

**HIGH COURT
JUDICIAL REVIEW**

**IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS
(TRAFFICKING) ACT 2000 (AS AMENDED)**

RECORD NO. 2025/1519/JR

[2026] IEHC 609

Between:

G.B

Applicant

and

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL and THE
MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION**

Respondents

Judgment of Mr. Justice Cian Ferriter delivered on 7th September 2026

Introduction

1. In these judicial review proceedings, the applicant seeks to quash a series of decisions as follows:

- (i) a decision of the respondent tribunal ("the Tribunal" or "IPAT") of 5 August 2025 confirming the recommendation of the International Protection Office ("the IPO") that the applicant be granted neither a declaration of refugee status nor subsidiary protection ("the Tribunal's decision");
- (ii) a decision issued on 10 September 2025 by the Minister pursuant to s.49(7) of the International Protection Act 2015 in which the Minister affirmed a decision of 26 March 2024 refusing the applicant permission to remain in the State under s.49 of the 2015 Act ("the s.49(7) decision");

- (iii) a decision made by the Minister on 3 October 2025 pursuant to s.50 of the 2015 Act in which the Minister formed the view that the return of the applicant to Georgia would not constitute a breach of the prohibition of *refoulement* (“the s.50 decision”) and a related decision of the Minister to order the deportation of the applicant from the State pursuant to s.51 of the 2015 Act (“the deportation order”). The deportation order was made on 10 October 2025 and issued to the applicant on 14 October 2025.

2. The applicant launched these judicial review proceedings on 13 October 2025, ostensibly well outside the 28 day statutory period for challenging the Tribunal decision of 5 August 2025 and also outside the 28 day statutory period for challenging the s.49(7) decision issued on 10 September 2025.

3. For reasons which I will come to shortly, I ruled at the outset of the judicial review hearing before me that the applicant was not entitled to an extension of time to challenge the Tribunal's decision of 5 August 2025.

4. Accordingly, this judgment focuses on the remainder of the applicant's judicial review challenge, namely the challenge to the s.49(7) decision and the challenge to the s.50 decision and deportation order.

Background

5. In brief, the background to the matter is as follows. The applicant is a Georgian national in his early 30s. He applied for international protection in the State on 15 August 2022 after facing threats, an assault and financial strain in Georgia due to a dispute with a neighbour over a workplace accident. The neighbour claimed that he suffered a serious eye injury and lost his vision following an explosion in the applicant's home when he was carrying out home renovations with the applicant. The applicant's claim was that he made payments to cover his neighbour's medical expenses but was later subjected to extortion and increased compensation demands and was subjected to a serious assault by his neighbour's relatives in November 2021 which required hospitalisation for three days. He left Georgia on 31 July 2022 before arriving in Ireland on 12 August 2022. The applicant further relied on a later incident in March 2025 when

explosives were thrown at the family apartment. This incident was reported to the police.

6. The IPO recommended refusal of international protection. On appeal to the Tribunal, the Tribunal found the applicant's account to be credible and that the harm feared by the applicant was capable of constituting persecution but held there was no Convention nexus (the applicant had contended there was a social group nexus). The Tribunal concluded that, in any event, adequate state protection was available to the applicant in Georgia and affirmed the IPO's recommendation of refusal of international protection status on that basis.

Extension of time – challenge to Tribunal's decision

7. The applicant was granted leave to apply for judicial review of the various impugned decisions, including the Tribunal's decision. While leave was granted, the question of any extension of time to seek judicial review was held over to the substantive hearing of the judicial review.

8. The respondents in their opposition papers raised an objection to the grant of any extension of time to challenge the Tribunal's decision and the s.49(7) decision.

9. Given the ostensibly lengthy delay in seeking to challenge the Tribunal's decision, I addressed the question of the extension of time to challenge that decision at the outset of the substantive hearing before me. Having heard submissions from both parties on that issue, I ruled that the applicant had not made out good and sufficient reason to extend time to challenge the Tribunal's decision and accordingly I refused such an extension. I held over the question of extension of time in relation to the section 49(7) decision until the giving of a view on the merits of the challenge to that decision and I will deal with that issue later in this judgment.

10. In order to explain why I refused an extension of time in respect of the judicial review challenge to the Tribunal's decision, it is necessary to set out some brief background.

11. By letter to the applicant of 5 August 2025, headed "decision of the International Protection Appeals Tribunal under s.46(3)(a) of the International Protection Act 2015", the Tribunal enclosed a copy of "the decision of the Tribunal" on the applicant's appeal from the IPO's recommendation that the applicant be granted neither a declaration of refugee status nor subsidiary protection. The Tribunal's decision was a 14 page one dated the same date, 5 August 2025.

12. On the first page of the Tribunal's decision, in the section headed "present at the hearing", the entry for "solicitor" said "N/A".

13. Regulation 10(1) of S.I. no. 16/2017, the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 ("the 2017 Regulations"), provides that "*the Tribunal may correct any error or omission in any decision made by the Tribunal under the Act of 2015*". Regulation 10(2) of the 2017 Regulations provides that any correction made under reg. 10(1) shall be notified to the applicant and his or her legal representative (if any), the Minister and the High Commissioner.

14. On 30 September 2025, an administrator in the Tribunal emailed the applicant's solicitor referencing in the subject line, *inter alia*, "*reg.10 annex to decision*" and attaching an annex to the decision document. The email stated "*please see the attached document for your attention in relation to the decision issued to your office on 05/08/2025 in relationship to your client mentioned above*". The accompanying document contained a correction to the first page of the Tribunal's decision which now recorded, for the entry "solicitor" under the heading "present at the hearing": "*CSHR Solicitors - Anly Anto*".

15. On the second page of the document, under the heading "*Annex to Decision pursuant to Regulation 10(1) of the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017*" it stated:

"The Tribunal wishes to correct the omission at the 'present at hearing' section of the decision which issued on 5 August 2025. Please note the relevant section shall include:

Solicitor: *CSHR Solicitors – Anly Anto*

This error is to be notified to the appellant, his/her legal representatives, the Minister and the High Commissioner.

Date of correction

30th September 2025”

The document was signed by the Tribunal member who made the decision of 5 August 2025.

16. Section 5 of the Illegal Immigrants (Trafficking) Act 2000 as amended (“section 5”), under the heading “judicial review”, provides in s.5(1) that a person shall not question the validity of, *inter alia*, at s.5(8), “a decision of the International Protection Appeals Tribunal under subs. (2) or (3) of s.46 of the International Protection Act 2015.... otherwise than by way of an application for judicial review under O.84 of the Rules of the Superior Courts”. Section 5(2) provides that “an application for leave to apply for judicial review under [O.84] in respect of any of the matters referred to in sub (1)... shall be made within the period of 28 days commencing on the date on which the person was notified of the decision, declaration, determination, recommendation, refusal or making of the order concerned unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made...”.

17. As the Tribunal's letter of 5 August 2025 made clear, the Tribunal decision of that date on the applicant's appeal of the IPO recommendation was a decision under s.46(3)(a) of the 2015 Act. Pursuant to the terms of s.5(1) and (2) of the 2000 Act, the applicant had 28 days from the date of notification of that decision to seek leave to apply for judicial review of the decision. The 28 days accordingly expired on 3 September 2025. The applicant did not launch judicial review proceedings seeking to challenge the Tribunal's decision until 13 October 2025, some 40 days outside the statutory period for making an application for leave to apply for judicial review of the decision.

18. The applicant sought to contend that as the Tribunal's decision was amended by the correction of 30 September 2025, that the amended decision was the operative

decision for the purposes of the commencement of the 28 day statutory time limit in s.5(2) of the 2000 Act and that he was accordingly in time with his judicial review challenge to the decision.

19. I rejected this argument on the basis that, in the context of the facts outlined above, the applicant was notified of the decision of the Tribunal within the meaning of s.5(2) of the 2000 Act on 5 August 2025. The decision of 5 August 2025 was the decision of the Tribunal pursuant to s.46(3)(a) of the 2015 Act. What occurred on 30 September 2025 was that a separate decision was made by the Tribunal pursuant to Regulation 10(1) of the 2017 Regulations to correct a very minor administrative error in the Tribunal's decision of 5 August 2025 by way of adding a brief annex to the decision. In my view, it is simply not correct as a matter of law or fact to contend that this separate correction decision of 30 September 2025 constituted the decision of the Tribunal pursuant to s.46(3)(a) of the 2015 Act for the purposes of the 28 day time limit in s.5(2) of the 2000 Act.

20. Section 46 of the 2015 Act is headed "decision of Tribunal on appeal" and relates to a decision of the Tribunal on an appeal, *inter alia*, under s.41(1) of the 2015 Act from a recommendation of the IPO that an applicant should not be given a refugee declaration or should be given neither a refugee declaration nor a subsidiary protection declaration. A decision of the Tribunal on the applicant's appeal from such an IPO recommendation, within the meaning of s.46(3)(a) of the 2015 Act, was manifestly made on the facts of this case by the Tribunal on 5 August 2025 and notified to the applicant on that date. That is when the statutory time period of 28 days for launching a judicial review commenced.

21. The separate decision made by the Tribunal on 30 September 2025 to correct a very minor administrative error on the first page of the decision relating to the representation at the hearing, did not correct or alter any material aspect of the analysis of the Tribunal as contained in its decision of 5 August 2025, let alone the substantive decision made by the Tribunal under s.46(3)(a) to affirm the recommendation of the IPO that the applicant be given neither a refugee declaration or a subsidiary protection declaration. Importantly for the purposes of the application of the time limit in Section 5(2) of the 2000 Act, the decision of the Tribunal pursuant to Regulation 10 of the 2017 Regulations made on 30 September 2025 is not a decision of the Tribunal pursuant to

s.46 of the 2015 Act. The applicant's judicial review challenge is not against the decision pursuant to Regulation 10 of the 2017 Regulations made on 30 September 2025 but rather to the decision of the Tribunal made on 5 August 2025, being the substantive decision of the Tribunal.

22. For those reasons, in my view, the 28 day time limit in s.5(2) of the 2000 Act commenced on 5 August 2025 and not 30 September 2025.

23. It is clear that all of the grounds of challenge to the Tribunal's decision as set out in the applicant's amended statement of grounds related to the substantive contents of the decision of 5 August 2025 and all of those grounds were capable of being identified well within the permitted 28 day statutory time for bringing a judicial review challenge to the decision. While there might be an argument to be made in principle that a correction decision made pursuant to regulation 10 of the 2017 Regulations which led to a material change in the reasoning or analysis in a Tribunal decision would yield good and sufficient reason for extending the time period to challenge the original decision, if the basis of such challenge only became clear following such a correction, that is manifestly not the type of scenario which arose on the facts here.

24. Given the legal position as I have set out above, and in circumstances where the applicant otherwise offered no reason at all, let alone any good and sufficient reason, for extending the 28 day period to challenge the Tribunal's substantive decision of 5 August 2025, I was compelled to refuse the extension of time application. As a result, the parties did not address me in their oral submissions on the applicant's challenge to the Tribunal's decision, as such challenge was not validly made within time and no extension of time to make that challenge was granted.

25. Accordingly, the parties focused their oral submissions on the remaining decisions in issue, being the Minister's s.49(7) decision and the Minister's s.50 decision, and the related decision to make a deportation order. I will accordingly confine the remainder of this judgment to those challenges.

26. I should add for completeness that the applicant was also out of time in respect of his challenge to the s.49(7) decision, albeit by a much smaller period (being a period

of some five days). In fairness to the applicant, I have set out my views on the substantive challenge to that decision, on the basis that in the event that I was with the applicant on that challenge, that factor might be of relevance to whether the statutory test was made out. I will return to this issue later in this judgment.

The Section 49(7) decision

27. Following the rejection by the Tribunal of his appeal, the applicant made an application to the Minister for leave to remain in the State pursuant to s.49 of the 2015 Act.

28. The Minister refused permission to remain (“PTR”) in a decision dated 26 March 2024.

29. The applicant then applied for a review of this refusal pursuant to s. 49(7) of the 2015 Act. The review decision communicated to the applicant on 10 September 2025 affirmed the original s.49(3) decision not to grant leave to the applicant to remain in the State.

30. Before addressing the section 49(7) decision in detail, and the applicant’s grounds of challenge to that decision, it is useful to summarise the legal principles applicable to the determination of section 49 applications.

31. Section 49 is headed “permission to remain” and provides in material part as follows:

“(1) Where a recommendation referred to in [section 39\(3\)\(c\)](#) [i.e. to refuse international protection] is made in respect of an application, the Minister shall consider, in accordance with this section, whether to give the applicant concerned a permission under this section to remain in the State (in this section referred to as a “permission”).

(2) For the purposes of his or her consideration under this section, the Minister shall have regard to—

(a) the information (if any) submitted by the applicant under subsection (6), and

(b) any relevant information presented by the applicant in his or her application for international protection, including any statement made by him or her at his or her preliminary interview and personal interview.

(3) In deciding whether to give an applicant a permission, the Minister shall have regard to the applicant's family and personal circumstances and his or her right to respect for his or her private and family life, having due regard to—

- (a) the nature of the applicant's connection with the State, if any,*
- (b) humanitarian considerations,*
- (c) the character and conduct of the applicant both within and (where relevant and ascertainable) outside the State (including any criminal convictions),*
- (d) considerations of national security and public order, and*
- (e) any other considerations of the common good.*

(4) The Minister, having considered the matters referred to in subsections (2) and (3), shall decide to—

- (a) give the applicant a permission, or*
- (b) refuse to give the applicant a permission.*

(5) The Minister shall notify, in writing, the applicant concerned and his or her legal representative (if known) of the Minister's decision under subsection (4), which notification shall be accompanied by a statement of the reasons for the decision.

(6) An applicant—

- (a) may, at any stage prior to the preparation of the report under section 39(1) in relation to his or her application, submit information that would, in the event that subsection (1) applies to the applicant, be relevant to the Minister's decision under this section, and*
- (b) shall, where he or she becomes aware, during the period between the making of his or her application and the preparation of such report, of a change of circumstances that would be relevant to the Minister's*

decision under this section inform the Minister, forthwith, of that change.

(7) Where the Tribunal affirms a recommendation referred to in section 39(3)(c) made in respect of an application, the Minister shall, upon receiving information from an applicant in accordance with subsection (9), review a decision made by him or her under subsection (4)(b) in respect of the applicant concerned.

(8) Subsections (2) to (5) shall apply to a review under subsection (7), subject to the modification that the reference in subsection (2)(a) to information submitted by the applicant under subsection (6) shall be deemed to include information submitted under subsection (9) and any other necessary modifications.

(9) An applicant, for the purposes of a review under subsection (7), and within such period following receipt by him or her under section 46(6) of the decision of the Tribunal as may be prescribed under subsection (10) —

(a) may submit information that would have been relevant to the making of a decision under paragraph (b) of subsection (4) had it been in the possession of the Minister when making such decision, and

(b) shall, where he or she becomes aware of a change of circumstances that would have been relevant to the making of a decision under subsection (4)(b) had it been in the possession of the Minister when making such decision, inform the Minister, forthwith, of that change....”

[Subsections (10) and (11) are not relevant for the purposes of this judgment]

32. In *MK (Albania) v. Minister for Justice and Equality* [2024] 2 IR 113 (“*MK (Albania)*”) the Supreme Court dealt with the question of the application of article 8 ECHR to a s. 49 application for permission to remain in the State on humanitarian grounds under s. 49(3) of the 2015 Act. In assessing the approach of the ECtHR in relation to article 8 rights, O’Donnell CJ stated, at para. 22, “*that the weight to be accorded to private life established during precarious residences is less than would be*

accorded to the same private life when established by a settled migrant or a citizen, and therefore more readily outweighed by the legitimate interest of the State". He then stated at para. 23 that *"the jurisprudence of the ECtHR establishes that it will only be rarely, and in exceptional circumstances, that the State's interest will not justify the interference with that private life"* [i.e. a private life that *"consists solely of ties formed with others while resident in the State and when that residence is precarious"*]

33. Having quoted case law of the European Court of Human Rights in *Jeunesse v. Netherlands* (2015) 60 E.H.R.R. 17, at para. 108, and *Pormes v. The Netherlands* CE:ECHR:2020:0728JUD002540214, O'Donnell CJ agreed *"that exceptionality is more of a description and not a legal test, but is a formulation here which describes something that is important in the present context"*. He stated, at para 25, that *"it is now well established that their choices and desires [i.e. the choice or desire of a person of precarious status to live in the State], unless accompanied by something more, can never outweigh the State's interest in maintaining an orderly immigration system"* and at para 26 he stated as follows:

"These weights and their relative relationship are, as it were, preloaded. Where on one side of the balance there is the State's interest in maintaining an orderly immigration system, and on the other side there are the social ties established by the fact of residence. But where that residence is precarious, then the State's interest prevails, and will always justify the interference with private life that a refusal of leave to remain in the country, or indeed, deportation, necessarily involves, unless, adopting the language of Mac Eochaidh J. [in the High Court in C.I. v. Minister for Justice, Equality and Law Reform[2014] IEHC 447] there is something more. The case law establishes the type of thing which may be something more, and which may have the capacity to tip the balance. This may be because of circumstances relating to the health of the individual, whether physical or mental, or the impact upon the individual by reason of their sexual identity, or orientation, or perhaps because of the manner in which they came to the country and their awareness or lack of it of the precarious nature of their residence, or the depth, length and intensity of the relationships they have established, and the particular circumstances of the persons involved in the nature of those relationships. I would not like to try to set out a definitive

list of such circumstances. It is sufficient that without something more, that the State interest in maintaining the integrity of the immigration system will justify interference with private life when all that can be asserted is that a life has been lived in a country where that residence is and is known to be precarious.”

34. As O’Donnell CJ summarised at para. 30, “*the jurisprudence of the ECHR makes it clear that removal of a precarious resident in accordance with law will only be a breach of the article 8 right to private life in exceptional circumstances.*”

35. That is the correct approach to an article 8 ECHR evaluation in a permission to remain context. However, the law is clear that a non-ECHR evaluation in a permission to remain context should be broader and less onerous.

36. As stated by Humphreys J. in *RA (Pakistan) v. Minister for Justice and Equality* [2019] IEHC 319 as agreed with by Donnelly J. in *HK (Western Sahara) v. Minister for Justice and Equality* [2022] IECA 141 (“*HK (Western Sahara)*”) at para 102 “*section 49 of the 2015 Act is somewhat wider than article 8 of the ECHR, although there is an overlap. Section 49 (3) covers “the applicant’s family and personal circumstances and his/her right to respect for his/her private and family life” whereas article 8 (1) of the ECHR provides for “the right to respect for his private and family life, his home and correspondence”*”.

37. As Donnelly J. noted in *HK (Western Sahara)*), at para. 102, having stated she agreed with the *dicta* of Humphreys J. in *RA (Pakistan)*, “*therefore, while article 3 ECHR must be addressed as part of the humanitarian considerations, the Minister’s considerations go further and there is a less onerous test. Similarly, as regards family and private life, article 8 ECHR rights must be considered, but the humanitarian considerations go further than that and reach into all aspects of private and family life. Thus, there does not have to be an interference with private and family life that will engage article 8 (1) ECHR rights, but there must be a consideration of personal and family rights and the overall context of the grant or refusal of PTR.*”

38. It seems clear from the foregoing that such broader non-ECHR consideration of an applicant’s family and personal circumstances under s.49 is not confined to

“humanitarian considerations”; it must also extend to the applicant’s connections to the State.

39. The fact that a broader and less onerous approach to the exercise of the Minister’s discretion is involved in a non ECHR evaluation of matters under s.49, such as level of connection to the State or humanitarian considerations, does not mean that once such factors are reasonably advanced the Minister must accede to a permission to remain application. Rather, the matter fundamentally remains one of a broad discretion vested in the Minister against a backdrop of the State’s legitimate and important interest in controlling immigration. What is required to persuade a Minister to grant permission to remain on the basis of non-ECHR matters is a matter entirely for the Minister once such assessment is made on a basis that is less onerous than the ECHR would require.

40. The issues raised by the applicant in these proceedings need to be seen in that legal context.

The Section 49(7) decision and the applicant’s grounds of challenge to it

41. The decision begins by setting out the background of the applicant’s international protection application and the rejection of same.

42. The decision then details the documentation submitted on behalf of the applicant in support of his review application and also notes documentation submitted in the course of his appeal to IPAT and states that this material was duly considered in the context of the applicant’s PTR review. The decision sets out the terms of s. 49 (3) of the 2015 Act and proceeds to deal with the applicant’s family and personal circumstances and his right to respect for his private and family life by reference to each of the matters set out in s. 49 (3)(a) to (e) of the 2015 Act. The decision then has a section headed “(ECHR)-private life”, and a section headed “Article 8 (ECHR)-family life” before setting out “section 49 (3) findings” and a conclusion.

43. While the applicant in his pleaded case took issue with the proportionality assessment in the “article 8 – private life” evaluation section of the review decision, on the basis that an adequate proportionality assessment had not been conducted, this point was not pressed at the hearing before me and sensibly so. Having considered the terms

of the article 8 private life assessment, including the proportionality assessment, in the review decision I am satisfied that it was conducted properly and in accordance with law.

44. The principal focus of the applicant's submissions at the judicial review hearing were in relation to alleged legal errors in the sections of the review decision dealing with the nature of the applicant's connection with the State (i.e. the s. 49 (3)(a) criterion) and the question of humanitarian considerations under s. 49 (3)(b).

Connection with the State

45. In the section of the decision dealing with the nature of the applicant's connection with the State, the decision maker sets out how the applicant illegally entered the State in August 2022 and failed ultimately in his international protection application. It notes that he had been in the State for approximately three years at the time of the decision, that he was single with no family connections to the State and was residing in IPAT provided accommodation. The decision notes that he was granted permission to access the labour market from March 2023 until the date of the final decision on the international protection application (being 5 August 2025). Reference is made to his employment in the State in addition to his friendships in the community and training engaged in by him. The decision references the applicant's statement that he had been working as an electrician and paying taxes and that his role was important in construction. The decision also notes that he had received medical treatment in the State.

46. The decision then says as follows:

“Whilst the above indicate some level of connection to the State, these were formed during a time when the applicant’s status in the State had yet to be determined and their length of residency cannot be considered lengthy or exceptional.

Additionally, it is common for applicants to form personal and emotional connections to their community while awaiting a decision on their international protection application, as well as taking on employment and education

opportunities. The connections referenced above would not be considered sufficient reason to give permission to remain."

47. Counsel for the applicant submitted that these paragraphs indicated a flawed legal approach on behalf of the Minister, on the grounds that the decision maker dismissed the applicant's asserted connections to the State on the basis that these connections were formed during a time when the applicant status in the State "had yet to be determined". He submitted that this demonstrated an error of principle; the Minister is obliged by s. 49 (3) to have due regard to the nature of the applicant's connections to the State but here he disregarded those connections solely on the basis that they were formed during a time when the applicant's status in the State had yet to be determined. The applicant submits that the Minister effectively subverted the statutory intention by imposing an elevated threshold and a preassigned weighting which the applicant could never get over. He also submitted that the formulation of the first paragraph set out above shows that the Minister improperly employed an "exceptional circumstances" legal test, which is not the appropriate legal test for s. 49 (3). Effectively, the applicant submits, the Minister determined the question of personal connections to the State wholly against the applicant on the basis of the precariousness of his residence here.

48. The review decision then went on to quote from *MK (Albania)* and to consider the applicant's article 8 private life rights in the context of a connection to the State before concluding "*In conclusion and based on submissions received from or on behalf of the applicant, it is decided that his connections to the State do not warrant a grant of permission to remain.*"

49. In my view, the paragraphs from the decision as set out at para 46 above which are impugned by the applicant do not reflect disregard of the question of the applicant's personal connections to the State or otherwise involve the imposition of an improper threshold or a legal test of exceptional circumstances.

50. As we have seen from the authorities, while s.49 (3) embraces an evaluation of ECHR rights, its scope is broader than the question of ECHR rights. The fact that the approach under s.49 (3) is necessarily broader, and less onerous, than that under article

8 ECHR does not mean that the Minister in exercising his broader assessment under s.49 is not entitled to have regard to the circumstances in which an applicant's connections to the State have been formed (in essence at a time when their status was precarious) or otherwise require a lengthy period of residence in the State or something of real weight.

51. It is clear from the face of the decision itself that the decision maker had regard to the matters advanced by the applicant in support of his case that he had connections to the State.

52. While the Minister may not impose a threshold for exercise of his broad discretion as high as the article 8 threshold as indicated by O'Donnell CJ in *MK (Albania)* (namely “exceptional circumstances” as indicated at para. 26 of his judgment in that case) in my view it was open as a matter of law to the Minister in exercise of the broad discretion which he has under s. 49 (3) to take the view on the facts that the matters advanced by the applicant did not constitute some sufficiently weighty level of connection to the State to persuade the Minister to exercise his discretion in favour of granting leave to remain.

53. While the ECHR test is clearly that of “exceptional circumstances”, that does not mean that on a given set of facts the Minister is precluded from looking for some matter of real weight in a non-ECHR evaluation. The fact that the threshold for granting permission to remain is lower than that of an ECHR breach does not mean that there is no threshold at all. Given the breadth of the discretion enjoyed by the Minister under s. 49 (3) in relation to non-ECHR right matters, I do not see that the conclusion that the decision-maker reached on the facts, outside of the question of an ECHR rights evaluation, that the applicant's connections “*would not be considered sufficient reason to give permission to remain*” is legally flawed.

54. I do not accept the case that the Minister improperly failed to have regard to the applicant's connections to the State on the basis that they were formed at a time when his status had yet to be determined. The fact that his connections were formed during a period when the applicant had a particular status was a fact referenced and taken into account by the Minister but was not in my view treated as a determinative legal test or threshold. The factors advanced by the applicant coupled with the length of his

residency in the State were found on an evaluative basis by the decision maker not to give rise to sufficient reason to merit permission to remain; they were not considered lengthy or “exceptional” but rather indicated only “some level” of connection to the State. I do not read the use of the word “exceptional” here as the application of a preset weighting or insurmountable threshold, or the articulation of some binding legal test; the approach of the decision-maker was rather whether, in the round, there was “sufficient reason” to give permission to remain. While the reasoning might be terse, the factors advanced were set out in full and engaged with and the matter was, in my view, legitimately approached as one based on a broad discretion.

55. In the circumstances, I do not see that the alleged unlawfulness arises as contended for.

Humanitarian considerations

56. As noted earlier, the Court of Appeal in *HK (Western Sahara)* invalidated a s.49(7) review decision in circumstances where there was a failure to apply any consideration to the humanitarian aspects of the applicant’s case beyond a consideration of Article 3 and Article 8 ECHR matters. The Court of Appeal held, in the judgment of Donnelly J at para.104, on the facts of that case that “*overall, the review gives no indication that the reviewer considered and applied the legal requirement that humanitarian considerations must go further than considerations of whether Article 8 ECHR rights in particular had been violated.*” The decision in *HK (Western Sahara)* was applied by Simons J in *A (Albania) v Minister for Justice and Equality* [2023] IEHC 692 to a s.49 (3) to a decision which demonstrated precisely the same flaw i.e. in failing to have regard to humanitarian considerations beyond Articles 3 and 8 ECHR. As Simons J noted, at para.19 of his judgment, the formulation of the s.49(3) decision in relation to the findings in the case before him was identical to that condemned by the Court of Appeal in *HK (Western Sahara)*.

57. The applicant submits that there was a legal error in the assessment of humanitarian considerations by the Minister in the review decision here. His contention is that the review decision unlawfully collapsed humanitarian considerations into an

Article 3 ECHR threshold analysis by focusing on the absence of medical evidence reaching Article 3 severity.

58. Both parties placed reliance in their submissions in respect of this aspect of the case on the recent decision of Bradley J in *SM v the Minister for Justice* [2025] IEHC 629. However, at the conclusion of the hearing before me, I was informed that the Supreme Court had recently accepted an appeal from that judgment of Bradley J (see determination of 17 June 2026 [2026] IESC DET 72). Bradley J had, in a second judgment in that case ([2026] IEHC 138) certified the following question for the purposes of an appeal

“In the exercise of ministerial discretion carried out pursuant to s.49(7) of the 2015 Act, including in particular s.49(3)(b) of the 2015 Act dealing with general humanitarian considerations, is the Minister entitled to weigh, as part of the balancing exercise carried out, the State’s interest in maintaining the integrity of an orderly system of international protection, asylum and immigration, on the one hand, and the other facts and circumstances which apply specifically to the individual who has made an application for a review, in assessing whether such factors, facts and circumstances amount to ‘something more’ than inter alia private rights, including (but not limited to) residence etc., such further other rights and other non-rights which apply to that individual, on the other hand?”

59. The Supreme Court granted leave to appeal in respect of that (and other) issues having regard to the number of cases identified as following it (as noted by the Supreme Court in its determination, at para. 7, the applicant's proceedings in *SM* were selected as a test case in the High Court out of more than 100 cases raising similar issues).

60. As that appeal has not yet been determined, I do not propose to have regard to the terms of Bradley J’s judgment in *SM* when considering the issues before me. I am satisfied that I can determine that the issues in the matter before me on the basis of established case law, including the Court of Appeal decision in *HK (Western Sahara)*, and on the basis of conventional judicial review principles.

61. In the section of the s.49(7) decision dealing with humanitarian considerations, under the heading "general humanitarian considerations" the decision maker referenced representations on behalf of the applicant to the effect that the events relating to persecution by the applicant's neighbour, as accepted by IPAT, were such that his life would be in danger. The decision maker noted that the Tribunal concluded there was no basis for finding the applicant was at real risk of the form of serious harm complained of by him should he be returned to Georgia.

62. The s.49(7) decision then addressed "medical issues". The decision noted that medical matters were highlighted in the applicant's previous s.49(3) review, where the applicant suffered serious injuries from an assault in Georgia in November 2021 and had severe tooth issues in the State in October 2023 but that these matters were not found to breach either Article 3 or Article 8 ECHR. The decision then made reference to the Supreme Court's decision in *DE v Minister for Justice and Equality* [2018] IESC 16 (which addressed the question of the test applicable in order to determine whether a deportation might give rise to a breach of Article 3 rights) and the decision maker expressed the view that the applicant's medical condition did not reach the threshold of a violation of Article 3 ECHR and that no further consideration of Article 3 ECHR was required. The decision maker also took the view that Article 8 ECHR was not engaged and there was no interference with respect to the applicant's private life on the basis of his medical grounds.

63. The decision then goes on to state: "*Although the applicant's medical history does not reach the level of a breach of his rights under Article 3 of the ECHR, it is nonetheless a humanitarian consideration and has been considered in light of this*".

64. The decision also states then a number of paragraphs later, that

"notwithstanding the above conclusions in respect of Article 3 and/or Article 8 ECHR it is acknowledged that humanitarian considerations may arise that do not meet special the threshold or breaches under Article 3 and/or 8 ECHR.

Against this background, general humanitarian considerations have been taken into account for this decision. These are separate from Articles 3 and 8 ECHR on whether the applicant should be given a permission to remain on the basis

of humanitarian considerations, in particular due to his family and personal circumstances, and any medical conditions."

65. The decision then states as follows:

"While the applicant is residing in the State and has made connections in the community, it can be noted that his status in the State had not yet be determined. However, while the applicant has made submissions with regards to humanitarian considerations, he has not demonstrated how returning to Georgia would result in a decline of his mental or physical health, or that he would not have access to the same services he is currently availing of in Ireland – education, religious freedom etc.

In relation to the medical issue raised above, it should be noted that medical treatment is available in the applicant's country of origin. The appellant has also not indicated that he could not avail of this treatment should he be returned to his country of origin.

I have analysed the humanitarian considerations of this application, and based upon this analysis I have found that the common good in maintaining the integrity of the international protection and immigration system outweigh the features of this case."

66. The applicant contends that the decision here deploys "boilerplate" language and that in substance the decision maker simply re-applied an Article 3 test in the paragraphs set out above, i.e. that the same flaw as in *HK (Western Sahara)* applies in substance to this decision also.

67. I do not accept that submission. The Article 3 test was correctly set out by the decision maker earlier in the section of the decision when quoting from the Supreme Court decision in *DE v Minister for Justice and Equality* namely whether there were substantial grounds for believing that in substance there was a real risk that the person would be "exposed to a serious, rapid and irreversible decline in their state of health resulting in intense suffering or a significant reduction in life expectancy". It is manifest

that the decision maker here did not reapply that test in considering humanitarian considerations beyond the questions of Article 3 and 8 ECHR. The decision maker noted, on the basis of his consideration of the matters advanced on behalf of the applicant in relation to his medical position that the applicant *"has not demonstrated how returning to Georgia would result in a decline of his mental or physical health or that he would not have access to the same services he is currently availing of in Ireland education - religious freedom etc"*. As regards medical issues, the decision-maker noted that medical treatment was available in the applicant's country of origin and the applicant had not indicated he could not avail of the treatment should he be returned to Georgia.

68. In my view this is a perfectly lawful and legitimate analysis and involves the application of a much less onerous threshold than that for Article 3. The legal flaw found to be present in *HK (Western Sahara)* and *A (Albania)* simply does not arise here.

69. The applicant further complains that there was a failure to engage with his humanitarian considerations case. That is simply not the case when the actual terms of the decision in relation to humanitarian considerations are considered. As noted above the decision expressly states that *"notwithstanding the above conclusions in respect of Article 3 and/or Article 8 ECHR it is acknowledged that humanitarian considerations may arise that do not meet the threshold of breaches under Article 3 and/or 8 ECHR."* The decision then goes on to state that *"Against this background, general humanitarian considerations have been taken into account for this decision"* and makes clear that these are taken into account on the basis that they are separate from Articles 3 and 8 ECHR. The decision then goes on to engage with the matters advanced, in particular the medical history of the applicant.

70. In the circumstances, for the reasons set out above, I do not accept that the s.49(7) decision was arrived at in breach of law.

Extension of time – section 49(7) decision

71. While the applicant was only out of time by some five days in respect of his challenge to the s.49(7) decision, in circumstances where the applicant has not

demonstrated any unlawfulness in the decision (without definitively deciding whether that would be a legitimate factor in favour of extending time) and where he did not otherwise advance any reason for his delay in challenging the s.49(7) decision, I do not believe that he has demonstrated any good and sufficient reason for an extension of time to challenge the s.49(7) decision and therefore must reject his application to apply for judicial review on this basis also.

Section 50 decision

Background

72. Section 50 of the 2015 Act is headed “prohibition of *refoulement*”. Section 50(1) provides that a person shall not be expelled or returned in any manner whatsoever to the frontier of a territory where, in the opinion of the Minister—“(a) *the life or freedom of the person would be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion, or (b) there is a serious risk that the person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.*”

73. The effect of s.50(2) and (3) is that the Minister is required, when considering the question of *refoulement*, to have regard to any relevant information presented by the person in his or her application for international protection and any new information arising from a material change in circumstance since the international protection application was determined.

74. If circumstances of *refoulement* are made out, the Minister is obliged to give permission to a person to remain in the State where that person would otherwise be the subject of a deportation order under [section 51](#).

75. Following receipt of the s.49(7) review decision, which affirmed the original s.49 (3) decision refusing the applicant permission to remain the State, the applicant's solicitors sent a short email to the IPO on 15 September 2025 submitting that a deportation order should not be issued in this case “*where the tribunal finds that it has been established that there is a reasonable chance that if he were to be returned to*

Georgia the appellant would face a well-founded fear of persecution at the hands of the people who attacked and threatened him in the past". In essence, the applicant contended that he should not be the subject of a deportation order as such an order would breach the s.50 prohibition of *refoulement*. The email attached "additional support documents as provided by the applicant" and invited the IPO to contact the solicitor if there were any queries. The enclosed documents consisted of a police report from the police department of the Poti City Division Georgia and an English translation of same. The report was dated 9 September 2025 and concerned an attack on the applicant's mother in Georgia on 2 September 2025 during which two unknown people threatened to kill the applicant. This was material which had not previously been before the Tribunal or Minister at s.49(7) review stage.

76. The police report was a short one which stated that on 2 September 2025 Poti City Division received a complaint from the applicant's mother where she stated that *"on September 2, 2025 when she was returning home she was met by two unknown persons in the vicinity of her house. They were asking about her son [the applicant] and his whereabouts. They threatened to kill him. They verbally and physically abused [the applicant's mother]. A criminal case was not initiated in connection with the above-mentioned fact, since the identification of the said persons was not possible."*

77. No other submissions were made in support of the application not to deport.

78. A decision in respect of the s.50 application was made on 3 October 2025, with a deportation order being made on 10 October 2025 and issued to the applicant on 14 October 2025.

The s.50 decision

79. After setting out the terms of s.50 of the 2015 Act, and referencing the fact that Georgia has been designated as a safe country of origin, the decision summarises the applicant's international protection history, the s.49(4) decision of March 2024, and the s.49(7) review decision of 10 September 2025. The s.50 decision then set out the applicant's representations regarding *refoulement*.

80. It set out the applicant's case as to the accident involving his neighbour and the resulting assaults and intimidation. It referenced the applicant's claim before IPAT that

in March 2025 explosives were thrown at the applicant's apartment in Georgia and that the applicant's parents were told that the applicant's neighbour, who was injured in the accident in the applicant's house, was behind the incident and that the applicant's mother had made a report to police of the incident. The decision then set out the matters considered in the context of the s.50 decision, including the Georgian police report dated 9 September 2025. Under the heading "consideration", the decision noted the Tribunal's acceptance of the applicant's account as credible but rejecting the Convention nexus suggested and also finding that state protection would be available for the applicant if returned to Georgia.

81. The decision-maker then held as follows:

“Following the decision of the IPO under section 49(7), further submissions were made by the applicant in relation to refoulement. The applicant submitted that on the 2nd of September 2025 his mother was attacked by two people asking for [the applicant's] whereabouts and threatening to kill him.

In support of his new claim the applicant submitted a police report dated 9th September 2025 and issued by the Poti Police Department against unknown individuals. It is noted that a previous police report, also against unknown individuals and detailing the above mentioned arson incident from March 2025, was submitted to the Tribunal. Both documents record that “no criminal case was initiated regarding the above-mentioned fact, as it was not possible to identify the unknown persons.”

It is noted that the Tribunal found that the March police report did not started [sic.] an investigation for a very conventional reason, namely the perpetrators [sic.] couldn't be identified, and therefore found that there was no wrongdoing from the police's side.

The September's report comes to the same conclusion and refrains from starting any investigation since the perpetrators [sic.] are reported to be unknown.

Notwithstanding that the veracity of the documentation submitted cannot be verify [sic.] by the IPO, it seems unusual that, despite knowing who would be behind the death threats against the applicant, the applicant's mother would again report against unknown individuals. It is noted as well that according to the applicant's own testimony at appeal, it was his mother who told him that [his neighbour] was behind the March 2025 accident. As previously found by the Tribunal, state protection is available in Georgia and the applicant provided no reason why the Police shouldn't protect him against [his neighbour] rather than the subjective mistrust in the Georgian institution, furthermore [his neighbour] hasn't been identified by the applicant as well connected with police or politics, which wouldn't justify why the applicant's mother would avoid to report him.

Finally, since [his neighbour] hasn't been reported as perpetrator [sic.], it is speculative to claim that the Police would not protect the applicant and his family against him."

82. The decision also contained the following paragraphs:

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

In addition, I have considered whether there could be other reasons why the applicant could be at risk of refoulement in Georgia, however Country of Origin Information Reports such as the US State Department Country Reports on Human Rights Practices, 2024, Georgia (Ref. 1) do not indicate that to return to the applicant to Georgia would constitute a breach of prohibition of refoulement."

83. In his second amended statement of grounds, the applicant raised a large series of grounds of complaint in relation to the s. 50 decision (and by extension the s. 51 deportation order relying on the s. 50 decision). He pleaded that the s. 50 decision was

irrational for the failure of the Minister to engage in an adequate assessment of the prohibition of *refoulement* under s. 50 and/or pursuant to Article 3 ECHR and that there was a failure to either take into account or properly evaluate material facts and considerations.

84. Amongst the specific sub-grounds advanced was that there was a failure to "properly consider" the new information contained in the police report of September 2025; that the s. 50 findings in relation to the police reports of March 2025 and September 2025 were irrational; that there was a breach of fair procedures in the Minister drawing adverse inferences from the material tendered; that the applicant should as a matter of fair procedures have been given an opportunity to respond to the finding that it was unusual that the applicant's mother would report unknown individuals behind the recent attack on her despite allegedly knowing who was responsible; that the Minister engaged in "speculation" in finding that it would be speculative to claim that the police would not protect the applicant and his family. Further sub-grounds complained of an inadequate consideration of the cumulative effect of incidents of violence against the applicant and his family and the escalating pattern of violence which the evidence demonstrated. It was also contended that the s. 50 decision was inconsistent with the IPAT's finding that the applicant established substantial grounds that he would face a real risk of torture or inhuman or degrading treatment if returned to Georgia. He also contended there was an improper drawing of adverse inferences from the content of unverified documents and that the s. 50 decision was vitiated by a failure to give reasons.

85. In his written submissions, the applicant largely focused on the alleged inadequacy of reasoning in the s.50 decision. In his oral submissions at the hearing before me, counsel for the applicant focused on an alleged failure of fair procedures in failing to give the applicant an opportunity to address the Minister's criticisms of the September police report. He also maintained that the decision was inadequately reasoned. He complained that the decision-maker's reference to COI did not properly engage with COI which was supportive of the applicant's case.

86. In my view, the applicant has not been able to demonstrate any legal infirmity in the s. 50 decision or the manner in which it was arrived at. It is patently the case that

the decision in its terms engages with the September 2025 police report submitted on behalf of the applicant and sets out an evaluative analysis of the terms of that police report.

87. Under the heading "The appellant's account regarding state protection", the Tribunal held in respect of the March 2025 police report as follows:

“[5.17] The appellant’s account is that he did not report his difficulties to the police because of the threats from [his neighbour] and also because he didn’t believe the police would be able to protect him either.

[5.18] On appeal the appellant has submitted a police document that records that on 20th March 2025 the appellant’s mother made a report to the police concerning an incident on the same date in which unknown persons broke windows in her apartment. The document records that ‘no criminal case was initiated regarding the above-mentioned fact, as it was not possible to identify the unknown persons.’

[5.19] The Tribunal notes that the police were satisfied to record the fact of a complaint and also issue a record of it to the appellant’s mother. The Tribunal also notes that the document records a conventional reason for the fact that there was no criminal case initiated in relation to the incident i.e, the inability to identify the perpetrators of the incident. The Tribunal finds nothing in the document to provide a basis for finding that the police in Georgia behaved inappropriately.”

88. The view reached by the s.50 decision-maker on the September 2025 police reports read in light of the Tribunal’s finding on the March 2025 police report was clearly rationally open to her. While the decision refers to the veracity of the September 2025 police report documentation being incapable of verification by the IPO, the decision-maker notwithstanding those concerns, goes on to expressly engage with the substance of the contents of that police report. No authority was advanced by the applicant for the proposition that the decision-maker was obliged at the s. 50 stage to revert to the applicant with concerns as to the strength of the contents of the police

report in the context of the question of *refoulement*. In my view, fair procedures did not require this step. The decision-maker was evaluating material supplied by the applicant himself, not some independently-sourced material which the applicant had no notice of. The decision-maker evaluated the material on its own terms and expressed a view that it seemed unusual that, despite the applicant's mother knowing who was behind the death threats against the applicant, she would again in September 2025 report an incident to the police (as she had done in March 2025) in relation to “unknown individuals”. That was a perfectly legitimate view for the decision-maker to take on the material tendered by the applicant and in my view cannot be regarded as irrational or arrived at in breach of fair procedures.

89. The question of *refoulement* is directly engaged with by the decision-maker holding that, as previously found by the Tribunal, state protection is available in Georgia and that the person behind the mistreatment of the applicant was not identified as well-connected with police or politics, which was a rational basis for the decision-maker's view that this would not justify why the applicant's mother would avoid reporting the person behind the incident who on the applicant's case to the Tribunal was fully known to his mother.

90. Furthermore, there was nothing speculative about the finding, in my view, that it was speculative to complain that the police would not protect the applicant or his family against the individual believed to be the perpetrator, in circumstances where that individual had not been reported to the police as a perpetrator.

91. I do not see that the reference by the decision-maker in the s.50 decision to 2024 COI in relation to availability of state protection in Georgia was unlawful. The Tribunal had assessed COI at some length in arriving at its view that state protection would be available for someone in the applicant's position in Georgia. No fresh submission was made at s. 50 stage in respect of COI. The s. 50 decision itself earlier referenced the fact that the Tribunal found that adequate state protection would be definitely available to the applicant in Georgia as there was no COI confirming that the sort of crime the applicant is a victim of would not be investigated by the police.

92. In my view, the decision is reasoned to the requisite legal standard. On reading the decision, the applicant would “well know” the reason for the decision and the

essential pathway of the Minister's rationale: see, in this regard, the extensive survey of the authorities on the scope of the duty to give reasons set out by Humphreys J in *Rutledge v Fingal County Council* [2026] IEHC 223.

93. In the circumstances, in my view, the applicant has not made out any unlawfulness in relation to the s. 50 decision.

Conclusion

94. For the reasons outlined above, the applicant is out of time to seek to challenge the Tribunal's decision. I am satisfied that the s. 49(7) decision was arrived at lawfully and that, in any event, the applicant is out of time to seek to challenge that decision also. I am further satisfied that the s. 50 decision, and consequently the s. 51 deportation order, were lawfully arrived at.

95. I therefore refuse the applicant the reliefs he claims in these proceedings.