THE HIGH COURT
JUDICIAL REVIEW

Record No. 2024 / 1046 / JR
[2026] IEHC 530

IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED), AND IN THE MATTER OF THE INTERNATIONAL PROTECTION ACT 2015

BETWEEN/

S.V.

Applicant

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL
THE MINISTER FOR JUSTICE

Respondents

Judgment of Mr. Justice Cian Ferriter delivered 30th July 2026

Introduction

1. In these judicial review proceedings, the applicant seeks an order quashing the decision of the first respondent ("the Tribunal") dated 11 July 2024 which affirmed the first instance decision that the applicant be granted neither refugee status nor subsidiary protection status.

2. The principal ground on which the applicant challenges the decision is that the Tribunal unlawfully failed to carry out a sufficiently individualised risk assessment of the applicant's particular circumstances when dealing with the question of availability of State protection for her feared persecution of domestic violence in the event she was returned to her country of origin, Georgia.

Background

3. The applicant is a national of Georgia born in 1979. She fled Georgia in May 2021 as a result of ongoing domestic abuse at the hands of her husband and went into hiding in Germany. Her husband discovered her whereabouts in Germany and continued to threaten her. She arrived in Ireland on 25 May 2022 and applied for international protection here.

4. In her s. 35 interview conducted by the IPO on 31 January 2023, the applicant gave evidence that her husband was heavily drinking during the past 10 years of her marriage to him. She said she had asked the police for protection but they would only give protection orders for 15 days, i.e. that her husband would be put in prison for 15 days but released thereafter without any conviction. She explained how she left Georgia for Germany in May 2021 with her new partner but that her husband located her whereabouts in Germany and continued to threaten her. She said that her husband was both physically abusive and psychologically abusive. His treatment of her resulted in her being hospitalised three times in the last five years of her relationship with him before she left Georgia. She said that her husband had become more aggressive because she was in a new relationship, that she did not know if his aggression would ever stop and that she feared returning to Georgia as a result. When asked about reporting his violence to the police in Georgia, the applicant said:

> *"The police would say he was drunk. But they said they would put him in jail for 15 days. But the last time he was bad I said yes he could go. But after he went to the jail he was more aggressive. The police would generally say he was only a drunk and what could they do? My family members were scared of him. It was a hard life and caused psychological damage to the kids."*

5. When asked if her husband was ever formally charged and convicted of a crime, she said that he was not and that "he had friends and was released after 15 days".

6. When asked if she would consider moving to Tbilisi to avoid harm, he said that there was no difference between the place in which she lived in Georgia and Tbilisi:

"In Georgia they can't protect a woman anywhere. It is a bad situation in Georgia for violence against women."

7. The IPO accepted the applicant's credibility but held that she was not entitled to international protection on the basis that state protection was available to her if returned to Georgia.

8. The applicant appealed that decision to the Tribunal. While the applicant accepted the credibility of the applicant's claims as to domestic violence and held that she had established a reasonable fear of persecution if returned to Georgia, the Tribunal held that the applicant would be able to avail of state protection if returned to Georgia and refused her both refugee status and subsidiary protection on that basis. I will come to the detail of the Tribunal's analysis of the state protection issue shortly.

The applicant's case

9. The focus of the applicant's challenge at the hearing of these judicial review proceedings before me was to the Tribunal's handling of the question of state protection. While the applicant in an amended statement of grounds and in her written submissions in respect of the judicial review advanced a case in relation to the Tribunal having preferential or irrational regard to country of origin information (COI) when finding that state protection was available to the applicant, her counsel did not press this case at the oral hearing and I think sensibly so in light of the analysis of COI disclosed in the Tribunal's decision.

10. I will accordingly focus on the principal issue advanced on behalf of the applicant at the hearing before me, namely the question of whether the Tribunal erred in assessing the question of the availability of state protection in light of the applicant's individual circumstances.

Relevant legal principles

11. The relevant legal principles are not in dispute.

12. Section 28(4) of the International Protection Act, 2015 ("the 2015 Act"), which reflects Article 4(3) of Directive 2004/83/EC (the Qualification Directive), makes clear that the assessment of an application for international protection (whether by the IPO or a Tribunal on appeal) "*shall be carried out on an individual basis*" and shall include taking into account *inter alia* "*all relevant facts as they relate to the country of origin at the time of taking a decision on the application*", "*the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm"* and "*the individual position and personal circumstances of the applicant*" so "*as to assess whether on the basis of the applicant's personal circumstances the acts to which the applicant has been or could be disposed will amount to persecution or serious harm*".

13. The necessity for an individual assessment of the applicant's individual situation and the specific risks she faces is borne out by the case law of the CJEU, e.g. in C-621/21 *WS*, at para. 60, the CJEU held that there was an obligation in assessing international protection applications to evaluate the individual circumstances of the applicant "*in order to determine whether the established facts and circumstances constitute such a threat that the person concerned may reasonably fear, in the light of his or her individual situation, that he or she will in fact be the victim of acts of persecution if he or she were to return to his or her country of origin…"* It is clear from paragraph 61 of that judgment that this exercise must be carried out in the context of the situation in the country of origin, including state protection.

14. In Joined Cases C-608/22 & C-609/22 *AH & FN v. Bundesamt für Fremdenwesen und Asyl (Afghan women),* at paragraphs 48 to 50, the CJEU stated:

> "*48 In accordance with Article 4 of Directive 2011/95, any application for international protection must, in principle, be subject to an individual assessment...*
>
> *49 In accordance with Article 4(3) of the directive, the individual assessment by the competent national authorities of whether an applicant's fear of being persecuted is well founded must be carried out on a case-by-case basis with vigilance and care, solely on the basis of a specific assessment of the facts and circumstances, in order to determine whether the established facts and circumstances constitute such a threat that the person concerned may reasonably fear, in the light of his or her individual situation, that he or she will in fact be the victim of acts of persecution if returned to*

his or her country of origin….

50 That provision lists the elements that competent national authorities must take into consideration when carrying out an individual assessment of an application for international protection. Those elements include the relevant facts as they relate to the country of origin at the time of taking a decision on the application for international protection and the individual position and personal circumstances of the applicant, including factors such as background, gender and age.
(emphasis added)

15. The CJEU further stated at para 54:

54 It follows from the foregoing that the requirement to carry out an individual assessment of the application for international protection presupposes that the competent national authorities adapt the methods of assessing the facts and evidence according to the specific circumstances and characteristics of each application.

16. While these statements were made in the context of Article 4 of the 2011 Recast Qualification Directive, they are equally applicable to Article 4 of the 2004 Qualification Directive as reflected in s.28 of the 2015 Act.

17. There is no dispute but that the question of whether the applicant has a well-founded fear of persecution is a necessary part of the assessment of whether the applicant qualifies for international protection. The question of state protection is addressed, *inter alia*, by the terms of s. 31 of the 2015 Act. Section 31(1), (2) and (4) of the Act of 2015 provide as follows:

"(1) For the purposes of this Act, protection against persecution or serious harm can only be provided by –

(a) a state, or

(b) parties or organisations…controlling a state or a substantial part of the territory of a state, provided that they are willing and able to offer protection in accordance with subsection (2).

(2) Protection against persecution or serious harm –

(a) must be effective and of a non-temporary nature, and

(b) shall be regarded as being generally provided where –

(i) the actors referred to in paragraphs (a) and (b) of subsection (1) take reasonable steps to prevent the persecution or suffering of serious harm, and

(ii) the applicant has access to such protection.

.....

(4) The steps referred to in subsection (2)(b)(i) shall include the operating of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm."

18. Barrett J in *BC v IPAT* [2019] IEHC 763 ("*BC v IPAT*") at para 10 held that the text of s.31:

"*yields the following questions for determination by IPAT when deciding whether or not state protection would be available:*

(1) Does the State in question take reasonable steps to prevent the persecution or suffering of the serious harm feared by a particular applicant?

(2) Do such steps include the operating of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm?

(3) Is such protection effective and of a non-temporary nature?

(4) Does the particular applicant have access to such protection?"

19. As we shall see, this was the test set out by the Tribunal in its decision at para [5.3.6] when it came to look at the question of state protection.

20. As the Supreme Court made clear in *BD v IPAT* [2025] IESC 38, the question of the absence of state protection is intimately bound up with the question of the assessment of the objective reasonableness of the applicant's fear of persecution. At para. 87 of her decision in *BD v IPAT*, O'Malley J. stated that "*Since international protection is provided by way of surrogate for national protection, it follows that the question of fear of persecution is inextricably entwined with the question of state protection and that the two elements must be assessed by reference to each other*."

The Tribunal's decision

21. The Tribunal approached the issues in the applicant's case as follows.

22. Having reasoned why it was satisfied that it was appropriate to deal with the appeal on a papers-only basis, the Tribunal stated, at para. [2.80], that:

> *"The appellant's case is that she was repeatedly assaulted by her husband and that he drank heavily. Her case is also that she was hospitalised as a result of his actions on three separate occasions. She also stated that he was also jailed for 15 days but that he was more aggressive on his release."*

23. This in broad terms reflects the case made by the applicant to the IPO under s. 35 interview, save that it does not record the fact that, apart from being jailed for 15 days, her husband was never charged or convicted in respect of the significant domestic violence he subjected the applicant to.

24. In section 4 of the Tribunal's decision, headed "Assessment of facts and circumstances", the Tribunal held, at para. [4.3.9], that:

> *"In her section 35 interview, she outlined that her husband started drinking a lot over the last 10 years and would make her life difficult, including visiting her workplace. She also noted that they were fighting every day and that it was bad for her children. She also noted that she was hospitalised on three occasions and that she moved to home she had inherited from her grandfather but that her husband also visited her there."*

25. At para. [4.3.10] the Tribunal stated:-

> *"She further noted that she had sought police protection but that the police would say that her husband was drunk and put him in jail for 15 days. She stated that when he*

returned, he would be more aggressive. She also stated that he was not convicted of any crime."

26. The Tribunal was satisfied, as set out at para. [4.3.11] of its decision, that the applicant had provided:-

"*…a coherent, consistent, plausible and credible account of past harm. She provided further detail upon request and, when assessed in light of available COI, her claim is plausible and not inconsistent with that COI, showing that domestic and gender-based violence remain a problem in Georgia*" (citing a 2022 US DOS report referred to in the IPO's s. 39 report)

27. The Tribunal accordingly accepted that the applicant was a victim of domestic violence in Georgia at the hands of her husband from who she was now separated (at para. [4.3.12]).

28. The Tribunal, in section 5 of its decision, set out its "analysis of well-founded fear". It accepted on the basis of the applicant's claim that she would face a reasonable chance of persecution if returned to Georgia. The Tribunal accordingly turned to what it regarded as "the primary question in this case", namely whether state protection is available to the applicant.

29. Having set out some initial legal context, the Tribunal stated, at para. [5.3.6], that the appropriate test for state protection was as outlined by Barrett J in *BC v IPAT* and set out the four questions relevant to that test as set out earlier in this judgment.

30. In respect of the first question in the *BC v IPAT* test, being one of the requirements of s. 31, namely whether the state takes reasonable steps to prevent the persecution or suffering of the serious harm feared by a particular applicant, the Tribunal stated, at para. [5.3.7], that the applicant had previously had the protection of state authorities as her husband "has previously been jailed by the police". It then referenced COI, including US DOS reports for 2022 and 2023 which stated that domestic and gender-based violence "remained a significant problem *that the government took several steps to combat*" (emphasis in original) and detailed those steps including 2021 legislation which introduced witness and survivor advocates during investigative and legal proceedings, the introduction of 24-hour electronic surveillance if there was a high risk of recurrence of violence and the deployment of an app for domestic violence survivors which made it easier for such persons to report abuse without alerting the perpetrator

who might still be nearby. The relevant COI also noted changing societal attitudes contributing to more frequent reporting and some improvements in enforcement in recent years.

31. In relation to the first question, the Tribunal held that the COI showed "a mixed picture" (at para. [5.3.15]). The Tribunal held that "*The COI does not show that victims of domestic violence such as the appellant in this case are not protected nor does it show that persons such as her ex-husband in the present case are protected by the law*". The Tribunal concluded that there were no grounds for considering that Georgia would not act to protect the applicant as:-

> *"COI showed the arrest of perpetrators, the operation of an emergency app system, the existence of a 24-hour monitoring system and the prioritisation of the issue by the government. These must be seen as the state authorities taking reasonable steps to prevent the type of suffering feared by the appellant."*

32. In relation to the second question, as to whether Georgia operates an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, the Tribunal held that the COI "again shows something of a mixed picture". It stated that the COI did not "*however, provide a basis for finding that there would be a lack of impartiality between the appellant and her ex-husband who threatened her in this case and in particular where the appellant previously obtained protection*" (para. [5.3.17]). It held that the COI showed that the legal system in Georgia did not show the system was ineffective "*where there are threats such as those in this case*". The Tribunal held, at para. [5.3.19] that "*The past example in this case does not support* [the conclusion that was not an effective legal system for the detection, prosecution and punishment of threats such as those in this case] *in particular where her husband has been arrested by the police in the past*" and that the COI showed an improving rather than disimproving position for victims of domestic violence. It concluded that the improvements set out above as reflected in the COI [i.e. the arrest of perpetrators, the emergency app system, the existence of a 24-hour monitoring system and the prioritisation of the issue by the government] were "*all indicators of an effective legal system, in answer to the second question*" (para. [5.3.19]).

33. The Tribunal then stated (at para [5.3.20]) that the same must be the answer to the third question, namely whether such protection is effective and non-temporary in nature.

34. The fourth question, whether the "particular applicant" has access to state protection is dealt with as follows, at paras. [5.3.22] and [5.3.23] of the Tribunal's decision:

> *"[5.3.22] The same again must be the answer to the fourth question. There is no basis on account of the evidence given or on account of the COI to suggest that the authorities will not act to protect the Appellant in this particular case. She is a Georgian citizen who lived in Poti. She speaks fluent Georgian. There is no reason to conclude that she cannot access state protection or the protection of the police.*
>
> *[5.3.23] Further, in a forward-looking test, applying the relevant COI, it shows ongoing significant improvement in the state response to domestic violence in Georgia and does not support a finding that state protection would not be available to the Appellant. Accordingly, the Tribunal is satisfied that the answers to the four questions show that state protection is available to the Appellant, in the circumstances of this case."*

35. The Tribunal then stated (at paras [5.3.24] and [5.3.25]):

> *[5.2.24] The relevant test for the Tribunal in this case is that as outlined in the 2015 Act, and broken down to the four questions outlined above. These questions can be seen to encapsulate the deterrence test on an objective basis; it is not for the Tribunal to engage in a hypothetical subjective assessment as to whether the particular potential actor of persecution in this case, specifically the Appellant's ex-husband, will or will not attempt to harm her, or will specifically be deterred by the possibility of state protection against him (nor indeed was this argued).*
>
> *[5.3.25] The question is whether state protection is available, by reference to the test under the 2015 Act and the questions outlined. These can be seen to provide an objective basis for assessing if state protection is available. If, assessed objectively, there is a functioning system of state protection that answers the four questions above, this can be seen as providing an objective deterrent to potential actors of persecution and serious harm. By placing the*

test on that objective basis, by reference to COI, it can be said to show a "systematic ability to deter and/or prevent the form of persecution of which there is a risk".

The parties' submissions

36. The applicant complains that her individual circumstances and, in particular, her fear that she would be the subject of persecution at the hands of her ex-husband if returned to Georgia on the basis that she failed to get effective protection from such persecution in the past, was not in fact engaged with by the Tribunal; there is no careful assessment of her particular circumstances in answering the four questions set out in *BC v* IPAT and in particular the crucial fourth question of the s.31 test (namely whether the particular applicant has access to state protection). She submits that this is evident from a fair reading of the paragraphs of the Tribunal's decision dealing with this question, as set out above. She submits that the terms of para [5.3.24] (as set out above) show a clear misunderstanding on the part of the Tribunal as to its true obligation which was to assess the state protection question and the related COI by reference to an assessment of the applicant's particular and individual circumstances and not by reference to a hypothetical subjective assessment of the likelihood of her ex-husband harming her again or being deterred by the possibility of state protection.

37. The respondents for their part submit that it is clear from the terms of the Tribunal's decision as a whole that the Tribunal understood the applicant's individual circumstances – see e.g. paras [4.3.9] and [4.3.10] of the decision as set out earlier in this judgment – and that when the Tribunal came to assess the four questions in *BC v IPAT*, it is clear that the Tribunal was assessing the relevant COI by reference to the applicant's individual circumstances as the law required it to do.

Discussion

38. In my view, the Tribunal correctly states in the first line of para. [5.3.24] of its decision (as set out at para 35 above) that the relevant test for the Tribunal was that as outlined in s.31 of the 2015 Act and broken down to the four questions outlined in *BC v IPAT*. The first part of the next sentence is legally correct; what is required is that the test is directed towards an objective assessment. However, it is an objective assessment by reference to the individual

circumstances of an applicant's situation. While it might be correct in the abstract for the Tribunal to state that it has not engaged in a "hypothetical subjective assessment" as to whether the applicant's ex-husband will or will not attempt to harm her or will be specifically deterred by the possibility of state sanction against him, that was not the case made to the Tribunal nor does it correctly capture the essential legal obligation on the Tribunal namely to conduct a careful examination of the question of well-founded fear of persecution including the question of availability of state protection by reference to the applicant's particular circumstances.

39. While the Tribunal earlier in its decision accurately summarised the applicant's case, and there are a number of references by the Tribunal during the course of its assessment of the state protection issue to the applicant's "case" and the fact that the applicant's husband had been jailed, the Tribunal does not in terms apply its assessment of the COI on the state protection to the applicant's full case namely that that she had been the subject of ongoing and serious domestic violence for years which had never resulted in any charge or conviction of her ex-husband but merely him being confined in prison for 15 days and that the reporting of her circumstances to the police did not, on her case, result in effective protection in the past. While I accept the point that a reading of the earlier parts of the decision demonstrates that the Tribunal did correctly summarise the individual circumstances of the applicant's case, those individual circumstances were not thereafter properly engaged with by the Tribunal at all.

40. In my view, the Tribunal did not go on to conduct its evaluation of the state protection issue in a sufficiently careful way to demonstrate that it was evaluating that issue by reference to the entirety of the applicant's actual circumstances and case; in particular that she had been the subject of ongoing and serious domestic violence for years which had never resulted in any charge or conviction of her ex-husband and that the reporting of her circumstances to the police did not, on her case, result in effective state protection in the past. While the Tribunal made a number of references in its state protection evaluation to the fact that the applicant had got state protection in the past because her husband had spent 15 days in prison, the applicant's case was very much that this did not represent effective state protection in light of the many years of significant abuse at his hands and, importantly in this regard, the fact that he was never convicted of any crime and continued to abuse her following her police reporting of the abuse. That case was not engaged with at all on the terms of the Tribunal's decision. This is compounded by the emphasis in para [5.3.24] of the decision on dismissing the hypothetical

subjective assessment of the applicant's ex-husband's likely future behaviour; that was not the case made by the applicant and appears to further betray a failure by the Tribunal to engage with the actual circumstances of the applicant's case.

41. While it may be that the Tribunal would have reached the same conclusion as to the availability of state protection on an evaluation of the applicant's full relevant individual circumstances, the applicant's claim was not on its face subjected to the type of careful examination which the law entitled her to. Given the potentially serious consequences for her safety, on her case, if returned to Georgia, it is appropriate in my view for the court to intervene by way of judicial review to ensure that she gets the benefit of a lawful assessment of her individual circumstances in a state protection context at a fresh tribunal hearing.

42. Accordingly, it seems to me that the decision must be quashed and remitted to a different Tribunal for a fresh assessment of the applicant's claim including the state protection question. Whether such different Tribunal on a fresh assessment of the applicant's individual circumstances concludes that state protection would nonetheless be available to the applicant in her individual circumstances is of course a matter for that Tribunal and not for this Court to express a view on.

Conclusion

43. In the circumstances, I will grant an order quashing the Tribunal's decision and direct that the appeal be remitted to a different Tribunal for a fresh assessment of the appeal.