

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

**[2025] IEHC 88
Record No. 2023/758JR**

BETWEEN/

R

APPLICANT

-AND-

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

RESPONDENTS

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 7th day of February 2025

INTRODUCTION

Preliminary

1. The applicant¹ is an Egyptian national who seeks to challenge the decision of the first named Respondent (“the IPAT”) dated 24th May 2023, made pursuant to the provisions of section 12(1)(b) of the International Protection Act 2015 (“the IPA 2015”), excluding him from eligibility for subsidiary protection due to his conviction (*in absentia*) in Egypt in September 2020 for assault and consequent imprisonment for five years, which constituted a serious reason for considering that he had committed a serious crime, *i.e.*, the applicant (then twenty-one years of age) had been convicted for having hit a sixteen year old boy in the face, causing him to fall to the ground and suffer a gash to his head which required twelve stitches and was sentenced to five years’ imprisonment.

2. The grounds upon which the applicant was granted leave to apply for judicial review on 11th December 2023 included the following variations on this central challenge:
 - (i) that the IPAT breached section 46(1) of the IPA 2015 by failing both to take relevant considerations into account and to consider the significance of its own finding that the imprisonment of the applicant in Egypt would constitute degrading and inhuman punishment and/or that the applicant would be at risk of serious harm by reason of his imprisonment: it is contended that the IPAT relied on the applicant’s non-attendance at court in Egypt and placed undue

¹ The applicant is also referred to as “the Appellant” in this judgment when referring to extracts of the IPAT’s decision dated 24th May 2023.

weight on the contents of the judgment of the Egyptian court made *in absentia*, and without any reference to mitigating factors, when assessing the seriousness of the crime committed by the applicant in this context; and, that in making a finding that the applicant did not express a subjective fear of poor prison conditions, the IPAT failed to consider the applicant's account of fear of imprisonment in his questionnaire;

- (ii) that the IPAT breached section 46(6) of the IPA 2015, acted in breach of constitutional justice, and failed in its duty to give adequate reasons: it is contended that in applying the exclusion criteria, the IPAT failed to address mitigating factors and factors which were in the applicant's favour, many of which are referenced in the decision; it is argued that the IPAT failed in its duty to give adequate reasons for its decision that the crime which the applicant committed would be such a 'serious crime' in Ireland that he should be excluded from international protection in Ireland; the decision to exclude was unreasonable and/or disproportionate.

Background

3. The applicant, having illegally entered the State on 15th May 2022, made a claim on 17th May 2022 for international protection on the basis that if he was returned to Egypt, he would face persecution and a real risk of suffering serious harm because he had been sentenced to imprisonment for assault.
4. An International Protection Officer recommended in a report dated 14th October 2022, made under section 39 of the IPA 2015, that the applicant should be refused a refugee

declaration and a subsidiary protection declaration because he had given insufficient information to support his claim and that decision was based on a belief that the applicant had not returned his completed application for international protection questionnaire.

5. By notice of appeal dated 9th February 2023, the applicant appealed the recommendation of the International Protection Officer to the IPAT on the ground that he was entitled to international protection. The appeal was heard by way of a remote oral hearing on 21st April 2023.
6. After the hearing of the appeal, the International Protection Office delivered the applicant's completed questionnaire to the IPAT, who afforded time for the applicant to make written submissions which the IPAT received on 11th May 2023.
7. Whilst these matters are addressed in further detail later in this judgment, in brief, the IPAT affirmed the recommendation of the International Protection Officer refusing the applicant a 'refugee' declaration (and given its findings, the IPAT deemed it unnecessary to consider the question of exclusion in a 'refugee context' under section 10 of the IPA 2015) and it decided that, whereas the applicant was the less responsible of the two assailants who attacked two sixteen year old year old boys, his hitting of one of the boys in the face causing him to fall to the ground and suffer a gash to his head which required twelve stitches *was* a serious crime and accordingly, the applicant was excluded from eligibility for subsidiary protection under section 12(1)(b) of the IPA 2015.

8. The applicant was notified of the IPAT's decision by letter dated 25th May 2023 which was received on 26th May 2023. The leave application was moved on 10th July 2023 for the purpose of "stopping the clock" (which was the widespread practice at that time) having regard to the 28 day time limit prescribed by section 5(2) of the Illegal Immigrants (Trafficking) Act 2000 (as amended) and, on behalf of the applicant, an extension of time was sought to cover the 11 day period of delay.
9. The leave application comprised the Statement of Grounds (dated and filed on 30th June 2023), the applicant's Affidavit sworn on 29th June 2023 (and filed on the 30th June 2023), the affidavit of Moustafa Almohamed (translator and interpreter) sworn on 29th June 2023 (filed on 30th June 2023) and the affidavits of Brian Burns (sworn on 4th July 2023 and 12th July 2023).
10. Leave to apply for judicial was granted by the High Court (Hyland J.) on 11th December 2023.
11. The Respondents' Statement of Opposition is dated 10th May 2024 and was filed on 17th May 2024.
12. As just mentioned, the second affidavit of Brian Burns solicitor, sworn on 12th July 2023, on behalf of the applicant, explains that the decision challenged in these proceedings was notified to the applicant by letter dated 25th May 2023 and received by him on 26th May 2023 and that the last date of the 28 day time period for seeking leave within time was 23rd June 2022 with the Statement of Grounds and grounding affidavit being filed on 30th June 2023. Mr. Burns avers that upon receiving draft

papers from counsel, his office immediately organised to finalise pleadings with the applicant and that it was necessary to arrange a consultation with the applicant together with the assistance of an interpreter to take instructions. Mr. Burns states that it consequently came to his attention that the International Protection Office had spelt the applicant's name in error when he first gave his name and further instructions were required from the applicant to ascertain the correct spelling of his name and to amend the proceedings which resulted in an unavoidable delay in filing the Statement of Grounds and grounding Affidavit. As referred to, Mr. Burns states that an application to stop time was made on 10th July 2023 and this court (Hyland J.) deemed the application 'open' on that occasion. Mr. Burns states that it was not possible to move the application earlier as the practice was that such applications were moved once per week, on a Monday.

13. The State respondents do not oppose the application for an extension of time.

14. Having regard to the short delay, the explanation of Mr. Burns (as just set out) and the order of Hyland J. dated 11th December 2023 (perfected on 14th December 2023), I consider that there is good and sufficient reason for extending the period for making this application for judicial review and I extend the period.

15. I will now set out the relevant provisions of the IPA 2015, before considering the substance of the applicant's challenge to the decision of the IPAT dated 24th May 2023 which affirmed the recommendation made by the International Protection Officer that the applicant should be given neither a refugee declaration nor a subsidiary protection declaration.

RELEVANT PROVISIONS OF THE IPA 2015

16. Section 41(1) of the IPA 2015 sets out as follows:

“41. (1) An applicant may, in accordance with regulations under subsection (4) (if any), appeal to the Tribunal against–

- (a) a recommendation, referred to in section 39 (3)(b), that an applicant should not be given a refugee declaration, or*
- (b) a recommendation, referred to in section 39 (3)(c), that an applicant should be given neither a refugee declaration nor a subsidiary protection declaration.”*

17. Section 46, subsections (1)-(3) and (6) of the IPA 2015 states:

“46. (1) Before reaching a decision under subsection (2) or (3), the Tribunal shall consider the following:

- (a) the notice of appeal;*
- (b) all material furnished to the Tribunal by the Minister that is relevant to the decision as to whether the applicant should be given a refugee declaration or, as the case may be, a subsidiary protection declaration;*
- (c) the recommendation under appeal;*
- (d) any observations made to the Tribunal by the Minister or the High Commissioner;*

(e) where an oral hearing has been held, the evidence adduced and any representations made at that hearing;

(f) such other matters as the Tribunal considers relevant to the appeal.

(2) In relation to an appeal under section 41 (1)(a) the Tribunal may decide to—

(a) affirm the recommendation that the applicant should not be given a refugee declaration, or

(b) set aside the recommendation that the applicant should not be given a refugee declaration and recommend that the applicant be given a refugee declaration.

(3) In relation to an appeal under section 41 (1)(b) the Tribunal may decide to—

(a) affirm the recommendation that the applicant should be given neither a refugee declaration nor a subsidiary protection declaration,

(b) set aside the part of the recommendation that recommends that the applicant should not be given a refugee declaration and recommend that the applicant be given a refugee declaration, or

(c) affirm the recommendation that the applicant should not be given a refugee declaration and set aside the part of the recommendation that recommends that the applicant should not be given a subsidiary protection declaration and recommend that the applicant be given a subsidiary protection declaration.

...

(6) A decision of the Tribunal under subsection (2) or (3) and the reasons for it shall be communicated by the Tribunal to the applicant concerned and his or her legal representative (if known), and the Minister.”

EXCLUSION

18. This application for judicial review was focused on the *exclusion* provisions which apply in the immigration code and the specific challenge related to the decision to exclude the applicant from being eligible for subsidiary protection, *i.e.*, subsidiary protection can apply where a person cannot return to their own country because they are at risk of serious harm but where they do not meet the requirements for refugee status.

19. Exclusion clauses have their provenance in Article 1F of the 1951 Geneva Convention relating to the Status of Refugees,² which stipulates that the provisions of the 1951 Convention shall not apply to any person with respect to whom there are serious reasons for considering that that person (a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; *(b) has committed a serious non-political crime outside the country of refuge prior to his/her admission to that country as a refugee*; or (c) has been guilty of acts contrary to the purposes and principles of the United Nations.

20. These provisions have been given effect at an EU and national level.

² The Convention Relating to the Status of Refugees was signed at Geneva on 28th July 1951.

21. The EU Common European Asylum System (CEAS) includes the Qualification Directive both in its original and recast format, and ultimate replacement by Regulations.³ Article 12 of the Qualification Directive sets out the grounds on which a person is excluded from the definition of a ‘refugee’ in Article 2(d) of the Directive. Article 17 of the Qualification Directive sets out the grounds on which a person is or may be excluded from the definition of a ‘*person eligible for subsidiary protection*’ in Article 2(f) of the directive.

22. Chapter V of the Qualification Directive (at Articles 15 to 17) is entitled “*Qualification for Subsidiary Protection*”. Article 15 provides for the three instances of ‘serious harm’ (as set out earlier); Article 16 provides for when the circumstances which led to the granting of subsidiary protection cease to exist or have changed so that protection is no longer required; Article 17 of the Qualification Directive (2011/95/EU) prescribes the four circumstances where a person *is excluded from being eligible for subsidiary protection*, as follows:

“(1) A third-country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

³ The Recast Qualification Directive (2011/95/EU) and Regulation 2024/1347 replacing the Qualification Directive (See also Regulation 2024/1348 replacing the Asylum Procedures Directive (2013/32)).

(b) he or she has committed a serious crime;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;

(d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.”

23. The CJEU has observed⁴ that the content and structure of Article 17(1)(a) to (c) of the Qualification Directive, concerning exclusion from eligibility for subsidiary protection, has similarities to Article 12(2)(a) to (c) which provides for exclusion from refugee status, which in turn replicates the content of Article 1(F)(a) to (c) of the 1951 Geneva Convention.

24. Chapter VI of the Qualification Directive provides at Article 18 for the granting of subsidiary protection status (and at Article 19 for the revocation of, ending of or refusal to renew subsidiary protection status).

25. At national level, in summary, the IPA 2015 provides that if a person does not qualify for refugee status they may qualify for subsidiary protection, if there are substantial grounds for believing that they would suffer serious harm if returned to their country of origin or country of former habitual residence. However, section 12 of the IPA 2015 makes specific provision for the exclusion from eligibility for subsidiary protection in the following terms:

⁴ Case C-369/17 *Shajin Ahmed*, ECLI:EU:C:2018:713, at paragraph 44.

“12.(1) A person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that he or she—

(a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes,

(b) has committed a serious crime,

(c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations, or

(d) constitutes a danger to the community or to the security of the State.

(2) A person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that he or she has incited or otherwise participated in the commission of a crime or an act referred to in subsection (1).

(3) A person is excluded from being eligible for subsidiary protection if he or she has, prior to his or her arrival in the State, committed a crime, not referred to in subsection (1), which, if committed in the State, would be punishable by imprisonment and if he or she left his or her country of origin solely in order to avoid sanctions resulting from that crime.”⁵

⁵ In its decision dated 24th May 2023, the IPAT, at paragraph 51 stated that it had also considered section 12(3) of the IPA 2015 and stated that the applicant’s account *“which has been accepted, is that he left Egypt both to avoid serving the sentence of imprisonment and also to avoid a revenge attack. Accordingly, he did not leave Egypt “solely” to avoid the sanctions resulting from his crime and section 12(3) would not exclude him from subsidiary protection”*.

26. In terms of the specific challenge to the IPAT's refusal in relation to subsidiary protection status, this application for judicial review is concerned with the provisions which are set out at Article 1F(b) – serious non-political crime, at Convention level, Article 17(1)(b) of the Qualification Directive at EU level, and section 12(1)(b) of the IPA 2015 at domestic level. Section 12(1)(b) of the IPA 2015 replicates Article 17(1)(b) of the Qualification Directive which permits a person's exclusion from subsidiary protection status where there are '*serious reasons*' for taking the view that that person has committed '*a serious crime*'. The CJEU has stated⁶ that Article 17(1)(b) of the Qualification Directive must be interpreted *strictly* because it sets out a ground for exclusion which constitutes an *exception* to the general rule in Article 18 for the granting of subsidiary protection. Hathaway, *The Rights of Refugees Under International Law* (First Ed., 2005) at p. 349 explains the reference to "*serious*" in Article 1F(b) of the 1951 Convention as "*“serious” criminality in this context is normally understood to mean acts that involve violence against persons, such as homicide, rape, child molesting, wounding, arson, drugs trafficking, and armed robbery.*"

DISCUSSION AND DECISION

27. Structurally and substantively, in his decision dated 24th May 2023, the IPAT addressed the applicant's claim for refugee status and then went on to consider the applicant's claim for subsidiary protection, before considering whether or not the applicant should be excluded from eligibility for subsidiary protection status.

⁶ Case C-369/17 *Shajin Ahmed*, ECLI:EU:C:2018:713, at paragraph 52.

28. The IPAT's decision is set out in the format of a 16 page report which addressed the following matters: Case Data; Persons present at the Hearing; (A) Introduction and Case History; (B) Case Facts and Documents; (C) Country of Nationality or Habitual Residence; (D) Assessment of Facts and Circumstances; Conclusion on Assessment of Facts and Circumstances; (E) Analysis of Well-Founded Fear; (a) The Appellant's victims and their families; (b) Imprisonment; (c) Conclusion; (F) Analysis of Serious Harm; (a) the Appellant's victims and their families; (b) Imprisonment; (c) Indiscriminate violence; (G) Exclusion; and (H) Overall Conclusion.

Refugee status

29. At paragraph E of his decision dated 24th May 2023, under the subheading 'Analysis of Well-Founded Fear', the IPAT examined (at paragraphs 20 to 27) the two reasons posited by the applicant for having a well-founded fear, namely (1) the possibility of a revenge attack from the two 16 year old boys involved in the fight, Mr. A and Mr. B, and their families and (2) going to prison. (In its decision, these matters were assessed by the IPAT in the context of both the applicant's claims for refugee status and for subsidiary protection).

30. At paragraphs 21 and 22 of its decision, for example, the IPAT addresses the first of the applicant's stated concerns in relation to "(a) *The Appellant's victims and their families*" in the context of his claim for *refugee* status, as follows:

“(21) *The Appellant*⁷ *fears that [Mr. A and Mr. B] and their families will want revenge and will harm the Appellant. In the context of an ongoing feud*

⁷ *i.e.*, the applicant in this judicial review application.

that fear is well founded. In the context of the violence in the feud, which involved the Appellant and his cousin inflicting serious injuries to [Mr. A and Mr. B], the fear is of violence that can amount to persecution.

(22) The nexus with a Convention ground put forward in the Appellant's written submissions of membership of a social group of the Appellant's family is not accepted because, on the Appellant's account, he would be targeted for revenge for having committed the assault and not because he is a member of his family. In the absence of a Convention nexus the Appellant is not a refugee”.

31. At paragraphs 23 to 26 of its decision, for example, the IPAT addresses the second of the applicant's stated concerns in relation to “(b) Imprisonment” in the context of his claim for *refugee* status and *inter alia* stated at paragraph 23, bearing in mind that sections 7(2)(c) and (d) of the IPA 2015 give examples of persecution of discriminatory or disproportionate punishment, that the conviction and sentence of the applicant (to imprisonment for five years) could not be considered to be either discriminatory or disproportionate and at paragraph 24, given that the applicant chose not to appear at his trial, that “*in the circumstances of the Appellant*[⁸] *tactically evading the authorities, his trial was not persecutory.*”⁹

⁸ The applicant in this judicial review application.

⁹ The IPAT at paragraph 24 of its decision dated 24th May 2023 referred to *IR C-569/20* (ECLI:EU:C:2022:401) and *Sejdovic v Italy* (2006) 42 EHRR 17 (ECHR).

32. At paragraph 25 of its decision, the IPAT observed, by reference to the country of origin information, that the applicant *“was not tried in a military or emergency court and is not an activist, opposition member or journalist. Even if the criticisms made of those aspects of the Egyptian justice system are valid, they do not affect the Appellant’s conviction. At the hearing before the Tribunal^[10] the Appellant accepted that he was involved in the assault.”*

33. The IPAT, at paragraph 26 of its decision, noted that the applicant’s written submissions focused on prison conditions in Egypt and that when he was asked by his counsel, the applicant said his fear about going to prison related to him having a bad name in his area, as a result, and the humiliation of being a prisoner and that he *“did not express a subjective fear of poor prison conditions.”*

34. The IPAT stated that *“[e]ven if an objective standard could be applied, and even if that objective standard would satisfy the definition of “persecution”, the Appellant in this case has not established a nexus with a Convention ground. The ground put forward in the Appellant’s written submissions of membership of the social group of the Appellant’s family is not accepted in relation to prison conditions because the Appellant would go to prison because he was convicted of assault and not because he is a member of his family. In the absence of a Convention nexus the Appellant is not a refugee”.*

35. The IPAT concluded on the applicant’s *refugee* status application at paragraph 27 of its decision dated 24th May 2023 that in light of its analysis, it was not necessary to

¹⁰ The IPAT.

consider *exclusion* under section 10 of the IPA 2015 and that it affirmed the recommendation of the International Protection Officer that the applicant “*not be given a refugee declaration.*”

Subsidiary Protection status

36. Chapter 5 of the Qualification Directive provides for ‘Qualification for Subsidiary Protection’ with Article 15 addressing “serious harm” as follows:

“Serious harm consists of:

(a) the death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.”

37. In this case, the assessment of the applicant’s claim for subsidiary protection begins under sub-heading ‘*F. Analysis of Serious Harm*’ in the IPAT’s decision dated 24th May 2023 and addresses “*(a) The Appellant’s victims and their families*” at paragraphs 28 to 30, “*(b) Imprisonment*” at paragraphs 31 to 37 and, “*(c) Indiscriminate violence*” at paragraph 38.

38. For example, at paragraph 28 of its decision dated 24th May 2023, the IPAT states that “[f]or the same reasons which were discussed at paragraph 21 above, there is a real risk that the Appellant would suffer serious harm in Egypt. The serious harm comes

within Article 15(b) of the Qualification Directive: torture or in human or degrading treatment in the form of a serious assault". At paragraph 29 of its decision, the IPAT refers to section 31(2) of the IPA 2015 and the decision of the High Court (Barrett J.) in *B & Others v The International Protection Appeals Tribunal & Anor* [2019] IEHC 763. The IPAT observed that "[t]he standard of protection need not be absolute: the duty is one to take reasonable steps. The test was broken down as follows by the High Court in *B v The International Protection Appeals Tribunal & Anor* [2019] IEHC 763: (1) Does the State in question take reasonable steps to prevent the persecution or suffering of the serious harm feared by a particular applicant? (2) Do such steps include the operating of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm? (3) Is such protection effective and of a non-temporary nature? (4) Does the particular applicant have access to such protection?"

39. Accordingly, at paragraph 30, after considering the country of origin information and the facts of the applicant's case, the IPAT *inter alia* found that they showed "*the police are willing to investigate and prosecute cases of assault, i.e. Egypt takes reasonable and effective steps to prevent the persecution or suffering of the serious harm in the nature of assaults including investigating, prosecuting and convicting perpetrators. The country of origin information does not point to a circumstance relating to the Appellant which would suggest that he would not receive State protection. Accordingly, the answers to the four questions set down in B. [v The International Protection Appeals Tribunal & Anor* [2019] IEHC 763] is "Yes." *The Tribunal [i.e., IPAT] finds that State protection is available to the Appellant.*"

40. At paragraphs 31 to 37 of its decision dated 24th May 2023, the IPAT then addresses the issue of ‘(b) Imprisonment’ in the context of the applicant’s claim for subsidiary protection and references, for example, Article 15(b) of the Qualification Directive “*which encompasses inhuman or degrading treatment.*”

41. The IPAT refers to the Human Rights Watch Report for Egypt (2022) (at paragraph 31), the Freedom House Report for Egypt (2022) (at paragraph 32), the Amnesty International Report for Egypt (2022) (at paragraph 33), the US State Department Human Rights Report for Egypt (events of 2022) (at paragraph 34) – all of which were extremely critical of prison conditions in Egypt – and states as follows at paragraphs 35, 36 and 37:

“(35) The impression given is that persons in prison in Egypt for political offences, or who are detained by the National Security Agency, can suffer prison conditions which can amount to inhuman or degrading treatment. The situation for other prisoners also presents challenges with the country of origin information referring to overcrowding, unsanitary conditions and denial of medical care. There are also reports of incidents of violence including sexual violence in prisons in Egypt.

(36) The Appellant’s personal circumstances must be taken into account. He was not convicted of a political crime. He does not suffer from a medical condition. During closing submissions in answer to a question from the Tribunal, counsel for the Appellant submitted that the personal

circumstance of the Appellant that puts him at risk in prison is that he is a young man.

(37) The country of origin information points to male prisoners in Egypt being at a high risk of overcrowding, unsanitary conditions, violence (including sexual violence) and denial of medical treatment. Imprisonment in such circumstances constitutes degrading, and in some cases, inhuman punishment. Although the Appellant's personal circumstances do not place him at a heightened risk of being imprisoned in those conditions, the test of a "real risk" of serious harm is relatively low one and is satisfied by the generally poor level of prison conditions throughout the Egyptian prison system as described in the country of origin information considered above."

42. The point is made at paragraph 4 of the Statement of Opposition (dated 10th May 2024), on behalf of the respondents, that *"Prison conditions in Egypt and the Applicant's fear of same were properly considered by [the IPAT] in the context of considering the Applicant[']s eligibility for subsidiary protection. Having found that the Applicant was eligible for subsidiary protection [the IPAT] then went on to consider the exclusion clause. The poor state of prison conditions in Egypt and the applicant's fear of same were not relevant factors for the purpose of the application of the exclusion clause under section 12(1)(b) of the 2015 Act and accordingly were not considered in that particular context."*

Exclusion from subsidiary protection

43. As I have referred to earlier in this judgment, at Convention, EU and domestic law level, a person is excluded from being eligible for subsidiary protection where the relevant authority finds that there are serious reasons for considering that he or she has committed a serious crime. The rationale underpinning the exclusion of a person from being eligible for subsidiary protection relates to whether or not that person is *deserving or undeserving* of subsidiary protection and, as far as EU member states are concerned, to maintain the credibility of the Common European Asylum System.¹¹

44. The scope of the ground for exclusion from subsidiary protection status in Article 17(1)(b) of the Qualification Directive is broader than that in relation to refugee status in Article 12(2)(b) of the Qualification Directive. Whilst the ground for exclusion from refugee status in Article 12(2)(b) refers to a serious non-political crime committed outside the country of refuge prior to admission of the person concerned as a refugee, the ground for exclusion from subsidiary protection prescribed by Article 17(1)(b) of the Qualification Directive refers more generally to a serious crime and, therefore, does not have similar temporal or geographic restrictions.

45. The requirement that there be '*serious reasons for considering*' establishes the *standard of proof* for exclusion from refugee status and subsidiary protection. Accordingly, a finding that there are *serious reasons for considering* that a person has committed a *serious crime* is conditional on a case-by-case assessment of the specific facts which apply with a view to determining whether the acts committed by the person concerned meet the conditions laid down in Articles 17(1) (and 12(2)) of the

¹¹ Case C-369/17 *Shajin Ahmed*, ECLI:EU:C:2018:713, at paragraph 51.

Qualification Directive. Therefore, prior to applying the exclusion provision, a decision-making body is required to undertake, for each individual case, an assessment of the specific facts within its knowledge, with a view to determining whether there are serious reasons for considering that the acts committed by the person in question, *who otherwise satisfies the conditions for refugee status or subsidiary protection*, was covered by the grounds for exclusion as prescribed. Any decision to exclude a person from either refugee – or subsidiary protection – status is required to be preceded by a full investigation into all the circumstances of his or her individual case and cannot be taken automatically, *i.e.*, there must be a full investigation into all the circumstances of each individual case and assessment of the specific facts.¹²

46. Similarly, the European Asylum Support Office (‘EASO’) document (dated 2016 and updated in 2020) entitled “*Judicial analysis, Exclusion: Articles 12 and 17 Qualification Directive (Second Edition)*”¹³, under the sub-heading ‘1.4 Burden of proof’, states that “[i]t is generally accepted that, since the exclusion clauses are exceptions to a rule, they require a narrow interpretation and that the burden of proving exclusion from refugee status or subsidiary protection status lies, as a rule, with the decision-maker”. (The issue is treated in further detail under the sub-heading ‘*Serious reasons for considering*’ at paragraph 3.2 of the (2020 version) of this EASO document).

¹² C-57/09 and C-101/09 (*B and D*) EU:C:2010:661 at paragraphs 87, 91, 93, 104 and 115 and, in particular, the interpretation of Articles 12(2)(b) and (c) of Directive 2004/83 (*i.e.*, now Article 12(2)(b) and (c) of Directive 2011/95).

¹³ EASO Professional Development Series for members of courts and tribunals (Updated by IARMJ-Europe under contract to EASO (2020)).

47. The structural and substantive approach of the IPAT in its decision of 24th May 2023, for the following reasons, in my view, met these legal requirements.
48. The applicant's circumstances were captured by section 12(1)(b) of the IPA 2015 (and Article 17(1)(b) of the Qualification Directive): the applicant – a third-country national from Egypt – was excluded from being eligible for subsidiary protection because the IPAT decided, in a comprehensive decision made on 24th May 2023, that there were serious reasons for considering that he had committed a serious crime.
49. The IPAT's decision of 24th May 2023 met the required standard of proof and also reflected the CJEU's view that Article 17(1)(b) of the Qualification Directive (and by extension section 12(1)(b) of the IPA 2015) be *strictly interpreted* where a person is excluded from being eligible for subsidiary protection when there are serious reasons for considering that he had committed a serious crime.
50. The approach of the IPAT in the manner of the decision of 24th May 2023 constituted an exception to the general rule stipulated by Article 18 of the Qualification Directive that Member States are required to grant subsidiary protection status to a third-country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.¹⁴
51. In interpreting the equivalent provision in section 12(1)(b) of the IPA 2015, particularly under section G 'Exclusion', from paragraphs 39 to 51 (with its Overall

¹⁴ Case C-369/17 *Shajin Ahmed*, ECLI:EU:C:2018:713, at paragraph 52.

Conclusion set out at section H and paragraph 52) the IPAT, in my view, construed these provisions *narrowly and strictly*, in its decision dated 24th May 2023 and afforded ‘*the benefit of the doubt*’ to the applicant. At paragraph 40 (page 12 of its decision), for example, the IPAT stated that “[t]he test to be applied is whether there are “*serious reasons for considering*” that the Appellant committed a serious crime. In this matter the Appellant has provided a number of court documents which the Tribunal has found to be authentic, and has provided a narrative relating to the assault which the Tribunal has found to be credible. The Tribunal accepts what is stated in the court documents. The Egyptian court did not have the benefit of the Appellant’s narrative because he did not appear at his trial. Accordingly, the Tribunal will accept the Appellant’s narrative where it contains additional details to what is contained in the court documents, and where it contradicts the contents of the court documents.”

52. Earlier, for example, under sub-heading D. (‘Assessment of Facts and Circumstances’), the IPAT found at paragraph 12 (page 4) of its decision dated 24th May 2023 that the “*applicant’s account in examination and cross-examination concerning the details of the assaults of [Mr. B and Mr. A] and of his role in what transpired was a full and detailed one which was frank in its admission of his involvement in the crime. That assists the credibility of his account.*” From paragraphs 13 to 19, the IPAT assesses the facts and circumstances, the evidence adduced by the applicant and cross-examined, the relevant documents, the inconsistencies and concludes at paragraph 19 that the applicant was a male Muslim and Egyptian national who was convicted of assault and sentenced to five years’ imprisonment.

53. The CJEU (in Case C-369/17 *Shajin Ahmed* ECLI:EU:C:2018:713) has agreed that the classification in Article 17(1)(b) of the Qualification Directive – and *a fortiori* section 12(1)(b) of the IPA 2015 – can cover a wide range of conduct of *varying degrees of seriousness* and has set out the following guidance in relation to this matter:

“(55) In that regard, it is important to note that, while the criterion of the penalty provided for under the criminal legislation of the Member State concerned is of particular importance when assessing the seriousness of the crime justifying exclusion from subsidiary protection pursuant to Article 17(1)(b) of Directive 2011/95, the competent authority of the Member State concerned may apply the ground for exclusion laid down by that provision only after undertaking, for each individual case, an assessment of the specific facts brought to its attention with a view to determining whether there are serious grounds for taking the view that the acts committed by the person in question, who otherwise satisfies the qualifying conditions for the status applied for, come within the scope of that particular ground for exclusion (see, by analogy, judgments of 9 November 2010, B and D, C-57/09 and C-101/09, EU:C:2010:661, paragraph 87, and of 31 January 2017, Lounani, C-573/14, EU:C:2017:71, paragraph 72).

(56) That interpretation is supported by the report of the European Asylum Support Office (EASO) for the month of January 2016, entitled ‘Exclusion: Articles 12 and 17 of the Qualification Directive (2011/95/EU)’, which recommends, in paragraph 3.2.2 on Article 17(1)(b) of Directive 2011/95,

that the seriousness of the crime that could result in a person being excluded from subsidiary protection be assessed in the light of a number of criteria such as, inter alia, the nature of the act at issue, the consequences of that act, the form of procedure used to prosecute the crime, the nature of the penalty provided and the taking into account of whether most jurisdictions also classify the act at issue as a serious crime.^[15] The EASO refers, in that regard, to a number of decisions taken by the highest courts of the Member States.

(57) Similar recommendations are, furthermore, set out in the Handbook on Procedures and Criteria for determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (United Nations High Commissioner for Refugees (UNHCR), 1992, paragraphs 155 to 157).’’¹⁶

54. Again, in interpreting the equivalent provision in section 12(1)(b) of the IPA 2015, particularly at paragraphs 39 to 51 of its decision dated 24th May 2023, the IPAT adopted and applied the aforesaid rationale of the CJEU when considering whether there were serious reasons for considering that the Applicant had committed a serious crime. For example, at paragraphs 41 and 42 (pages 12 and 13 of its decision), the IPAT stated as follows:

¹⁵ Emphasis added.

¹⁶ Case C-369/17 *Shajin Ahmed*, ECLI:EU:C:2018:713, at paragraphs 55 to 57.

“(41) The account of the assault in both the court documents and the Appellant’s evidence at the appeal hearing set out that he committed an assault. Assault is a crime in Ireland, Egypt and all other jurisdictions of which the Tribunal is aware. The assault of which the Appellant was convicted is a crime committed by the Appellant.

(42) As to whether the assault is a “serious crime” the Tribunal takes into account the factors discussed by the Court of Justice in Ahmed (C-369/17, EU:C:2018:713) and B and D (Cases C-57/09 and C-101, EU:C:2010:661). An individual assessment of the assault is required focusing on the Appellant’s responsibility and any mitigating factors (the latter could not have been taken into account by the court^[17] because the Appellant did not attend). The Tribunal will examine mitigating factors as well as the following matters:

- The nature of the act.*
- The consequences of the act.*
- The form of procedure used.*
- The nature of the penalty.*
- Whether most jurisdictions consider the act to be a serious crime.”*

55. The IPAT then went on to address and assess each of these matters in a detailed and considered manner, which I will now address.

¹⁷ *i.e.*, the court in Egypt.

The nature of the act

56. The IPAT, at paragraphs 43 and 44, addressed “the nature of the act”, as follows:

“43. The nature of the act was participation in an assault. The Appellant voluntarily “gave a hand” to his cousin ... who was looking for the two people who had assaulted [the applicant’s cousin] earlier that day. The Appellant explained that his victim was the one who suffered a head injury. According to the two medical reports at pages 3 and 11 of the court documents the only one of the two to suffer head injuries was [Mr. B]. The document at page 7 of the court documents says that he was sixteen years old at the time (as was [Mr. A], as per the document at page 6 of the court documents). Involvement in the wounding of a child by a twenty one year old will usually constitute a serious crime, subject to mitigating circumstances.

44. The assault happened in front of a mosque, but it appears from the appellant’s evidence that that location was where the two groups happen to meet rather than having been selected by the Appellant and [the applicant’s cousin]. The Appellant’s evidence was that he had his victim only once, but that caused his victim to fall to the ground and suffer a head injury. The Appellant was not armed, [the applicant’s cousin] was armed.”

57. In his decision, the IPAT was careful to distinguish the facts which applied to the applicant and to that of his cousin, including, for example, that the applicant was unarmed.

The consequences of the act

58. The “consequences of the act” are described at paragraph 45 of the IPAT’s decision dated 24th May 2023 as follows:

“45. The consequences of the act are that [Mr. B] suffered a head injury. The medical report contained in the court documents says that he had two head injuries: a wound 15 cm long and one cm deep, and a wound four centimetres long and half a centimetre deep. He required stitches. The court documents do not say how many stitches, the Appellant said twelve stitches. A wound requiring twelve stitches points to the assault been a serious crime.

59. The court document, as translated, states at page 9, in paragraph numbered 2, that:

“[Mr. B], who confirms an attack by others against him, and the presence of a wound in the head from the left side, fifteen cm long and 1 cm deep, and there is also another wound four cm long and half a cm deep. The stitches have been made, and the treatment period is less than 21 days. The statement was closed on the mentioned day, date and time.

Signature 12/07”.

The form of procedure used

60. The “form of the procedure” used is described at paragraph 46 of the IPAT’s decision dated 24th May 2023, as follows:

“46. Another factor to be taken into account is the form of procedure used to prosecute the crime. The court documents show that it was prosecuted in Mutabas Criminal Court. The document at page 5 refers twice to a “Misdemeanour”. The same document refers to a court “headed by” a named judge, but it does not expressly state that the appellant was tried by a court consisting of a number of judges. The Appellant’s narrative did not elaborate on the form of proceedings, as is to be expected because he did not attend the trial. The court documents do not point to a formal procedure used which is more serious to the standard criminal procedure. The Appellant’s submissions on exclusion claim that the trial was unfair and contrary to the rule of law. The analysis at paragraphs 24 and 25 of this Decision is also relevant to that issue. That the accused went on the run and did not appear at his trial is, however, relevant to the exclusion analysis in that the tribunal takes into account that the trial court did not hear his version of events nor any mitigating factors.”

The nature of the penalty

61. The “nature of the penalty” is described at paragraph 47 of the IPAT’s decision dated 24th May 2023, as follows:

“47. The nature of the penalty was five years’ imprisonment which in itself point[s] to the crime being a serious one. However, the Tribunal takes into account that the Egyptian court decided the case having heard only the prosecution evidence.”

62. The conditions of the prison were not factors which went to the assessment of the seriousness of the offence in contrast to the fact of the penalty and length of the imprisonment. The same prison conditions applied irrespective of the nature of the penalty.

Whether most jurisdictions consider the act to be a serious crime

63. In the applicant's Statement of Grounds, paragraph (e)(1) (of the Legal Grounds) it is argued that the IPAT erred in law and misapplied the test for what constitutes a "serious crime" pursuant to section 12(1)(b) of the IPA 2015 by failing to apply the exclusion criteria in accordance with established EU and Irish law and/or in the alternative misapplied the text in respect of a serious crime in C-369/17 *Shajin Ahmed*. There was some debate between the parties at the hearing in relation to the above reference by the IPAT to section 3 of the Non-Fatal Offences Against the Person Act 1997 ("the NFOAP Act 1997").¹⁸ On behalf of the applicant it was suggested that section 3 of the NFOAP Act 1997 was at the less serious end of the spectrum of seriousness, with section 4 of the NFOAP Act 1997, for example, providing for the offence of "causing serious harm", whereas section 3 related to "assault causing harm". Section 4(1) of the NFOAP Act 1997 provides that a person who intentionally or recklessly causes serious harm to another shall be guilty of an offence, and section 4(2) of the NFOAP Act 1997 provides that a person guilty of an offence under this section shall be liable on conviction on indictment to a fine or to imprisonment for life or to both.

¹⁸ Prior to the amendment of section 3 of the NFOAP Act 1997 by the Criminal Justice (Miscellaneous Provisions) Act 2023 in November 2023 which increased the tariff from five years to ten years.

64. I do not consider that the reference by the IPAT in paragraph 48 of its decision dated 24th May 2023 to section 3 of the NFOAP Act 1997 in the manner set out, could in any way be deemed to be an error.

65. The issue as to whether most jurisdictions considered the act to be a serious crime is set out at paragraph 48 of the IPAT's decision dated 24th May 2023 as follows:

“48. Although assault is considered a crime in all jurisdictions of which the Tribunal is aware, whether it is considered to be a serious crime depends on the circumstances of the case. Goodwin Gill and McAdam, The Refugee in International Law (4th ed.) paragraph 5.3.1 give assault as an example of a serious crime, subject to mitigating factors on the facts of the individual case. In Ireland the assault described would be a crime under section 3 of the Non-Fatal Offences against the Person Act, 1997. The maximum sentences are, on summary conviction, to imprisonment for a term not exceeding 12 months or to a class C fine (€1,000 to €2,500) or to both; or, on conviction on indictment to a fine or to imprisonment for a term not exceeding five years or to both.”

66. Further, at paragraph 49 of its decision, the IPAT referred to the fact that the applicant's written submissions sought to rely on the following as constituting mitigating factors: *“the Appellant's age, immaturity, vulnerability, reliance on his cousin, minimal involvement, lack of any prior offences and self-defence”*.

67. The IPAT observed that the absence of other convictions was a factor in the applicant's favour. It stated that in the case of a 21 year old assaulting a 16 year old, the factor of age was difficult to describe as a mitigating one, and that agreeing to help his cousin in the circumstances of the case showed some level of immaturity. The IPAT stated that the applicant, on his own account, had agreed to "give a hand" to his cousin in dealing with the two children who earlier that day had thrown stones at his cousin and that the claims that he was vulnerable or acted in self-defence must be understood in that context.

68. Ultimately, after addressing mitigating factors at paragraph 49 of its decision, the IPAT summarises its conclusions at paragraphs 50 and 51 of its decision dated 24th May 2023, as follows:

"50. In summary, and applying the standard of proof of "serious reasons for considering", the Appellant was the less responsible of the two assailants who attacked two sixteen year old year old boys. The Appellant was aged twenty one years [at] that time. His involvement was hitting a boy in the face causing him to fall to the ground and suffer a gash to his head which required twelve stitches. Even having regard to the mitigating factors in the matter, the Tribunal finds that that is a serious crime, and the Appellant thereby is not entitled to subsidiary protection under section 12(1)(b) of the International Protection Act, 2015.

51. The Tribunal has also considered the exclusion provision contained in section 12(3) of the International Protection Act, 2015 under which a

person is excluded from subsidiary protection if “he or she has, prior to his or her arrival in the State, committed a crime, [not being a “serious crime”], which, if committed in the State, would be punishable by imprisonment and if he or she left his or her country of origin solely in order to avoid sanctions resulting from that crime.” The Appellant’s account, which has been accepted, is that he left Egypt both to avoid serving the sentence of imprisonment and also to avoid a revenge attack. Accordingly, he did not leave Egypt “solely” to avoid the sanctions resulting from his crime and section 12(3) would not exclude him from subsidiary protection”.

69. The ‘Overall Conclusion’ is set out under sub-heading ‘H’, at paragraph 52 of the IPAT’s decision as follows, *“the Tribunal finds that the Appellant is not entitled to subsidiary protection. The Tribunal affirms the recommendation made by the International Protection Officer that the Appellant should be given neither a refugee declaration nor a subsidiary protection declaration.”*

CONCLUSION

70. Consistent with the jurisprudence of the CJEU, the decision of the IPAT dated 24th May 2023 carefully examined the nature of the events which occurred and the nature of the participation of the applicant and his cousin in the fight which occurred between them and two individuals (Mr. A and Mr. B).

71. For the reasons set out in this judgment, the applicant, in my view, has failed to establish any grounds upon which the decision of the IPAT should be quashed or that he is entitled to any declaratory relief. In the circumstances, I refuse the applicant's application seeking to challenge by way of judicial review the IPAT's decision dated 24th May 2023.

PROPOSED ORDER

72. I shall make an order refusing the applicant's application for reliefs by way of judicial review.

73. I shall list the matter for Tuesday 18th February 2025 at 10:30 to deal with final orders, including the question of costs.

CONLETH BRADLEY

Friday 7th February 2025