



AN CHÚIRT ACHOMHAIRC
THE COURT OF APPEAL

Court of Appeal Record Number: 2026 37
High Court Record Number: 2024 855 JR
Neutral Citation Number: [2026] IECA 154

APPROVED – NO REDACTION NEEDED

Faherty J.
Pilkington J.
Collins J.

BETWEEN/

E.L.
APPLICANT/RESPONDENT

- AND -

THE MINISTER FOR JUSTICE, HOME AFFAIRS AND
MIGRATION
RESPONDENT/APPELLANT

- AND -

THE INTERNATIONAL PROTECTION APPEALS
TRIBUNAL

NOTICE PARTY

JUDGMENT of Mr. Justice Anthony M. Collins delivered on the
30th day of July 2026

I. Background to the Appeal

1. The Minister for Justice, Home Affairs and Migration ('the appellant') invites the Court to set aside the judgment and order of the High Court (Barr J.) of 5 December 2025 ([2025] IEHC 690) and of 27 January 2026 respectively whereby it quashed the decision of the Chief International Protection Officer ('the IPO') dated 17 April 2024 to refuse E.L. ('the respondent') international protection under s. 39(3)(c) of the International Protection Act 2015 ('the Act of 2015') and remitted the matter to the IPO to be determined by another member of that body. The appellant also asks the Court to dismiss the respondent's application for judicial review.

2. The respondent arrived in Ireland on 17 February 2024. She applied for international protection on 19 February 2024. As an applicant from a safe country of origin designated under s. 72 of the Act of 2015, her application fell to be determined under an accelerated procedure. She attended a personal interview with the IPO on 4 March 2024 pursuant to s. 35 of the Act of 2015.

3. In a letter dated 8 April 2024, the respondent's solicitor sent submissions to the IPO to support her application. The end of the letter is in the following terms:

NB: The Applicant is scheduled to be assessed by Dr Gillian Moore Groarke, Consultant Psychologist, Cork, [on] 17 April 2024 at 11 AM and we would expect to be in a position to furnish your office with a report from Dr Moore Groarke shortly thereafter and, in the circumstances, would ask that your office refrain from making any decision on Client's application until you are furnished with same report.

4. The consultant psychologist examined the respondent as arranged. Dr Moore Groarke issued her report on 19 April 2024. The respondent's solicitor furnished a copy of that report to the IPO under cover of a letter dated 23 April 2024.

5. Meanwhile, on 17 April 2026, the IPO completed its report and recommendation under s. 39 of the Act of 2015. On 24 May 2024 the appellant made a decision in the exercise of his powers under s. 49 of the Act of 2015. By letter of 29 May 2024 the respondent was notified of the s. 39 recommendation and the s. 49 decision.

6. By order of 18 November 2024, the High Court (Gearty J.) granted the respondent leave to apply for an order of *certiorari* by way of judicial review to quash the IPO's determination of 17 April 2024 as notified by letter dated 29 May 2024 refusing her application under s. 39(3)(c) of the Act of 2015. Amongst the grounds upon which she was granted leave to seek that remedy was that, by failing to take account of the aforementioned psychological report, the IPO had acted unreasonably and/or in breach of the duty of co-operation and/or s. 28(1) of the Act of 2015, as a result of which the IPO's assessment of credibility was materially flawed.

7. On 19 March 2025, the appellant filed a Statement of Opposition. It pleaded the respondent was not entitled to the reliefs sought in the Statement of Grounds filed on 2 July 2024. Paragraphs 6 and 7 of the Statement of Opposition are as follows:

The International Protection Officer examining the Applicant's application for international protection prepared a report with

a recommendation under section 39 of the International Protection Act 2015 on 17 April 2024. As a matter of law, this concluded the examination of the application for international protection, subject to appeal. There is no legal provision for the International Protection Officer to reopen the examination.

The Respondent received a psychologist's report in respect of the Applicant on 23 April 2024. It is admitted that psychologist report was not considered by the International Protection Officer in preparing the section 39 report in circumstances where that report had been completed on 17 April 2024. It is denied any unlawfulness arises. Without prejudice to the generality of the foregoing:

- a. No reasonable explanation was advanced for the delay in submitting the psychologist's report.*
- b. As a matter of statute, applications for international protection from applicants from safe countries of origin are required to be dealt with under accelerated procedures. In the circumstances, it was reasonable to conclude the examination of the international protection application without awaiting the psychologist's report.*
- c. In correspondence of 8 April 2024, the Applicant placed emphasis on the need to await the psychologist's report in respect of her permission to remain application. No specific submission in respect of the importance of the psychologist's report to the international protection application was advanced.*

II. The High Court Judgment

8. Paragraph 11 of the judgment under appeal records the respondent's submission that the IPO had acted unlawfully and unreasonably in failing to await the production of the psychologist's report, as a consequence of which the High Court had to annul the recommendation and the decision in respect of her application for international protection. After citing para. 7 of the Statement of Opposition, para. 15 of the judgment under appeal notes the appellant's submission that it was unnecessary for the IPO to await

production of the psychologist's report before it made its report and recommendation under s. 39 of the Act of 2015.

9. At paras. 20 and 21 of its judgment, the High Court identified the central issues before it as whether the IPO was wrong to make its report and recommendation in the absence of the psychologist's report and, if it erred in so doing, had the respondent an adequate and effective remedy by way of an appeal to the International Protection Appeals Tribunal ('the IPAT') such that the relief sought ought to be refused.

10. The High Court commenced its analysis of the first issue at para. 22 of its judgment. It observed that, by s. 28(1) of the Act of 2015, the IPO shall, in co-operation with an applicant for international protection, assess the relevant elements of that application and summarised the content of that duty as set out in that section. Relying upon para. 75 of the judgment of the Court of Justice of the European Union in Case C-175/11, *H.I.D., B.A. v. Refugee Applications Commissioner* ECLI:EU:C:2013:45, the High Court held that a prioritised procedure, such as that which applied to the respondent, must be conducted so as to allow persons in the respondent's circumstances to exercise in full the rights that Art. 23 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (*OJEC* 2005 L 326, p. 13) confers upon them. In particular, those persons must enjoy a sufficient period of time within which to gather and present the necessary material in support of their applications, thus allowing the deciding authority to carry out a fair and comprehensive examination of their

applications and to ensure applicants are not exposed to dangers in their country of origin. Paragraph 27 of the judgment under appeal concludes by finding that the fact the respondent's application for international protection was determined under an accelerated procedure did not deprive her of an entitlement to have her application considered in full.

11. Paragraphs 28 to 30 of the judgment under appeal held that the respondent's solicitor had acted promptly and had not delayed in obtaining a psychological report of the respondent from a suitably qualified expert and in submitting that report to the IPO. Paragraphs 31 to 33 of the judgment under appeal are as follows:

I hold that in failing to await production of the medical report, the first respondent acted in breach of the terms of s.28 of the 2015 Act. He did not cooperate with the applicant in the presentation and consideration of her application for asylum or international protection.

I hold that in so doing, the first respondent acted unreasonably. He had been asked by a solicitor to await production of a medical report, which the solicitor had considered was necessary in order to put his client's application fully before the first respondent. The solicitor was not seeking a deferral of the conclusion of the report to some indeterminate date in the future. He informed the first respondent that he had obtained an expedited appointment with the psychologist. It was reasonable to assume that the report would be forthcoming within a short period of that examination. In the events which transpired, the report issued two days after the examination. It was furnished to the first respondent four days later.

I hold that in these circumstances, notwithstanding that the applicant's application was being dealt with under an accelerated procedure, the first respondent acted unreasonably in failing to await production of the medical report.

12. Paragraphs 34 and 35 of the judgment under appeal dismissed the appellant's argument that since the psychologist's report did not go so far as to establish that the respondent's condition had arisen as a result of her treatment at the hands of her father, it had not been shown that the IPO would have arrived at a different result. It was sufficient for the respondent to establish that evidence which had not been considered might have led to a different finding on the issue of the respondent's credibility.

III. The Appeal

13. The High Court certified that its decision involved a point of law of exceptional public importance and that it was desirable in the public interest that an appeal be taken to the Court, *viz.*, where an applicant for international protection under the Act of 2015 is dissatisfied with the first instance decision on that application, in what circumstances may s/he seek judicial review of that decision given the availability of an appeal to the IPAT under Part 6 of the Act of 2015. The question was posed in terms identical to those that the Supreme Court had identified in *A.B. v. Chief International Protection Officer* [2025] IESCDT 110.

14. In *Clinton v. An Bord Pleanála* [2007] 1 I.R. 272, 282, Denham J. (*nem. diss.*) summarised a line of case-law commenced by the *obiter* observation of Walsh J. in *The People (Attorney General) v. Giles* [1974] I.R. 422, 430, to the effect that “[o]nce a certificate was granted the gate to an appeal was opened and issues other than the certified ground of appeal could be argued on the appeal.” On the same page of her judgment, Denham J. referred to *C.S. v. Minister for Justice* [2005] 1 I.R. 343 as authority for the

proposition that s. 5(3) of the Illegal Immigrants (Trafficking) Act 2000, now s. 5(6) thereof, was amongst the provisions to which that case-law applied.

15. The Notice of Appeal received on 24 February 2026 unsurprisingly emphasises an alleged error on the High Court’s part in granting relief where the respondent had available to her a full, *de novo/ex nunc* appeal to the IPAT which it asserts is an effective alternative remedy. It was also submitted the High Court had applied an incorrect test in determining whether the IPO’s failure to consider a document at first instance justified the grant of relief.

16. The Notice of Appeal does not appeal the findings at paras. 31 to 33 of the judgment under appeal. Paragraph 3.1 of the submissions filed in the Office on the appellant’s behalf on 30 April 2026 recognises that the judgment under appeal “*came to two essential conclusions*”, the first of which is at paras. 31 to 33. At the hearing of 16 July 2026, Counsel for the appellant confirmed his client’s instructions that he does not appeal the finding in those paragraphs of the High Court judgment.

IV. Analysis

17. The decision at paras. 32 and 33 of the judgment under appeal that the IPO acted “*unreasonably in failing to await production of the medical report*” is based upon the finding at para. 31 that that failure was a breach of the duty s. 28 of the Act of 2015 imposes on the IPO. Since the appellant had contended to the contrary before the High Court, that court’s finding resolved one of the two issues in dispute between the parties at the hearing of the

application for judicial review. The duty identified – to assess, in co-operation with applicants, relevant elements of an application – is fundamental to the operation of any system of international protection deemed compatible with national and international standards: *P.O. & S.O v. Minister for Justice & Equality* [2015] IESC 64 per Charleton J. at paras 16 – 19; Case C-756/21, *X v. IPAT* EU:C:2023:523 at paras. 44 to 61. The High Court and both of the parties before it recognised that the breach of the duty so identified was an independent, free-standing ground upon which to grant relief by way of judicial review.

18. The appellant in effect submits that the respondent ought not to have the benefit of the relief she obtained in the High Court because an adequate alternative remedy was available to her that she did not pursue. To accede to that submission, the Court must disregard the fact that the High Court granted the respondent the relief she sought by reference to a contested, free-standing ground which determination the appellant chose not to challenge in this appeal.

19. That latter fact creates two insuperable obstacles to the appellant's case before the Court. First, in the exercise of the appellate jurisdiction from all decisions of the High Court conferred under Art. 34.4.1° of the Constitution of Ireland, the Court is not empowered to reverse, set aside or ignore a High Court order that has become final and conclusive as between the parties. In the absence of an appeal, the Court must accept the High Court order and judgment as constituting a conclusive determination of the ground and, therefore, the grant of relief in the proceedings before

it. Second, since the High Court is not subject to judicial review (*People (DPP) v. Quilligan* [1989] I.R. 46, 57-58 per Henchy J.), the Court cannot find the High Court erred in law by not exercising its jurisdiction to decline relief by reason of the respondent's failure to exercise an adequate alternative remedy in circumstances where the appellant accepts that the High Court was correct to grant relief against him due to the IPO's breach of a statutory duty fundamental to the operation of the system for international protection, which ground constituted an independent basis for the High Court's exercise of its jurisdiction.

20. Without deciding the issue as to whether the respondent was correct to seek the protection of the High Court, the sole jurisdiction competent under the Constitution of Ireland to decide whether a public body, here the IPO, exercised its powers in accordance with law, the approach the appellant adopted in the course of these proceedings indicates that they come within one of the exceptions the Supreme Court identified in *A.B. v. Chief International Protection Officer* [2026] IESC 23 per Donnelly J. at para. 71, namely an entitlement "*to seek a direct judicial review remedy, including a declaration, to prevent persistent illegality on the part of the IPO/Minister*". In the High Court the appellant stood over the IPO's decision on the ground, *inter alia*, that "*...applications for international protection from applicants from safe countries of origin are required to be dealt with under accelerated procedures*". The High Court ruled against that proposition. By not appealing from that finding, the appellant appears to accept that the approach it canvassed and advocated in favour of before the High Court was incorrect at law. It is not unreasonable to surmise that, had it not

been for the High Court's determination of the issue in the respondent's favour, the appellant would have persisted with an approach to the reception of potentially relevant information concerning applications for international protection processed under an accelerated procedure which it only now accepts did not conform with the duties of a fundamental character that s. 28 of the Act of 2015 imposes on the IPO.

V. Conclusion

21. For the reasons set out at Part IV, I dismiss this appeal and affirm the judgment and order of the High Court.

22. The default position under s. 169(1) of the Legal Services Regulation Act 2015 is that a party that has been entirely successful in proceedings is entitled to an award of costs against the unsuccessful party unless the court hearing the matter orders otherwise. I am of the provisional view that, having been entirely successful in this appeal, the respondent is entitled to an order against the appellant for the costs thereof, to include all reserved costs. If parties wish to make any submissions as to the content or form of the orders proposed they should contact the Office no later than seven days from the date of the delivery of this judgment. Should it be necessary, the Court will convene a short hearing to hear those submissions and thereafter make such determinations as it deems fit.

23. As this judgment is delivered electronically, Faherty and Pilkington JJ. have authorised me to record their agreement with it and the orders proposed therein.

Appearances:

For the Appellant: Colmcille Kitson, instructed by the Chief State Solicitor

For the Respondent: Michael Lynn SC and Noeleen Healy, instructed by
Niall J Walsh & Co. Solicitors