



**THE HIGH COURT
JUDICIAL REVIEW**

Record No. 2023/1223 JR

BETWEEN

BB

Applicant

-and-

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL
and**

THE MINISTER FOR JUSTICE

Respondents

JUDGMENT of Ms Justice Sara Phelan delivered on the 9th day of July 2026

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Introduction

1. This judgment relates to a decision by the International Protection Appeals Tribunal refusing international protection to the applicant. In the course of his application for international protection, the applicant claimed, firstly, refugee status and, secondly, subsidiary protection, on the grounds that if returned to his country of origin, Georgia, his life would be threatened and he would face death.
2. In broad terms, the issues raised by the applicant concerned his claims that:
 - a. he was denied an effective remedy in circumstances where the first-named respondent, the International Protection Appeals Tribunal (“Tribunal”), made a decision that it was not in the interests of justice to hold an oral hearing in his case – where credibility issues were at stake – and the Tribunal thus proceeded to determine the application on a papers-only basis;
 - b. he should have received notification from the Tribunal that his case would be determined on a papers-only basis separately from, and in advance of the Tribunal making a decision on the substantive appeal;
 - c. the Tribunal failed to make a decision in respect of witness evidence in deciding not to hold an oral hearing;
 - d. the Tribunal failed to provide cogent reasons as to why a papers-only hearing was in the interests of justice;
 - e. part of the content of the Tribunal’s *Administrative Practice Note - Appeals Before the International Protection Appeals Tribunal (Update - May 2023)* misstated the law; and
 - f. the Tribunal acted irrationally and/or unfairly in making adverse credibility findings additional to those made by the International Protection Office (“IPO”) at first instance;

and the applicant seeks *certiorari* of the decision of the Tribunal to affirm a recommendation of the IPO that the applicant be given neither a refugee declaration nor a subsidiary protection declaration. For the reasons set out hereunder, the reliefs sought by the applicant are granted, albeit not on all grounds as put forward by the applicant.

Legislative Framework

3. In s.2 of the International Protection Act 2015 (“Act”),

- a “refugee” is defined as:

“ a person, other than a person to whom section 10 applies, who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside his or her country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it.”

- a “person eligible for subsidiary protection” is defined as including a person:

“ in respect of whom substantial grounds have been shown for believing that he or she, if returned to his or her country of origin, would face a real risk of suffering serious harm and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country ”

- and “serious harm” is defined as meaning:

*“(a) death penalty or execution,
(b) torture or inhuman or degrading treatment or punishment of a person in his or her country of origin, or
(c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in a situation of international or internal armed conflict.”*

4. The Act provides that, at first instance, an international protection applicant makes an application to the IPO pursuant to Part 3 - Part 5 of the Act, the outcome of which is a determination by the IPO as provided for at s.39 of the Act. Section 39(3) provides that following the examination of an application by an international protection officer, the officer shall prepare a written report (in this judgment referred to as the “IPO report”) and make one of the following recommendations, being that –

- (a) the applicant should be given a refugee declaration;

- (b) the applicant should not be given a refugee declaration and should be given a subsidiary protection declaration; or
- (c) the applicant should be given neither a refugee declaration nor a subsidiary protection declaration;

following on from which, the applicant is notified of the outcome by the Minister for Justice, pursuant to s.40 of the Act.

5. Pursuant to Part 6 of the Act, an applicant may appeal from a determination of the IPO to the Tribunal and the default position, pursuant to s.42 of the Act, is that the Tribunal must hold an oral hearing where the applicant has requested one or where the Tribunal is of the opinion that it is in the interests of justice to do so. However, and relevant to the particular circumstances of the present case, where the IPO report has made a finding “*that the applicant’s country of origin is a safe country of origin*”, pursuant to s.39(4)(e) of the Act, then – instead of the provisions of s.42 applying – the provisions of s.43 of the Act (as regards accelerated appeals procedures) apply, and the default position under s.43 is that the Tribunal makes its decision without holding an oral hearing. Given the centrality of the provisions of s.43 to the present case, it is appropriate to quote it in full, and it provides:

“Where the report under section 39 includes any of the findings referred to in section 39(4), the following modifications shall apply in relation to an appeal under section 41 by the applicant concerned –

- (a) the appeal shall be brought by notice in writing within such period, which may be a shorter period than that prescribed for the purposes of section 41(2)(a), from the date of the sending to the applicant of the notification under section 40, as may be prescribed under section 77,*
- (b) notwithstanding the provisions of section 42, the Tribunal, unless it considers it is not in the interests of justice to do so, shall make its decision in relation to the appeal without holding an oral hearing, and*
- (c) the notification referred to in section 40(1) shall include a statement informing the applicant concerned of the effect of the modifications referred to in paragraph (a) and (b).”*

6. At all material times to the applicant’s case, Georgia was and remains a designated safe country of origin under s.72 of the Act and under the International Protection Act 2015 (Safe Countries of Origin) Order 2018. The effect of this designation is that, in accordance with s.33 of the Act, Georgia must be considered to be a safe country of origin in relation to the applicant’s application, unless the applicant

submitted serious grounds for considering the country not to be a safe country of origin in his particular circumstances and in terms of his eligibility for international protection pursuant to s.33(b) of the Act. The applicant did not make any submission in this regard in the present case.

Factual Background

7. The applicant is a Georgian national whose claim for international protection on 22 March 2022 was grounded on his evidence/claims that he had fled Georgia in the following circumstances:
 - he had worked as a slot technician at a casino;
 - he received a message/call from an unknown number and calls from people who requested that he insert a microchip into the gaming machines (for the purpose of defrauding the casino owner) in return for money;
 - he changed his phone number in order to try and avoid contact but ‘they’ found his new number and the requests were repeated;
 - when he refused to assist these individuals, he was threatened and abused physically and psychologically;
 - this abuse included an incident where the applicant was shown a gun by an unknown individual, a physical assault in a car, a shooting, a damaged car and a deliberate ramming of his car, in which he claimed his then pregnant wife suffered mental and physical harm/difficulties;
 - he initially had not reported the threats to the police because the casino was closing down, and he believed the threats would go away upon it closing;
 - he was prevented from attending at his place of work and there were photographs of himself and his co-workers on the door;
 - he was offered work in an internet café to hack the computers to retrieve the passwords of patrons of the café who were there for online casino games; and
 - his wife and child remained in Georgia and their presence there was a significant risk.
8. In applying for international protection, the applicant:
 - completed the requisite application form on 22 March 2022;

- was interviewed in accordance with s.13(2) of the Act on the same date (“s.13(2) interview”);
- completed his Application for International Protection Questionnaire (“AIPQ”) on 30 May 2022; and
- attended for interview at the IPO, as provided for by s.35 of the Act (“s.35 interview”), on 26 November 2022.

By letter dated 28 February 2023, the applicant was informed that the IPO recommended by way of a determination dated 19 January 2023 that he should be given neither a refugee declaration nor a subsidiary protection declaration. The basis for the IPO’s determination lay in negative credibility findings and findings that firstly, the applicant had not established a well-founded fear of persecution if returned to Georgia (relating to the refugee declaration); and secondly, substantial grounds had not been shown for believing that the applicant faced a real risk of serious harm if returned to Georgia (relating to the subsidiary protection declaration).

9. The IPO report recorded that the applicant did not claim to have a well-founded fear of persecution in Georgia for any of the five stated reasons on the questionnaire and that none of the five boxes (recording a well-founded fear of persecution on the grounds of race, religion, nationality, political opinion or membership of a particular social group) had been ticked by the applicant, but the applicant then gave reasons on the questionnaire for his well-founded fear and those reasons are summarised at §7 above.
10. As regards the applicant’s nationality, the IPO made a finding that on the balance of probabilities the applicant was a national of Georgia. As regards credibility, and given *“the consistency of the applicant’s responses throughout his asylum process”*, the IPO accepted the applicant’s personal circumstances (e.g., his age, where he was from in Georgia, where he was living in Georgia, his marital status, his dependents (wife and child), his religion and his education). Furthermore, the IPO also accepted – given that the *“applicant was largely consistent with his narrative and any credibility issues were generally explained satisfactorily at interview”* – on the balance of probabilities and coupled with the benefit of the

doubt, the fact that the applicant had been approached to take part in illegal activities in the casino. All of these were findings favourable to the applicant.

11. However, the IPO found that a number of credibility issues arose from the applicant's s.35 interview, including that:

- the applicant had omitted certain facts or details of circumstances from his questionnaire and conversely – at interview – the applicant failed to mention, or contradicted, certain facts or details of circumstances that were mentioned in his questionnaire;
- the authenticity of documents submitted by the applicant (e.g., a notice putting him on unpaid leave, a medical report in respect of his wife, photographs of a car with damage to it) could not be verified and were of little probative value;
- the applicant said that the people who were threatening him knew about his wife and child in February 2020, but his child was not born until October 2020;
- the applicant's account of the car accident being connected to his issues at the casino was speculative and vague;
- the fact that the applicant did not claim international protection in any of the countries he travelled through (it was recorded in the Tribunal's decision, drawing from the s.13(2) interview, in addition to the s.35(12) report prepared following the s.35 interview, that the applicant had travelled to the State via Turkey, Italy and the United Kingdom) was inconsistent with the claim that he feared for his life; and
- the applicant did not report the incidents complained of to the police and further, the applicant's perception of a dysfunctional police force that would not be able to afford him adequate state protection, was not corroborated by COI.

12. And ultimately, the IPO concluded that the applicant's account of subsequent victimisation was *"internally and externally inconsistent"* and the applicant was *"unable to satisfactorily address why he had so many inconsistencies and credibility issues with his claim."* The IPO also held that *"the applicant's reason for not claiming protection in the first safe country he arrived in undermines his*

fear of Georgia” and the IPO rejected, on the balance of probabilities, the claimed material fact that the applicant had been a victim of multiple incidents after refusing to assist unknown persons.

13. The IPO then went on to consider the applicant’s claim and the IPO assessed whether there was well-founded fear of persecution and/or a real risk of serious harm against the backdrop of the accepted facts as set out at §10 above, before concluding that the applicant would not face a reasonable chance of persecution if returned to Georgia for *inter alia* the reasons that firstly, the accepted material facts did not meet the threshold of acts of persecution as defined by the Act; secondly, Country of Origin Information (“COI”) did not indicate that the applicant would face a reasonable chance of persecution in Georgia; and thirdly, the applicant, by reason of Georgia being a safe country of origin, would be able to avail of state protection and help from the police. Further, the IPO was satisfied that, in accordance with s.33 of the Act, the applicant had not submitted any serious grounds for considering Georgia not to be a safe country of origin in his particular circumstances and in terms of his eligibility for refugee status.
14. That being so, the IPO moved on to consider subsidiary protection and whether the applicant would face a real risk of serious harm if returned to Georgia and based upon the accepted facts and COI as regards the three elements of serious harm as set out at §3 above, the IPO found that there were no substantial grounds for believing that if the applicant were returned to his country of origin, he would face a real risk of serious harm.
15. The applicant submitted a notice of appeal (albeit using the incorrect form, which had been provided to the applicant by the IPO – and this is discussed further hereunder) to the Tribunal on 10 March 2023 and this notice was accompanied by an email from the applicant’s solicitor on the same date, the relevant part of which stated:

*“Please find enclosed herewith Notice of Appeal completed and signed by our client and Grounds of Appeal on behalf of our client.
Please note is [sic] our intention to provide additional grounds of appeal and submissions.*

We ask you confirm if our request for an oral hearing will be acceded to. If this appeal will be considered on paper only we ask you confirm same and allows [sic] to provide legal submissions and additional grounds of appeal in advance of the decision being issued.

We look forward hearing from you and if you have any further queries, please do not hesitate to contact our office."

16. The notice of appeal appears to have been at least partly completed by the applicant's solicitor and:

- a. included details for the applicant's solicitor;
- b. enclosed grounds of appeal (which were *pro forma* and perfunctory and did not refer to any details specific to the applicant and/or the IPO report) and noted that grounds of appeal were "*to follow*";
- c. stated that additional documentation to be considered in the appeal was also "*to follow*";
- d. at Part 7, requested an oral hearing, and stated that the applicant required a Georgian interpreter;
- e. at Part 8, stated that the applicant's wife would be a witness, gave her email address (but neither the applicant's wife's address nor her telephone number was supplied, as prompted for at Part 8) and noted that the nature, purpose and relevance of her evidence would be to "*confirm story and threats*"; and
- f. at Part 9, stated "*first day to meet solicitor 10.03.2023*" as regards an application to extend time.

17. This notice of appeal also clearly stated on the cover page "***This form should not be used where the recommendation includes findings under section 39(4) resulting in use of accelerated appeals procedures***" and it further stated at Part 8 on p.4 (in the section dealing with witnesses):

"Note: You can request the Tribunal to direct the attendance of a witness before the Tribunal. Please supply the name, address and telephone number of any such persons. Please also state clearly the nature, purpose and relevance of the evidence proposed to be given by them." (emphasis supplied)

18. The notice of appeal also stated *inter alia* at p.8 (in an "Information note"):

“Any additional information on which you intend to rely must be submitted with your application (unless previously submitted to the International Protection Officer).”

19. An acknowledgement email was sent from the Tribunal to the applicant’s solicitor on 10 March 2023, noting that the contents of the applicant’s solicitor’s email of 10 March 2023 had been *“duly noted and circulated to the relevant personnel in the Tribunal”* and the applicant’s solicitor was advised in the same email *“[p]lease visit our website at www.protectionappeals.ie for updates on Tribunal operations. All correspondence with the Tribunal should be conducted by email to info@protectionappeals.ie.”*

20. On 22 March 2023, a more substantive reply from the Tribunal was emailed to the applicant’s solicitor, as follows:

“Your attention is drawn to the Tribunal’s Administrative Practice Note which sets out the practice and procedure before the Tribunal.

As you will be aware, section 43 of the International Protection Act, 2015 (the Act) provides for an accelerated appeal procedure where the Report prepared by the International Protection Officer, under section 39 of the Act, contains any of the findings referred to in section 39(4).

In this case, the Report contains a finding that the applicant’s country of origin is a safe country of origin under section 39(4)(e). Accordingly, in accordance with s.43(b) of the Act, the Tribunal shall make its decision without holding an oral hearing unless it considers it is not in the interests of justice to do so.

The Tribunal has noted your client’s request for an oral hearing. This will be brought to the attention of the Tribunal member to whom your client’s appeal is assigned.”

21. It was not apparent from the papers before me that there was any further correspondence between the applicant/his solicitor and the Tribunal or *vice versa*. Nor was it apparent that any additional grounds of appeal or documentation had been forwarded (as suggested on the notice of appeal – see §16.b and §16.c above) had been forwarded on behalf of the applicant to the Tribunal. And no such further correspondence/additional documentation was brought to my attention at hearing.

22. Ultimately, on 02 October 2023 (more than six months after the notice of appeal had been submitted, the relevance of which is discussed hereunder), the Tribunal

made a decision ‘on the papers’ (“impugned decision”), affirming the IPO recommendation that the applicant should neither be given a declaration of refugee status nor a declaration of subsidiary protection. In the impugned decision, the Tribunal summarised the applicant’s responses at interview on 22 March 2023, his responses to the questionnaire and his answers at the s.35 interview, before going on to note the rejection of the applicant’s application for international protection by the IPO and the grounds of appeal as submitted on behalf of the applicant on 10 March 2023.

23. The Tribunal then considered the applicant’s request for an oral hearing and noted the contents of the letter of 22 March 2023 from the Tribunal to the applicant’s legal representatives, as set out at §20 above, before going on to note that:

“ save and except these grounds [i.e., the grounds of appeal as submitted on behalf of the applicant on 10 March 2023], the Tribunal has not received any further submissions and/or communications from the Appellant’s Legal Representatives after the receipt of the Notice of Appeal/Grounds of Appeal on the 10th March 2023 up to the date of the making of the within decision as to why the Appellant’s appeal hearing should be assigned an oral hearing.”

24. The Tribunal then considered the provisions of s.43(b) of the Act and the existing jurisprudence as set out hereunder:

- **GA & anor v. IPAT & ors** [\[2022\] IEHC 440](#), per Heslin J, that papers-only appeals are lawful and “[t]he applicants’ right to be heard does not include an absolute right to an oral hearing before IPAT” (at §208); the Tribunal should not take into account matters of which an appellant is unaware and an applicant is deemed to be aware of the contents of their questionnaire and, by implication, the s.35 interview (at §110); there is no obligation on the Tribunal to request documents from applicants, particularly when applicants are aware that the absence of the documents will undermine their credibility (at §81 and §94); and
- **TB v. IPAT & anor** [\[2022\] IEHC 275](#), per Phelan J at §92, that the Tribunal has a discretion to refuse a request for an oral hearing but this discretion falls to be exercised in accordance with the requirements of constitutional justice; in determining whether the interests of justice require an oral hearing in any given case, the Tribunal should demonstrate that it has had regard to the

applicant's right to a fair decision-making process through its consideration of identified credibility issues and its conclusion on whether they are capable of being justly resolved without an oral hearing and, if so, why;

before going on to quote extensively from the decision of Ferriter J in *FP v. IPAT & anor* [2022] IEHC 535. The judgment in *FP* is discussed further hereunder and for ease of reference (and to avoid repetition), those parts of the judgment quoted by the Tribunal in the impugned decision are underlined in the discussion section of the present judgment at §47, albeit that the Tribunal did not quote from *FP* in a sequential manner.

25. The Tribunal then went on to hold at §13-§14 of the impugned decision that:

“ the claims made by the Appellant have been largely consistent throughout the international protection application process and with each subsequent form of application/questionnaire and/or interview.

The Tribunal has considered all before it in relation to whether under the circumstances the Tribunal can proceed to make a determination herein on the Appellant's appeal on an examination of the papers only. The Tribunal finds that having regard to all before it and in particular the analysis hereinbefore and recent case law that the Tribunal can proceed to make a determination herein on the Appellant's appeal on papers only. The Tribunal finds that the Appellant who is legally represented has made consistent claims throughout the international protection procedure and that having regard to all before it the Tribunal finds that it can proceed to make a determination on the Appellant's claims having regard to the claims made heretofore on the papers only. ”

This constituted the entirety of the Tribunal's analysis of the applicant's request for an oral hearing. As more particularly set out hereunder, from §61 onwards, the failure on the part of the Tribunal to give adequate reasons as to why the interests of justice did not warrant an oral hearing (in addition to the failure on the part of the Tribunal to engage with the applicant's request for an oral hearing and the reason for that request, however briefly expressed) leads me to grant an order of *certiorari* in the circumstances of this case.

26. Having decided that it could make a decision 'on the papers', the Tribunal then proceeded to consider the substance of the applicant's appeal and for the reasons

set out hereunder, it is not necessary to review the detail of the impugned decision as regards the applicant's substantive appeal.

Procedural Background

27. The applicant opened the application for leave on 27 October 2023, applied *ex parte* for leave to seek judicial review on 20 November 2023 and leave was granted by order of Hyland J on that date, whereupon a notice of motion was issued by the applicant, returnable for 08 December 2023. A statement of grounds had been filed on 25 October 2023 and the applicant had also sworn an affidavit in support of his application on 25 October 2023 ("grounding affidavit"), and an affidavit of verification on the same date.
28. When the matter initially came on for hearing before me, it was apparent that the applicant had not sworn foreign language affidavits in accordance with RSC O.40, rr.18-20, in circumstances where his grounding affidavit contained an averment that *"the Statement Required to Ground Application for Judicial Review ("Statement of Grounds") herein, which has been translated from English and explained to me in the Georgian language."* It was apparent from this averment that the applicant was not sufficiently proficient in English to swear an affidavit in English – or, in the terminology of O.40, r.18, he was not *"capable of making an affidavit"* in English – and that foreign language affidavits were required. I thus adjourned the hearing for a period of time in order to allow the applicant to comply with the provisions of O.40, rr.18-20 and foreign language affidavits were subsequently sworn by the applicant on 15 April 2025.
29. The impugned decision was exhibited to the applicant's grounding affidavit, as was the notice of appeal referred to at §15 and §16 above, and the grounding affidavit referred to the applicant's responses noted on the notice of appeal as set out at §16.d and §16.e above (regarding his request for an oral hearing before the Tribunal and stating that his wife would be a witness). The applicant also averred to the conclusion by the Tribunal regarding the request for an oral hearing, the finding by the Tribunal that it could proceed to determine the appeal on a papers-only basis and the Tribunal's ultimate conclusion following its assessment of facts and

circumstances. And lastly, the applicant averred to the possible necessity for an extension of time.

30. The applicant's solicitor also swore an affidavit on 25 October 2023, for the purpose of compliance with Practice Direction HC81. This affidavit averred to the facts that

- *" when the Applicant was issued by the IPO with the s.40 Notice on 28th February 2023, which included the Section 39 Report, dated 19th January 2023, it was accompanied by a standard Schedule 1 "International Protection Appeals" Notice of Appeal form. This contains the notation: "This form should not be used where the recommendation includes findings under section 39(4) resulting in use of accelerated appeals procedures" and notation: "Therefore if you wish to appeal please complete the "international Protection Appeals Tribunal - Notice of appeal (enclosed at schedule 1) and submit it within 10 working days of the date of this letter to the following address:" I say that, in my experience, it was nevertheless common for the IPO to issue this form, even for decisions which contained a s.39(4)(e) findings [sic]."*
- *" the IPAT publishes another Notice of Appeal form, entitled Schedule 1A "International Protection Appeals – Accelerated Procedures". This contains the notation: "This form should ONLY be used where the recommendation includes findings under section 39(4)* resulting in use of accelerated appeals procedures".*
- *"The Schedule 1A Notice of Appeal form has a more elaborate Part 7. Paper based appeals section. This provides space to set out "reasons why you are of the view that it is in the interests of justice that an oral hearing be held in your case". Notably, however, there is no section to list witnesses, as in the Schedule 1 Notice of Appeal form."*

31. The applicant's solicitor's affidavit also referred to the applicant's responses noted on the notice of appeal as set out at §16.d and §16.e above, before going on to exhibit the email correspondence with the Tribunal as referred to at §15 to §20 above, and the applicant's solicitor then averred that *"no issue was raised by the IPAT in respect of the proper form of the Notice of Appeal. In any event, no determination was made in the Impugned Decision in respect of the witness evidence, and no communication issued from the Tribunal in respect of how her evidence was to be adduced."*

32. The applicant's solicitor then made certain references to s.43(b) of the Act (which is discussed in greater detail hereunder) and lastly the applicant's solicitor averred to delay and an extension of time. However, as regards applying for judicial review and seeking *certiorari* of the impugned decision, the time limit for commencing proceedings is 28 days from the date of the impugned decision, in accordance with s.5(2) of the Illegal Immigrants (Trafficking) Act 2000 as amended by s.34 of the Employment Permits (Amendment) Act 2014. It seems to me that no issue arises as to time, and no decision is required by me in this regard, given that the impugned decision was notified/issued on 04 October 2023 and the application for leave was opened on 27 October 2023. Further, the fact that the applicant was 'within time' was accepted by the respondents, albeit by way of written submissions rather than in the statement of opposition. And thus, I think it appropriate to note at this juncture that where time is not in issue, the notice of motion should not seek an extension of time, given that whether or not an extension of time is required should be clear prior to the notice of motion being filed and by the time the leave application is being heard. I accept that the statement of grounds may sometimes seek an extension of time out of an abundance of caution in case, for example, there is a delay in filing – and in those circumstances, the applicant's submissions should clarify whether or not an extension of time is actually required.
33. A statement of opposition, dated 18 July 2024, was filed and an affidavit was sworn on behalf of the respondents on 20 February 2025, which exhibited the version of the Administrative Practice Note ("APN" or "Practice Note") which was current as of the applicant's appeal to the Tribunal and a blank Schedule 1A form (being the correct notice of appeal form which should have been provided by the IPO to the applicant), both of which had been referred to by the applicant's solicitor in her affidavit. Insofar as they are relevant to this judgment, the matters relied upon by the applicant and the respondent in the respective statements and affidavits are discussed in more detail below.

Discussion

34. I had the benefit of written and oral submissions from counsel for both parties and it is clear that the following issues fall to be determined by me:

- a. whether a refusal of an oral hearing under s.43(b) of the Act must issue separately and in advance of the substantive appeal decision so as to allow an applicant an effective remedy to challenge the s.43(b) decision (relying on ground §e)1. of the statement of grounds);
 - b. whether the impugned s.43(b) decision refusing to grant an oral appeal hearing was otherwise procedurally unfair or unlawful (relying on ground §e)1. of the statement of grounds); and/or
 - c. whether the Tribunal acted irrationally and/or unfairly in making adverse credibility findings in addition to those made by the IPO (relying on grounds §e)1. and §e)2. of the statement of grounds);
- and I will now consider each of these issues in turn.

Whether a refusal of an oral hearing under s.43(b) of the Act must issue separately and in advance of the substantive appeal decision so as to allow an applicant an effective remedy to challenge the s.43(b) decision

- 35. The applicant's primary argument in respect of the requirement to issue a separate decision refusing an oral hearing focussed on the right to an effective remedy. Relying on the decision of the Supreme Court in *AWK v. Minister for Justice* [2020] IESC 10; [2024] 1 IR 539 (*per* McKechnie J at §34, that a literal approach remains the primary method of statutory interpretation), counsel for the applicant submitted that a decision under s.43(b) of the Act was not expressly subject to the 28-day time constraint provided for at s.5 of the Illegal Immigrants Trafficking Act 2000 (as amended) – i.e., the time limit applicable to instituting judicial review proceedings in respect of a final substantive decision under s.46 of the Act – and that instead, a challenge to a s.43(b) decision was subject to the time limits for instituting judicial review proceedings as provided for by RSC O.84, r.21 – i.e., within three months from the date on which grounds for the application first arose – and that this differentiation militated in favour of the applicant's argument that a s.43(b) decision should issue separately and in advance of the substantive hearing.
- 36. In response, counsel for the respondent relied upon the decision of Gearty J in *ED & AD (Zimbabwe) v. Minister for Justice* [2024] IEHC 303 where, in the context

of an application to quash deportation orders made under s.51 of the Act, the Court held at §1.3 that:

“There is no statutory requirement for a separate decision in respect of information received under s.50 of the International Protection Act 2015 (“the 2015 Act”) to be made in writing. What is required is that the Applicants understand the reasons for the deportation orders. s.50 ensures the continuing responsibility of the Minister to maintain the prohibition on refoulement.”

and at §2.4 - §2.5 that:

“The Applicant relies on A.W.K. v The Minister for Justice [2020] IESC 10 but that is authority, it seems to me, for the opposite conclusion. As in AWK, the section in question here, s.50, is a necessary staging post on the way to a s.51 decision. As in A.W.K., the section should be read in its context. The effect of a different time limit (and three months is the time limit argued for, as set out in O.84) would be that an interim decision on new information submitted under s.50 could be challenged long after a deportation order had been made by a Minister under s.51, who did not realise that her earlier decision was about to be reviewed. That simply does not make sense. To use the words of McKechnie J. in A.W.K., the result would be discordant with the remaining legislation. Further, to allow a challenge to a s.50 decision after a s.51 decision has issued and 28 days have passed would not be conducive to a fair and effective system of deportation. Allowing a challenge to the process by which an order was made at any time within three months while confining any other challenge to the deportation order to a period of 28 days does not make logistical sense.”

Supplemental submissions

37. In circumstances where two decisions of Ferriter J (*KS v. IPAT & anor* [2026] IEHC 13 and *IM v. IPAT & anor* [2026] IEHC 64) were delivered in the interregnum between the substantive hearing in the present case and preparation of this judgment, I enquired as to whether the parties would like to make submissions on the application of *KS* and *IM* to the present case. The parties answered in the affirmative, provided supplemental written submissions and a short further oral hearing was arranged. In *KS* and in *IM*, Ferriter J concluded that the Tribunal was entitled to refuse an oral hearing – and that such refusal was lawful – in the circumstances pertaining to both of those cases, and that an oral hearing was usually required only where there were demeanour-based credibility issues or where there were contested facts such as warranted an oral hearing. Whilst perhaps the decisions in *KS* and *IM* may be more directly relevant to the issue as identified

at §34.c above – whether the Tribunal acted irrationally and/or unfairly in making adverse credibility findings additional to those made by the IPO, and for the reasons set out at §7474 below, this judgment does not make any determination in terms of that issue – it is appropriate to consider these supplemental submissions in terms of additional issues raised therein.

38. Counsel for the applicant contended by way of his supplemental submissions that *KS* did not decide the applicant’s distinct ‘sequencing/prior notification’ point – i.e., whether, where an applicant had requested a prior decision, s.43(b) should be decided and communicated before the s.46 merits decision – and maintained his contention that where (as in the present case) an applicant has expressly sought advance clarity and the ability to act on it (including by lodging focused submissions and, if necessary, seeking review of the procedural route), fair procedures and effectiveness require that the s.43(b) decision be made and notified before the s.46 merits decision.
39. And, as regards *IM*, counsel for the applicant noted that in that case the contention that fair procedures were breached by a failure to communicate an advance decision on the oral hearing question was not pursued at the hearing and indeed Ferriter J at §23 noted that “*a number of authorities make clear that there is no entitlement to a separate decision*” in respect of whether an oral hearing should be held. Counsel for the applicant submitted that the decision in *IM* must be read in the context that the ‘appropriate case’ (i.e., where specific submissions were made and a prior decision was sought) was not being adjudicated in *IM* because it was not argued and that specifically, the authorities in *FP* and *CC* both preserved, rather than foreclosed, the central question for an ‘appropriate case’.
40. Counsel for the applicant also sought, by way of his supplemental submissions, to introduce a modification to the argument regarding the availability of an effective remedy (which I deal with from §45 below), and that modification was that the failure to provide any timeframe for when a s.43(b) decision will be made and communicated, is contrary to the right to an effective remedy at Article 39 of Directive 2005/85/EC (“procedures Directive” or “2005 Directive”). And counsel for the applicant suggested that this further point was touched upon at §21-§22 of

his original submissions. However, having reviewed §21-§22 of the applicant's original submissions, I do not see any reference to a timeframe therein, or indeed any reference to the detail of Article 39 of the procedures Directive upon which counsel for the applicant sought to rely in his supplemental submissions and thus, I am making no further determination on the modified argument sought to be advanced by the applicant in this judgment.

41. It is clear from the wording of s.43(b) of the Act that the default position in respect of the Tribunal hearing a substantive appeal in relation to an applicant from a safe country of origin is that such appeal be heard 'on the papers' – or, as set out in s.43(b), "*without holding an oral hearing*" – unless the Tribunal considers that "*it is not in the interests of justice to do so*". This, it seems to me, places an overarching and continuing obligation on the Tribunal to – as it considers an appeal 'on the papers' – be fully cognisant of the "*interests of justice*" at all times during the appeal process and if at any time during the 'on the papers' consideration the Tribunal is of the view that the interests of justice warrant an oral hearing, then the Tribunal must cease its papers-only consideration, move to an oral hearing and inform the applicant of same. The net effect of this overarching and continuing "*interests of justice*" obligation is that the s.43(b) decision is closely intertwined with the consideration of the substantive appeal and to have an 'obligatory' two-stage process as suggested by the applicant is not only unwarranted and contrary to the plain wording of s.43(b), but it is also artificial and inefficient.
42. Counsel for the applicant also argued at hearing that issuing a separate advance s.43(b) decision would have been more efficient. I do not, for the reasons as expressed at §44 below, accept this to be the case. In any event, efficiency can never trump fair procedures, and I am satisfied that fair procedures are adequately protected by the overarching and continuing obligation identified above.
43. That is not to say that a Tribunal may not, in the specific circumstances of a particular case (perhaps where comprehensive, relevant and specific submissions had been made as to the need for an oral hearing), decide to notify an applicant as to the fact that a decision has been reached to hear the appeal 'on the papers' in advance of determining the substantive appeal, but given that an appeal 'on the

papers' is the default position, an applicant cannot claim to have been taken by surprise when an appeal 'on the papers' occurs in the absence of such prior notification. As noted by Heslin J in *GA* at §120, the s.43(b) decision is a "*discrete decision*", and whilst counsel for the applicant in the present case submitted that Heslin J suggested at §122 of *GA* that a s.43(b) decision is separately reviewable (the import of this from the applicant's perspective being, presumably, that a s.43(b) decision must therefore be issued in advance), this must be seen in light of the facts of that case where the s.43(b) decision was, in fact, issued in advance of the substantive decision. However, the fact that a s.43(b) decision is a "*discrete decision*" does not mean that it is a decision that can or should be arrived at in isolation from the substantive decision, and whilst a s.43(b) decision is capable of being reviewed in its own right, does not mean that it must issue separately from, and in advance of, the substantive decision.

44. Whilst not forming a definitive view of the applicant's proposition that a challenge to a s.43(b) decision attracts a different time limit for instituting judicial review proceedings, it seems to me that in practice this would mean that a s.43(b) decision remained reviewable for a period of time well in excess of the period within which a substantive decision remained reviewable and it seems to me that this is not what the legislature envisaged. However, I do not need to decide this point in the present case since if there is to be an obligatory two-stage process as suggested by the applicant (in the framing of the issue set out at §34.a above), that would necessarily result in delay and inefficiencies and the Tribunal would have to, for every appeal subject to the accelerated appeal procedures, firstly, alert an applicant as to the fact that the Tribunal, having considered the interests of justice, was making its decision in relation to the appeal without holding an oral hearing and issue a separate decision in this regard; secondly, allow a period of time within which an applicant could challenge that decision (that period being three months according to the applicant); and thirdly, either postpone the consideration of the substantive appeal if the s.43(b) decision were challenged or issue the decision on the substantive appeal at a time somewhat removed from the original consideration, at which point in time it is at least conceivable that intervening circumstances may require a fresh consideration of the decision on the substantive appeal. I am of the view that this delay and uncertainty are entirely antithetical to the objectives of the Act, which

include ensuring that international protection applicants from safe countries of origin are subject to an accelerated appeals procedure and this feeds back to my view that there is no requirement that a s.43(b) decision be notified to an applicant in advance of a substantive s.46 decision.

45. As regards the applicant's effective remedy argument, I am satisfied that, albeit that judicial review cannot be equated to an appeal *simpliciter*, contemporary judicial review constitutes an adequate remedy under EU law requirements. In ***NM(DRC) v. Minister for Justice*** [2016] IECA 217; [2018] 2 IR 591, Hogan J held at §51 that:

“In the light of this trilogy of case-law – Meadows, ISOF and Efe – it is clear that what might be termed modern, post-Meadows-style judicial review will satisfy the effective remedy requirements of Article 39.1 of the Procedures Directive”

and Hogan J stated at §34 of ***Efe v. Minister for Justice & ors*** [2011] IEHC 214; [2011] 2 IR 789, that:

“[I]t is clear that, post-Meadows at any rate, it can no longer be said that the courts are constrained to apply some artificially restricted test for review of administrative decisions affecting fundamental rights on reasonableness and rationality grounds. The test is broad enough to ensure that the substance and essence of constitutional rights will always be protected against unfair attack.”

46. I am satisfied that an applicant is not denied a right to an effective remedy – which is the applicant's basis for suggesting a two-stage process – by reason of my views as expressed above since the remedy of judicial review remains available to an applicant if the circumstances surrounding that applicant's application for international protection justify such course of action. Furthermore, it is clear that in the present case the applicant has not been denied access to such effective remedy since judicial review was available to him and constituted an effective remedy in law.

Whether the impugned s.43(b) decision refusing to grant an oral appeal hearing was otherwise procedurally unfair or unlawful

47. In *FP*, Ferriter J considered whether the Tribunal had breached fair procedures in failing to inform an applicant separately, and in advance of the substantive decision, of its decision not to hold an oral hearing and whilst part of Ferriter J’s judgment is set out in the impugned decision, it is worth quoting from that judgment in greater detail and I gratefully adopt the reasoning of Ferriter J. As noted at §23 above, those parts of *FP* relied upon by the Tribunal in the present case are underlined in the extract from *FP* below, albeit the sequencing of the quotation in the impugned decision was slightly different:

“26.

..... [in *SK v. IPAT* [\[2021\] IEHC 781](#)] *I held that the Tribunal acted unlawfully, on the facts, in arriving at that decision in circumstances where it did not properly engage with the essential case advanced by the applicant as to why there should be an oral hearing.*

27.

..... *I did not in that case consider, let alone determine, whether an appellant under the accelerated appeal procedure provided for in s.43 was entitled to a decision in advance of the substantive appeal determination as to whether or not an oral hearing would be conducted. Further, I did not address the question as to whether there was an onus on the Tribunal dealing with a s.43(b) appeal to communicate its thinking as regards whether or not there should be an oral hearing in advance of its substantive determination of the appeal. I did not consider the contents of the Practice Note, or of the standard appeal form, or the implications of same for an appellant’s expectations of the shape and structure of the accelerated appeal process on any given set of facts.*

28.

Accordingly, and for the avoidance of any doubt, SK is not authority for the proposition that there must be a two-stage process in any appeal under s.43, with the first stage involving a communication of the Tribunal’s view as to whether or not it is in the interests of justice that there should be an oral hearing of the appeal and the second stage involving, depending on the decision reached at the first stage, either a papers-only determination (with an appropriate opportunity for the appellant to lodge written submissions and any additional documentation before that determination) or an oral hearing (with appropriate opportunity for the appellant to lodge written submissions and any additional documentation before that hearing).

29.

The passages from the Practice Note quoted earlier in this judgment make it clear that an appellant should not assume that there will be any further communication from the Tribunal following receipt of a notice of appeal in cases where, such as here, the accelerated appeal procedure applies. This seems to me to be in keeping with the terms of s.43 itself which clearly

contemplate (in contradistinction to s.42) that, in a safe country of origin appeal context, the default position is that an appeal will be determined on the papers only.

30.

While s.43 provides for the Tribunal making its decision in an accelerated appeal without holding an oral hearing unless it considers it not in the interests of justice to do so, the appellant is clearly not a passive participant in the process. The standard notice of appeal requires the appellant to indicate whether they are seeking an oral hearing and, if so, on what basis. The applicant ticked the box on his appeal notice for an oral hearing but did not set out any grounds for that position either in the notice of appeal, in his solicitor's accompanying letter or in any follow-up submissions.

31.

The onus is fundamentally on an appellant to prosecute his or her appeal. If, on a given set of facts, an appellant pursuant to s.43(b) advances grounds and submissions in support of an oral hearing i.e. for the Tribunal not adopting the default position in such appeals and calls on the Tribunal to make a decision on that issue in advance of the ultimate determination of the appeal, it may be that fair procedures would require a decision on that issue in advance of the substantive appeal determination. Such an assessment would have to be fact sensitive and the parameters of what may be required as a matter of fair procedures in such a case will have to await consideration in an appropriate case. For present purposes, I believe it suffices to say that it could not be said as a matter of statutory interpretation, or as a matter of principle as regards the operation of the appeal procedure governed by s.43(b), that the Tribunal is under an onus to determine the oral hearing issue first and to actively invite submissions from an appellant on that question, in advance of proceeding to a final determination on the appeal.

32.

The striking feature of this case is that there was simply no follow-up at all by the applicant or his solicitor following his solicitor's request to the Tribunal on 16th September 2020 to permit an extension of time to lodge the appeal i.e. for late acceptance of his appeal. On the facts, the Tribunal was entitled to proceed on the basis that the applicant's solicitors had received its replying communication of 21st September 2020. I do not believe that the applicant can seek to fix the Tribunal with such consequences as may have flowed from the fact that neither the applicant nor his solicitor followed up at any point in the 12 months after the 16th September 2020 letter to establish whether the appeal had been accepted. the fact that the Tribunal's email of 21st September 2020 was not seen by the applicant's solicitor, did not, in my view, absolve the applicant from seeking to actively prosecute his application for a late appeal, and, thereafter his appeal if that application was granted. One can reasonably infer that the applicant was in fact content to "let sleeping dogs lie". Having adopted that approach I do not believe that the applicant can now

complain that the process was unfair in a legal sense when the process proceeded on the basis advertised in the Tribunal's Practice Note referred to earlier.

33.

On the basis of the contents of the Practice Note and, indeed, the terms of s.43, an appellant is on clear notice of the fact that the default position will be that an appeal of this type will be dealt with on the papers. The applicant here had advanced no reasons or grounds at all either in his notice of appeal or the accompanying solicitor's letter as to why it was in the interests of justice that his appeal should be dealt with, contrary to the statutory default position, by an oral hearing. I see no basis in the circumstances for any finding that the Tribunal acted otherwise than in accordance with law. If the applicant wished to ascertain whether his late appeal had been accepted for determination, he or his solicitor could have written at any point to do so. If he wished thereafter to advance submissions as to why his appeal should be dealt with orally or, if not, what his submissions were in respect of the substantive appeal, he could likewise have done so. Instead, the applicant remained silent on all these matters. He does not explain why no reminder letter was sent to the Tribunal, why he did not follow up matters with his solicitor or why he did not otherwise take any steps to establish whether his application for a late appeal had been accepted or to otherwise advance his appeal.

34.

As regards the question of the practice of IPAT as regards advance notification of decisions on requests to hold oral appeals under s.43(b), on the basis of the evidence before the Court, it appears to be the case that there is no standard practice in relation to Tribunal members conveying a decision in s.43(b) appeals as to whether or not there will be an oral hearing prior to proceeding to a determination of the substantive appeal, albeit that it does appear that where oral hearings are requested, some Tribunal members take the approach of issuing a decision on such requests in advance of determining the substantive appeal and invite further submissions prior to the determination of the substantive appeal (whether on a papers-only or oral hearing basis) in such instances.

35.

One can see how this latter approach is helpful for appellants and their legal representatives in circumstances where a case has been made to the Tribunal as to why an oral hearing will be necessary in the interests of justice, but where the Tribunal does not accept that submission. What distinguishes that type of scenario from the facts of the case before me is that other than ticking the box on the appeal form no positive case at all was made to the Tribunal by the applicant as to why it was said to be in the interests of justice for an oral hearing to be held and no request was made to the Tribunal for a decision on the oral hearing question in advance of a decision on the substantive appeal. In the circumstances, it is perfectly understandable why the Tribunal did not see the

need to issue a separate decision on the question of an oral hearing in advance of the determination of the appeal itself.

36.

I would further observe that the fact that a Tribunal Member may, in some cases (such as SK), issue a separate decision on a request to hold an oral hearing does not mean that the Tribunal is under an obligation to do so in every case. It is certainly not an approach specified or required under s.43(b). A two-stage process, as a matter of the wording of the section, is only necessary if the decision maker accedes to a request for an oral hearing, in which case the appellant will then be notified of the holding of an oral hearing. It would appear from the Practice Note that in that eventuality an opportunity will then be permitted to lodge written submissions in advance of the oral hearing. As noted earlier, whether as a matter of fair procedures entitlement there should be a prior decision on a request for an oral hearing, where the request is the subject of specific submissions and accompanied by a request that a decision on that issue should issue before the determination of the appeal, is a question that will have to await resolution in an appropriate case.”

48. Counsel for the applicant urged me to find that the present case was an appropriate case to resolve “*whether as a matter of fair procedures entitlement there should be a prior decision on a request for an oral hearing, where the request is the subject of specific submissions and accompanied by a request that a decision on that issue should issue before the determination of the appeal*” but I do not agree with the applicant’s submission for the reasons as set out below.
49. However, before setting out such reasons, the contents of the Practice Note must be considered and it is stated in its “*Introduction*” to be “ in furtherance of ensuring the efficiency of the functions of the Tribunal in accordance with fairness and natural justice”, reflecting the duty imposed on the chairperson of the Tribunal, pursuant to s.63(1) of the Act to “ ensure that the functions of the Tribunal are performed efficiently and that the business assigned to each member is disposed of as expeditiously as may be consistent with fairness and natural justice”. The Practice Note deals with the process of an appeal to the Tribunal, commencing with “*Tribunal Sittings*”, “*Communications with the Tribunal*” and “*Initiating an Appeal to the Tribunal*”, before dealing with – for the purposes of the present case – a “*Request to hold an oral hearing*” at Section 4.5. Section 4.5.1 deals with the accelerated procedure and states:

“Appellants in respect of whom an International Protection Officer’s report contains any of the findings referred to in section 39(4) of the 2015 Act, i.e.

.....

*e) that the applicant’s country of origin is a safe country of origin, shall, in accordance with section 43(b) of the 2015 Act, have their appeals determined by the Tribunal **without an oral hearing**, unless the Tribunal considers it is not in the interests of justice to do so.*

*The Notice of Appeal for the submission of appeals falling under the accelerated appeal procedures pursuant to section 43 of the 2015 Act is contained in Schedule 2 of the International Protection Act 2015 (Procedures and Periods for Appeals)(amendment [sic]) Regulation 2022 (S.I. No. 542 of 2022). Should an appellant whose appeal falls under the accelerated procedures be of the view that in their case an oral hearing is necessary, they should set [sic] in their **Notice of Appeal Form 1A** any reasons why they are of the view that it is in the interests of justice that an oral hearing be held in their case.*

*Appellants are advised that, in accelerated appeals pursuant to section 43 of the 2015 Act, where there is no automatic entitlement to an oral hearing on request, the determination as to whether, exceptionally, an oral hearing is necessary in the interest [sic] of justice is a matter for the Tribunal Member dealing with the appeal. Any submissions as to why an oral hearing is deemed necessary by an appellant must be clearly made at the time the Notice of Appeal is submitted and while any such submissions will be taken into consideration, parties should not expect the Tribunal to engage on correspondence on the issue. In other words, in the case of an accelerated appeal, the Tribunal may determine, without further notice, that an oral hearing is not required and, while the refusal of same will be addressed in the final decision of the Tribunal, the Tribunal might not contact the appellant/their legal representative between the acceptance of the appeal and the issuing of the decision on the appeal for international protection. The Tribunal considers that what is required is that an appellant must have an opportunity to make his or her case. Whether an oral hearing is required in the interests of justice will depend on the nature of the case made (see: *VJ v Minister for Justice and Equality and Ors* [2019] IESC 22, unreported, Supreme Court, 31 October 2019 [it should be noted that the citation for *VJ & ors v. Minister for Justice and Equality & ors* in the Practice Note is incorrect and it should read [\[2019\] IESC 75](#)]).*

50. Whilst the applicant sought a declaration in his statement of grounds that:

“ the First Named Respondent’s Administrative Practice Note – Appeals Before the International Protection Appeals Tribunal (Update – May 2023) (the “Administrative Practice Note”) misstates the law in stating that, where s.39(4) of the 2015 Act applies, the Tribunal may determine “without further notice” that an oral hearing is not required and that “the Tribunal might not contact

the appellant/their legal representative between the acceptance of the appeal and the issuing of the decision on the appeal for international protection”

it is clear for the reasons set out above that, in the circumstances of the present case, the Practice Note did not misstate the law and the applicant is not entitled to such declaration. The Practice Note accurately reflects the statutory default under s.43(b) that an accelerated appeal will be determined without an oral hearing unless the Tribunal considers that it is not in the interests of justice to do so, and it also makes clear that an appellant who contends that an oral hearing is necessary must set out the reasons for that contention at the time of submitting the notice of appeal. Insofar as the Practice Note states that the Tribunal may determine, without further notice, that an oral hearing is not required and may address that refusal in the final decision, that is not inconsistent with s.43(b) or with the authorities, provided that the Tribunal’s decision in any individual case complies with the requirements of fair procedures and gives adequate reasons for the course adopted. Further, it is clear that Hyland J in *CC v. IPAT & anor* [2023] IEHC 636 endorsed the procedure as set out in the Practice Note. That being so, whether or not the procedures applied in the applicant’s appeal to the Tribunal were procedurally unfair must be assessed in light of the contents of the Practice Note and the particular circumstances of the appeal.

51. As set out at §16.f above, the applicant first met his solicitor, in the context of an appeal to the Tribunal, on 10 March 2023. The notice of appeal submitted on that date was sparse, and the grounds of appeal were perfunctory, generic and expressed in very general terms, with no detail being provided to substantiate the grounds of appeal or to explain why, in the particular circumstances of the applicant’s case, the interests of justice required an oral hearing. The email of 10 March 2023, accompanying the notice of appeal and grounds of appeal, stated:

“Please note is our intention to provide additional grounds of appeal and submissions.

We ask you confirm if our request for an oral hearing will be acceded to. If this appeal will be considered on paper only we ask you confirm same and allows [sic] to provide legal submissions and additional grounds of appeal in advance of the decision being issued.”

52. It is significant, however, that despite the impugned decision not issuing for in excess of six months following the lodging of the notice of appeal – a very substantial period of time during which further steps could have been taken by the applicant – neither additional grounds of appeal nor submissions were provided by the applicant’s solicitor. Nor was any witness statement, *précis* of proposed evidence, or other material submitted to explain the nature, purpose and relevance of the evidence proposed to be given by the applicant’s wife, beyond the brief statement that she would “*confirm story and threats*”.
53. Further, and despite the detailed response from the Tribunal on 22 March 2023 as set out at §20 above, there was no subsequent correspondence from the applicant’s solicitor to the Tribunal. The remarks of Ferriter J in *FP* are apposite in this regard: the “*onus is fundamentally on an appellant to prosecute his or her appeal*”. In the present case, absent comprehensive, relevant and specific grounds of appeal, submissions or other material directed to the asserted need for an oral hearing, the Tribunal had limited material with which to assess whether the interests of justice required departure from the statutory default position under s.43(b). The applicant’s request for an oral hearing was, in substance, a bare or minimally particularised request, and the accompanying request that the Tribunal confirm whether an oral hearing would be granted was insufficient, in itself, to require the Tribunal to engage in a separate prior determination of that issue before deciding the substantive appeal. In considering this at hearing, counsel for the respondent accepted in answer to a question posed by me – “*do you accept that if the applicant had put in additional information, précis, statement or whatever, that there was an onus on the Tribunal to consider that, in terms of making a decision as to whether the interests of justice lay in relation to having an oral hearing*” – that the Tribunal would have had to consider any additional information provided, in terms of making a decision as to where the interests of justice lay in relation to having an oral hearing but in the circumstances of this case there was no obligation imposed on the Tribunal since no additional information was provided by the applicant.
54. It should also be noted that the impugned decision (dated 02 October 2023) predated the *ex tempore* decision of Hyland J in *CC* by just over three weeks, the decision in *CC* being handed down on 27 October 2023, where Hyland J, in

refusing a leave application, also considered the question of a right to an oral hearing and the entitlement to a stand-alone decision. Hyland J considered the decisions of Ferriter J in *SK* and *FP* and noted at §17-§18:

“The applicant’s case is that he is entitled to know whether he should put in submissions for an oral hearing or for no oral hearing, and that to vindicate that entitlement he must be told whether he is having an oral hearing or not. In my view, he has no entitlement per se to such a communication. The applicant is seeking to manufacture an obligation to inform him as to whether an oral hearing would be provided, based on the request for additional submissions. However, as I have pointed out above, even absent such a notification there was nothing to stop him putting in the submissions.”

and at §28:

“In relation to fair procedures, the applicant argues that fair procedures may require a decision on whether to grant an oral hearing in advance of the substantive appeal determination. For the reasons I have already set out, in my view, no substantial grounds have been advanced to demonstrate that this is a case where fair procedures required such a communication. The only reason advanced for such a proposition here is that the appellant needed to know what kind of submissions to put in. The appellant had an opportunity to put in whatever submissions he wished and did not take it.”

55. Hyland J, in *CC*, also considered the application of the Practice Note and commented at §30 of her decision:

“Similarly, here the solicitor could have put in whatever additional consolidated grounds or submissions that he wished. There was no unfairness in this respect. If the solicitor believed based on his own experience that he would be told whether an oral hearing was to take place or not, thus allowing him to put in the type of submissions he wanted, that was clearly a misconceived belief since the APN makes it clear that is not the position”

before proceeding to note at §31 that:

*“Returning to the decision in *FP*, at paragraph 34, Ferriter J. notes that there is no standard practice in relation to Tribunal members conveying a decision as to whether or not there would be an oral hearing with some members issuing a decision on some requests in advance and inviting further submissions. He refers to it as a helpful practice. But this does not mean in my view that a different approach by a Tribunal member, entirely in accordance with the APN can be treated as unlawful, or that the applicant can be treated as having substantial grounds in respect of the alleged legality in this respect.”*

and concluding at §36 that:

“There was no basis for the applicant’s solicitors to sit on their hands and wait for notification in relation to an oral hearing when the legal context i.e., the APN, makes it clear that this may not be provided. Whether or not the applicant was going to obtain an oral hearing, he clearly needed to put in additional material in this respect but failed to do so. In short, nothing about the factual scenario identified by the applicant undermines the decision that was made by the Tribunal in this respect.”

56. It is clear from the Practice Note, of which the applicant’s solicitor – who practises in this area of law, may be taken to have been aware – that *“the Tribunal might not contact the appellant/their legal representative between the acceptance of the appeal and the issuing of the decision on the appeal for international protection”* and in my view, and in order to ground any submission that the procedures applied in the applicant’s appeal to the Tribunal were procedurally unfair, the applicant’s solicitor ought, first, to have dealt with the correspondence from the Tribunal on 22 March 2023 by way of reply, enclosing comprehensive, relevant and specific grounds of appeal and/or submissions and giving a proper *précis* of the applicant’s wife’s evidence. Whilst a full or formal witness statement may not have been necessary, at the very least the Tribunal ought to have been properly aware of the *“nature, purpose and relevance”* of her evidence so that it could have come to an informed view as to whether an oral hearing was required in the interests of justice. In the present case, it seems to me that there was a significant information deficit before the Tribunal – the response *“confirm story and threats”* is simply not sufficiently detailed – and it was not for the Tribunal to supplement that deficit. Rather, it was for the applicant to fill that information deficit, and that he failed to do.
57. Counsel for the applicant sought to distinguish the present case from *CC* on the basis that no letter had issued to the Tribunal in *CC* enquiring as to whether or not an oral hearing would be granted. In my view, however, the letter sent by the applicant’s solicitor on 10 March 2023 asking the Tribunal to *“confirm if our request for an oral hearing will be acceded to”* was insufficient to shift the onus to the Tribunal, particularly where the Tribunal replied on 22 March 2023 in the terms set out at §20 above.

58. Further, and as submitted by counsel for the respondent at hearing, had the grounds of appeal made it clear that additional oral evidence was required at an appeal hearing, this may have triggered a request for further information by the Tribunal pursuant to s.44 of the Act (*“Appeal to Tribunal: provision of information”*), but this mechanism was not triggered since the grounds of appeal were silent in this regard. As noted by Ferriter J in *KS* at §65:

*“BW (at para 44, following Cooke J in SUN at para 37) also makes clear that depending on context an opportunity to address credibility issues at appeal stage need not necessarily be addressed by way of further oral hearing; the opportunity to adduce additional evidence e.g. by a further written statement of an applicant, may well suffice. (As already noted, s. 44 of the 2015 Act empowers the Tribunal to make such further enquiries and to request such further information as the Tribunal considers necessary. **An appellant is also free to tender further information or evidence in his Notice of Appeal against an IPO recommendation should such material be germane to his appeal.**)”* (emphasis supplied)

and should the applicant have wished to advance additional material in support of his appeal, this avenue was always open to him.

59. Separately, and noting that the incorrect form for the notice of appeal was provided to the applicant by the IPO (see §15 above), in answer to a question posed by me at hearing as regards the use of the incorrect appeal form – *“so the applicant didn’t actually get an opportunity to give details as to why an oral hearing was required because the form didn’t actually permit that?”* – counsel for the applicant stated *“correct, so having filed this form, there was no extra space on the form to indicate why an oral hearing would be required”*. However, in my view that does not absolve the applicant or his solicitor from taking additional steps to specify why an oral hearing was required and such additional steps could have been by way of a comment on the form and/or by way of grounds of appeal and/or by way of submissions, but there was no additional specification by the applicant in this case. Accepting that the correct form (a Schedule 1A form) prompts for an applicant to provide *“reasons why you are of the view that it is in the interests of justice that an oral hearing be held in your case”*, the applicant’s solicitor (as noted above) is experienced in appeals from the IPO to the Tribunal and cannot be excused for

failing to provide additional information as regards the claimed need for an oral hearing simply because the form did not prompt for further information.

60. By way of reply at hearing, counsel for the applicant relied upon the duty of cooperation as provided for at s.27 and s.28 of the Act – with s.27 setting out the duty of an applicant to cooperate and s.28 covering the assessment of facts and circumstances by the IPO in cooperation with such applicant – and it was his submission that the Tribunal’s function was an inquisitorial one, such that the Tribunal could not simply refrain from further engagement and then issue a decision with no warning on the basis that no further information had been provided by the applicant. However, that submission does not engage with the warning given by the Tribunal on 22 March 2023 by reference to the Practice Note (and as set out at §20 and §49 above) and the applicant and his solicitor were left in no uncertain terms that, in the words of the Practice Note:

“Any submissions as to why an oral hearing is deemed necessary by an appellant must be clearly made at the time the Notice of Appeal is submitted and while any such submissions will be taken into consideration, parties should not expect the Tribunal to engage on correspondence on the issue. In other words, in the case of an accelerated appeal, the Tribunal may determine, without further notice, that an oral hearing is not required and, while the refusal of same will be addressed in the final decision of the Tribunal, the Tribunal might not contact the appellant/their legal representative between the acceptance of the appeal and the issuing of the decision on the appeal for international protection.”

Failure to give reasons / failure to engage with request for oral hearing

61. Quite separately, however, the fact that the applicant failed to fill the information deficit identified above does not necessarily dispose of the application in the present case. The limited nature of the material provided by the applicant meant that the Tribunal was not required to issue a separate prior decision on the request for an oral hearing, nor was it required to invite further submissions before deciding the substantive appeal. Nonetheless, once the Tribunal addressed the request for an oral hearing in its final decision, it was required to demonstrate that it had considered whether, in the particular circumstances of the appeal, the interests of justice required departure from the statutory default position under s.43(b). That

required some engagement, however concise, with the matters actually before it, including the fact that the applicant had requested an oral hearing, and that the notice of appeal identified the applicant's wife as a proposed witness whose evidence was said to "*confirm story and threats*".

62. The applicant submitted that the Tribunal set out the jurisprudence in respect of s.43(b) oral hearings in the impugned decision but that the Tribunal failed properly to apply the principles therefrom and failed to provide cogent reasons as to why a papers-only hearing was in the interests of justice. The applicant did not take issue with the jurisprudence referred to by the Tribunal and clearly any Tribunal decision must evidence the Tribunal's consideration of the interests of justice and whether a papers-only decision is appropriate.
63. The applicable principles as to reasonableness and the adequacy of reasons are well established. In *Meadows v. Minister for Justice* [2010] IESC 3; [2010] 2 IR 701, Murray CJ was clear that, in reviewing an administrative decision affecting fundamental rights, the Court is concerned not with substituting its own view for that of the decision-maker, but with whether the decision is rational, proportionate and supported by reasons which disclose the basis upon which the decision was reached.
64. In the international protection context, the obligation to give reasons has been described as requiring reasons which are sufficient, intelligible and capable of being understood by the person affected by the decision. In *Mallak v. Minister for Justice* [2012] IESC 59; [2012] 3 IR 297, it was held by Fennelly J that the obvious means for achieving fairness in the decision-making process is for reasons to accompany the decision. Whilst in *AA v. Minister for Justice and Equality* [2019] IECA 272, Baker J stated at §30 that sufficient and intelligible reasons must be given, that those reasons must flow from the facts before the decision-maker, and that the requirement is not met by reasons in form only where the underlying rationale is not apparent. The essential question is whether fairness to the recipient has been achieved. In this context, therefore, the issue is not whether the Tribunal was entitled, in principle, to refuse an oral hearing under s.43(b), but whether the reasons given by the Tribunal demonstrate that it addressed the relevant features of

the applicant's case and explain why, notwithstanding those features, the interests of justice did not require an oral hearing.

65. The impugned decision deals with the applicant's request for an oral hearing at Section B thereof, from §7-§14, and it is clear therefrom that the Tribunal noted that the applicant wanted to have an oral hearing "*to address adverse credibility findings made by the IPO in the S. 39 Report*". The Tribunal also considered the correspondence and procedural history of the applicant's appeal (from 10 March 2023 to 22 March 2023 as set out above) and noted that:

"..... *save and except these grounds* [i.e., to address the credibility findings, referring to the notice of appeal and grounds of appeal], *the Tribunal has not received any further submissions and/or communications from the Appellant's Legal Representatives after the receipt of the Notice of Appeal/Grounds of Appeal on the 10th March 2023 up to the date of the making of the within decision as to why the Appellant's appeal hearing should be assigned an oral hearing.*"

66. Further, the Tribunal considered the contents of the Practice Note, the provisions of s.43(b) of the Act and the existing jurisprudence before coming to the conclusion – as set out in full at §25 above – that "*the Tribunal finds that it can proceed to make a determination on the Appellant's claims having regard to the claims made heretofore on the papers only.*" It is also clear that in coming to this conclusion, the Tribunal considered the applicant's credibility, noting that "*the Appellant who is legally represented has made consistent claims throughout the international protection procedure*". The impugned decision refers to "*the analysis hereinbefore*" – i.e., the analysis from §7-§13 of the impugned decision – but where the impugned decision is vitiated, in my view, is that it does not apply the jurisprudence to the facts of this case in any discernible way – and give specific reasons why an oral hearing was not required in the interests of justice – and neither does the impugned decision engage with the substance of the applicant's request for an oral hearing. In other words, the impugned decision does not "*flow from the premises*" in the words of Murray CJ in *Meadows*.

67. It is clear from existing case law that a *quasi*-judicial body such as the Tribunal is not required to give detailed reasons for its decision (see, for example, *Mallak*,

where Fennelly J held that the duty to give reasons is “*not a matter of complying with a formal rule*”; **Connelly v. An Bord Pleanála** [2018] IESC 31; [2021] 2 IR 752, where Clarke CJ held at §10.1 that there was no obligation upon the decision-maker to provide a “*discursive determination along the lines of what might be expected in a superior courts judgment*” and **XT v. IPAT** [2022] IEHC 423, where Heslin J held at §58 that there was no requirement upon the decision-maker to set out its reasons in any “*formalistic way*” and that it was not for the Court to dictate the way in which a decision-maker expressed their decision) but any individual whose rights might be affected by such decision is entitled to know the basis for such decision and, in the present case, the Tribunal has not joined the dots, so to speak. In other words, whilst the statutory basis for the accelerated procedure was noted by the Tribunal and whilst the Tribunal referred to the factual background, the Practice Note and the existing jurisprudence, the Tribunal failed to specify why, in this particular case, it could “*proceed to make a determination on the Appellant’s claims having regard to the claims made heretofore on the papers only.*” It could be said that the Tribunal’s rationale may be implied from §13-§14 of the impugned decision but that is not sufficient in my view and any applicant, including the applicant in the present case, is entitled to cogent reasons, however brief, such that the rationale for the decision-making is clear, and such rationale should not have to be presumed or assumed by any applicant.

68. It was submitted on behalf of the respondents by way of written submissions that “*this consideration [i.e., an interests of justice consideration] clearly took place, and the reasoning of the Tribunal was clear in the decision*” but for the reasons as outlined above, I do not accept that submission.
69. Furthermore, and in addition to the failure to give reasons, it is not at all clear that the Tribunal engaged with the reason, however perfunctorily expressed, why the applicant required an oral hearing in the first place. The reason – as referred to at §16.e above – was that the applicant’s wife would be a witness and the nature, purpose and relevance of her evidence would be to “*confirm story and threats*” but nowhere in Section B – that part of the impugned decision dealing with the request for an oral hearing – is it evident that the Tribunal engaged with this reason and indeed the applicant’s wife is not mentioned at all in Section B. Again, therefore,

the impugned decision does not make the necessary analytical connection (or “*flow from the premises*”), albeit that in the present case the Tribunal was left with very little to consider and an explanation as to why the information provided by the applicant did not warrant an oral hearing could have been stated succinctly by the Tribunal.

70. This conclusion is supported by *inter alia* the decision of Phelan J in *TB*. In *TB*, the request for an oral hearing in the notice of appeal was a generic one, pointing to the statistically greater prospects of success following oral hearings. However, the applicant’s solicitors subsequently provided written submissions in relation to the applicant’s appeal and these submissions addressed adverse credibility findings in some detail but did not repeat a claim that an oral hearing was necessary. Thereafter, the applicant’s solicitor sent a letter specifying why an oral hearing was warranted and in light of the written submissions (addressing adverse credibility findings) and this letter, Phelan J found that the respondent had failed to engage in proper analysis of whether an oral hearing was required.
71. Although the Tribunal in *TB* had more material before it than the Tribunal in the present case in considering whether or not an oral hearing was required, the essence of Phelan J’s rationale was that a complete lack of engagement with the case made for an oral hearing was contrary to fair procedures requirements and in breach of the statutory duty. And indeed, Phelan J contrasted the written submissions in *TB* to the lengthy submissions in support of request for an oral hearing in *SK*, but found nonetheless that an application had been made, and therefore it had to be properly engaged with. By way of example, at §73, she held that “[i]t is noted that the reasons for the decision to refuse an oral hearing recorded in the Tribunal decision proper do not refer in terms to the basis advanced for requiring an oral hearing in the first place” and it is clear that, in the present case, there was equivalent lack of reference to the basis advanced for requiring an oral hearing.
72. Furthermore, Phelan J noted at §86:

*“In my view **there was no engagement in the decision rejecting the request for an oral hearing with the actual case made in favour of an oral hearing** and it is not clear from the reasoning advanced by the Tribunal that it considered the*

extent to which an assessment of the personal truthfulness of the applicant would be determinative of the appeal and whether the applicant's personal truthfulness could, in this case, be fairly gauged without an oral hearing having regard to the centrality of the applicant's personal credibility to the outcome. Credibility had been identified as being at issue in the case, as it transpired, credibility issues were also material to the decision on appeal." (emphasis supplied)

and similarly, whilst the case made in favour of an oral hearing was minimal in the present case, the essential point remains that there was simply no engagement in the impugned decision that actually reflected that case (i.e., the case made by the applicant). In other words, even where the information provided by an applicant in support of an oral hearing is minimal, the Tribunal must still identify that material and explain why it does not satisfy the "*interests of justice*" threshold. This the Tribunal did not do in the present case.

73. It follows, therefore, that the impugned decision is vitiated for the reasons as set out at §61-§7272 above and an order of *certiorari* is appropriate in the circumstances.

Whether the Tribunal acted irrationally and/or unfairly in making adverse credibility findings in addition to those made by the IPO

74. It was also submitted on behalf of the applicant that he had a right to an oral hearing where credibility was in issue and that the general jurisprudence leaned in favour of an oral hearing where an applicant sought to address adverse credibility findings, with the requirement for an oral hearing being particularly pronounced where an applicant sought to address new information or make submissions which could have a bearing on the Tribunal's decision. However, and given my findings as set out above, and particularly in relation to the second issue identified at §34.b above, it is not necessary for me to determine this final ground of challenge and this issue will be for the Tribunal on remittal.

Conclusion

75. In conclusion, it is the applicant's responsibility to prosecute his case and, as such, there is no obligation on the Tribunal to notify the applicant of the refusal of an oral hearing under s.43(b) separately and in advance of the substantive appeal decision or, in other words, the Tribunal is not required to notify the applicant of whether or not the substantive appeal hearing is proceeding on a papers-only basis. However, this does not absolve the Tribunal of its responsibility to engage with the substance of the applicant's request for an oral hearing, however minimal, in its decision and it is this lack of engagement and failure to give reasons by the Tribunal that means that the applicant has been successful on this occasion.
76. For the reasons as set out above, I will grant an order of *certiorari* of the impugned decision dated 02 October 2023, on grounds e)1.(iii) and e)1.(iv) of the statement of grounds dated 25 October 2023 and filed on the same date, with a further order remitting the appeal to the Tribunal for a fresh decision by a different Tribunal member. I will also place a stay on all orders in the event of a notice of appeal being filed by either party within 28 days of the perfection of the order of this Court, such stay to remain in force until the first return date in the Court of Appeal and in the event of no notice of appeal being filed within such 28-day period, the stay will be lifted.

Costs

77. Pursuant to s.169 of the Legal Services Regulation Act 2015, costs should follow the event "*unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties*". In circumstances where the applicant has succeeded in his application (albeit not on all grounds put forward), I am not satisfied that there is anything in the nature or circumstances of the case, or in the conduct of the proceedings, which would justify a departure from that position and thus, I am inclined to award the costs of the proceedings to the applicant.
78. However, it is open to the parties to contend for the making of a different form of costs order and if either party wishes to contend for a different costs order, that party should file written submissions (not exceeding 1,000 words) within seven

days of this judgment being delivered. In the event of submissions being filed, this matter will be listed, in person, for 10:45 on 23 July 2026 in order to hear the parties as regards costs and in the event of submissions not being filed within seven days of this judgment being delivered, an order in the substantive matter will be perfected in line with §76 above, together with a costs order in line with §7777 above.