) of the 2015 Act, but had not previously been before the IPO or IPAT when determining the protection application. The information was "new" only in the sense that it had not been considered at earlier stages of the process. On the facts of that case the newly submitted information was also material and relevant to the claim of membership of a religious organization. This claim had been rejected by IPAT, although at the same time it had been accepted that membership of the religious organization in question would expose an individual to some level of State persecution upon return to the country of origin. Barrett J. was satisfied to quash the decision because there had been a failure to properly consider this new documentation by the Minister in circumstances where the documentation was clearly relevant to purported membership of a religious organization and therefore a recognized risk of persecution but had not been addressed by the Minister even though it had not previously been considered during the protection decision making process.

56. The circumstances here are entirely distinguishable from those in *Y v. Minister for Justice and Equality*. While the additional information sought to be introduced in this case might be considered corroborative of the Applicant's claim to be a person at risk, it was not available to the Minister when she made her decision and therefore could not have been considered. It is also important to recall that it was not available because the Applicant had not discharged the duty on him under s. 50(3) of the 2015 Act to put that information before the Minister "*forthwith*". The coupling of a requirement to submit additional information "*forthwith*" in relation to a "*change in circumstance*" makes it clear that the statutory intention was that the additional information should be submitted without delay when the change in circumstance relied upon occurs.

57. In maintaining these proceedings the Applicant is, in effect, relying on his own wrongdoing in failing to put information relevant to the formation of the Minister's opinion before the Minister as soon as it became available as required under s. 50(3) of the 2015 Act. This proposition is the more unpalatable because the Applicant ought to have been aware that time was of the essence, since time limits were specified at each stage of the process, and he was specifically advised that:

- (i) a time limit of five days applied to making submissions in support of a review application under s. 49(7) by letter dated the 18th of August, 2022 when he was notified of refusal of his protection application; and
- (ii) a time limit of five days applied to informing the Minister of his intention to voluntarily return to Georgia or face deportation as communicated by letter dated the 10th of July, 2023.

58. The only apparent explanation for the delay in adverting to the relevance of information in relation to a change in circumstances and the failure to communicate same more speedily, is changes in the Applicant's legal representation. While a change in legal representation may provide some explanation for delay, it does not justify it and does not cure the Applicant's breach of duty to notify "*forthwith*" under s. 50(3) of the 2015 Act.

59. I do not accept that it is an answer to the Applicant's apparent failure to notify

the Minister of information pertaining to a change in circumstances relevant to his application without delay that the Minister ought, in any event, to have been aware of the Applicant's connection to his wife and son and the fact that they had made separate applications for protection without this being brought to her attention on behalf of the Applicant in the context of the s. 50 considerations. This proposition depends on an unsafe assumption of administrative coordination in circumstances where the duty to notify information relating to a relevant change of circumstance rests unequivocally with the Applicant under s. 50(3) of the 2015 Act.

60. Nor do I accept that the decision in *M.A.K. v. Minister for Justice* is authority for the proposition that the decision to make a deportation order is incomplete, or otherwise has no legal meaning or effect until both the order is made and the specified period by which the Applicant must leave the State is notified to him. While, on the authority of *M.A.K. v. Minister for Justice*, a person may not be required to leave the State on foot of a deportation order in respect of which a last date for leaving the State has not been specified and notified, this does not mean that the decision to make a deportation order is incomplete prior to notification of the existence of the order and the date specified for leaving the State.

61. Section 50(1) of the 2015 Act operates to preclude expulsion or return in any manner to a territory where *refoulement* risks as defined under the 2015 Act exist in the opinion of the Minister. The obligation to consider relevant information in relation to a change of circumstances arises as a matter of law both by reason of s. 50(3) and by reason of the nature of the obligation under s. 50(1), which applies at the time of expulsion or return. To this extent, opposition on the basis that the Minister could be placed under a never-ending obligation to reconsider her decision under s. 50 if an applicant sends in further information after a decision is not persuasive. Where information detailing a change of circumstance is submitted to the Minister relevant to *refoulement* considerations under s. 50(1), this information ought to be considered by the Minister before proceeding to act on a deportation order which has already issued. Section 50(2)(a) creates a statutory obligation that such additional information is considered in forming an opinion under s. 50(1) provided the information as to a change of circumstances is furnished without delay in accordance with s. 50(3) of the 2015 Act. Of course, to be relevant, the information should relate to a change in circumstance

liable to have a potential impact on a proper consideration of a prohibition on *refoulement*.

62. The Applicant falls into error, however, in reading s. 50(1) and/or (3) as requiring the Minister to set aside earlier decisions for the purpose of considering additional information pertaining to a change of circumstance. The obligation to be satisfied that *refoulement* is not prohibited when transferring or expelling a person under s. 50(1) of the 2015 Act does not require the quashing of a decision already made on the facts prevailing when the decision was made or require revocation of a deportation order made before the additional information in relation to a change in circumstance was communicated. The decision to make a deportation order cannot properly be challenged on the basis of information not previously furnished by an applicant who is under a duty to provide that information but did not do so in time.
63. It is significant that the information not communicated was known to the Applicant from December, 2023, up to seven months before the Deportation Order was made, but not communicated in support of his application, even though he was expressly advised in July, 2023 that the Minister proposed making a deportation order if he did not notify the minister of his intention to leave the State voluntarily within 5 days. While submitting new information late is manifestly not compliant with the obligation to provide information “*forthwith*” in s. 50(3) in terms of demonstrating compliance with the requirements of that provision, it is also relevant to how the Minister elects to proceed in dealing with a consideration of new information submitted late and a court’s discretion in intervening by way of judicial review in respect of any challenge to the exercise of that discretion.
64. The fact that a decision under s. 50(1) of the 2015 Act has already been made and communicated does not excuse the Minister from a duty to consider relevant information in relation to a change of circumstances at any time up to the point of removal from the State, albeit there remains a duty on an applicant under s. 50(3) of the 2015 Act to communicate that information “*forthwith*”. There is no time limit in s. 50(3) on when a “*change in circumstances*” will be considered. A change in circumstances might occur at any time. The obligation as to time imposed under s. 50 of the 2015 Act pertains to the communication of information relating to the change of

circumstances as soon as the change occurs.

- 65.** Where an applicant seeks to procure the revocation of a deportation order in reliance on new information relevant to *refoulement* considerations which was not before the Minister when the deportation order was made, he or she may do so by making an application for revocation under s. 3(11) of the 1999 Act citing ss. 50 and 51 of the 2015 Act. The Minister is under no obligation to revoke a deportation order, lawfully made, of her own motion and without an application being made under s. 3(11) of the 1999 Act, even where consideration of the new information results in a decision on the part of Minister not to give effect to a deportation order already in being, having regard to the new information and absent an application to revoke.
- 66.** Nothing in the terms of the 2015 Act limits consideration of s. 50(1) to before the making of a deportation order and I am satisfied that a s. 50(1) consideration may occur after a deportation order is made, in consequence of which the Minister may decide not to give effect to a deportation order by deciding not to expel or transfer in reliance on it. Nonetheless, the Minister is entitled to operate a decision-making process and to rely on decisions made at different stages of that process as lawful at the time they were made, subject to an obligation to consider relevant, new information in accordance with law, when it is received. When warranted, the Minister may reach a different decision based on the new information. Alternatively, the Minister may be satisfied to stand over the previous decision because the new information does not result in a change in opinion. Critically, the fact that a deportation order is extant does not legitimize the expulsion or transfer of a person in breach of the prohibition on *refoulement* in s. 50(1) of the 2015 Act.
- 67.** It is striking in this case that while the Applicant submitted new information after a deportation order was made following consideration of s. 50(1) of the 2015 Act and before being notified of the making of the decision, the Applicant did not write subsequent to correspondence on the 8th of August, 2023, requesting the Minister to refrain from relying on the Deportation Order made pending further consideration of s. 50(1) of the 2015 Act in light of the new information provided, whether under s. 3(11) of the Immigration Act 1999 or otherwise. This, it seems to me, would have been an appropriate letter to write where the Applicant considered that the new information was

such as could preclude his expulsion or return to Georgia under s. 50(1), having regard to the stage of the process which had been reached when the new information was submitted.

- 68.** While it is true that neither an application under s. 3(11) of the 1999 Act nor an application for a fresh consideration of s. 50(1) of the 2015 Act have suspensive effect where a deportation order has been made, this fact alone does not justify and provide grounds of a challenge to an extant and lawfully made deportation order. The lack of suspensive effect could have been addressed on the facts and circumstances of this case by an application under s. 3(11) of the 1999 Act and/or s. 50(1) of the 2015 Act and a request for an undertaking not to expel or transfer pending a decision on that application. Absent provision of an undertaking following appropriate request and where a real risk of forced return in breach of the prohibition on *refoulement* is demonstrated, a remedy by way of an application for injunctive relief may be pursued.

Whether the doctrine of legitimate expectations precludes reliance on a deportation order made without consideration of new information

- 69.** In addition to contending that the Minister ought to have revoked the Deportation Order and engaged in a fresh consideration under s. 50(1) of the 2015 Act before serving notice of same, the Applicant asserts a legitimate expectation that the information would be considered in the s. 50 process in light of the acknowledgement of receipt for the information by email in August, 2023, before the deportation decision was notified. In response, the Minister claims that it is clear from the replies given that there was no representation whatsoever that the documentation would be taken into account in the formation of the Minister's decision to make a deportation order.

- 70.** Reliance is placed in written submissions on a series of cases including *Glencar Exploration p.l.c. v. Mayo County Council (No. 2)* [2001] IESC 64, [2002] 1 I.R. 84; *Lett & Co. v. Wexford County Council & Ors.* [2012] IESC 14, [2012] 2 I.R. 198; *Keogh v. CAB and the Revenue Commissioners* [2004] IESC 32, [2004] 2 I.L.R.M. 48 and *Elder v. Minister for Defence & Ors.* [2019] IEHC 716.

- 71.** As clear from the authorities identified, the principles are well established. Only

one of the authorities referred to in written submissions was opened to me in oral argument, namely, *Elder v. Minister for Defence & Ors.* In that case, in an *ex tempore* note of judgment, Ní Raifeartaigh J. reviewed a number of these authorities and others and observed (at para. 10) that the doctrine of legitimate expectation is fundamentally concerned with holding a public body to a statement it has made in the past about a decision that it is going to make in the future, this being a statement either about what decision it will make (in terms of its substance), or a statement about how the decision will be made (in terms of the process). She further observed (at para. 11) that the doctrine is distinguishable from the doctrine of promissory estoppel in at least one important respect, namely that the person does not have to act to his detriment on foot of a promise or representation. She reflected (at para. 12) that the underlying thinking seemed to be that it would be unfair to allow a public body to renege on what it has said to a person or a class of persons if it has made a statement of intent or communicated something in connection with a decision it will be taking in the future. She confirmed that the communication can arise if something is said orally, or written down in a letter or other document, but sometimes it can be implied, for example, from a previous practice.

72. It is clear from *Elder* and from other authorities cited in written submissions, that the very first requirement of successful reliance on the doctrine of legitimate expectation is that there must be a communication as to what will happen that the public authority in question later seeks to resile from. In consequence, careful consideration is required of the communications relied upon as giving rise to a legitimate expectation to see what is represented and how this compares to what occurs.

73. The communication relied upon by the Applicant in this case is limited to what amounts to a simple acknowledgement of receipt of correspondence of a *pro forma* nature, in which it is stated that the correspondence had been received, contents noted, and it had been “*forwarded to the relevant unit for their attention*”. Follow up emails seeking the solicitor’s authority to act do not bring the position any further but explain why notice of the Deportation Order was served on the Applicant and his previous solicitors, and not the solicitors who had submitted the new information on his behalf requesting that it be considered under s. 50(1) of the 2015 Act.

74. Nothing in any of the emails generated on the 2nd and 3rd of August, 2023, prior to communication of the Deportation Order by letter dated the 8th of August, 2023, purports to confirm that the documentation would be considered in any particular process or for any particular purpose. Specifically, nothing in the emails relied upon communicate a statement of intent as to how the Minister will make a decision or the procedure to be followed in making the decision on foot of the documentation submitted. It was manifestly not suggested that if a deportation order had already been made it would be revoked, or would not be served before a further consideration of *refoulement* issues under s. 50(1) of the 2015 Act occurred, this being the process which the Applicant contends he is entitled to on foot of the emails in seeking to quash the Decision and Deportation Order made on the 26th of July, 2023, ever before the new information was submitted.
75. On the basis of the language used in the emails identified as giving rise to a legitimate expectation, I am not satisfied that the Applicant could reasonably, or fairly, treat the Minister as having committed to revoking a deportation order already made, or to considering the new information before proceeding to notify the Applicant of the making of the Deportation Order. It is simply not possible to construe the correspondence as amounting to the communication of a representation of the nature contended for on behalf of the Applicant.
76. The fact that the Applicant has not established a legitimate expectation to the process contended for in these proceedings does not detract from the legal effect of s. 50(1) of the 2015 Act, which clearly imposes an obligation on the Minister to refuse to expel or return a person to the frontier of a territory where in the opinion of the Minister a *refoulement* risk arises. In consequence, relevant changes of circumstances which have been communicated “*forthwith*” in accordance with s. 50(3) must be considered by the Minister before effect is given to a deportation order made before that information was communicated.
77. The Minister is under a duty as a matter of domestic law, transposing obligations under EU law and giving effect to EU and international law obligations, to not expel or return a person to the frontiers of a territory in breach of the principle of *non-refoulement*. As the Minister has not refused to entertain an application to revoke the

Deportation Order under s. 3(11) of the 1999 Act or refused to consider an application that, based on the new information submitted, s. 50(1) of the 2015 precludes transfer in this case because the new information was submitted late and after the making of the impugned Deportation Order, the lawfulness of any refusal to consider new information on the basis of that the change in circumstances was not communicated “*forthwith*” does not arise for determination on the facts of this case and will, therefore, not be considered further.

CONCLUSION

78. For the reasons given above I have concluded that the Applicant has not established that the Minister acted unlawfully in notifying the making of a deportation order under s. 51(3) of the 2015 Act, notwithstanding the submission of information relevant to s. 50(1) considerations after the making of the Deportation Order and without considering that information on either of the two grounds advanced in these proceedings. Accordingly, I must refuse the relief sought in these proceedings.

79. I will list this matter to hear the parties in relation to any consequential matters arising unless the form of a final order is agreed and communicated on consent to the Registrar before the expiry of two weeks from the delivery of judgment.