

**APPROVED
NO FURTHER REDACTION REQUIRED**

[2026] IEHC 611



**THE HIGH COURT
JUDICIAL REVIEW**

[2025 No. 376 JR]

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

BETWEEN

E.I.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr Justice David Keane delivered on 7 September 2026

Introduction

1. The applicant seeks to quash a decision of the respondent tribunal ('the Tribunal' or 'IPAT') dated 6 February 2025, made pursuant to s. 46(3) of the International Protection Act 2015 ('the 2015 Act'), affirming the recommendation of an international protection officer ('IPO') dated 24 January 2024, made pursuant to s. 39(3)(c) of the 2015 Act, that the applicant should be given neither a refugee declaration nor a subsidiary protection declaration ('the IPAT decision').

2. The applicant raises four grounds of alleged error in the IPAT decision. The first two grounds are linked, as are the last two.
3. The first ground is that the IPAT decision fails to properly apply the presumption (or ‘evidential advantage’) in s. 28(6) of the 2015 Act (whereby the fact of past persecution is a serious indication of a well-founded fear of future persecution) in that it fails to apply it to the availability of effective state protection.
4. The second ground is that the IPAT decision wrongly construes and, hence, wrongly applies the definition of ‘refugee’ in s. 2 of the 2015 Act, which in turn reflects the definition of ‘refugee’ in Article 2 of Council Directive 2004/83/EC (‘the Qualification Directive’), in that it fails to consider the availability of effective state protection as part of its assessment of whether the applicant has a well-founded fear of persecution.
5. Having been considered and rejected in a train of High Court judgments, including *B.A. v IPAT* [2020] IEHC 59 (Burns J), *T.A. v IPO* [2023] IEHC 390 (Heslin J), *N.G. v IPAT* [2023] IEHC 535 (Phelan J), and *Z.M. v IPAT* [2023] IEHC 637 (Hyland J), the argument encompassed by those two grounds – based on an over-broad or over-literal reading of certain dicta in the judgments of the Court of Justice of the European Union (‘CJEU’) in Joined Cases C-175/08, C-176/08, C-178/08, C-179/08 *Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi and Dier Jamal v Bundesrepublik Deutschland* [2010] ECR I-01493 (‘*Abdulla*’) (at paras. 57 and 58) and in Case C-255/19 *Secretary of State for the Home Department v OA* ECLI:EU:C:2021:36 (‘*OA*’) (at para. 57), as well as the *Opinion of Advocate General Hogan* ECLI:EU:C:2020:342 in the latter case - was comprehensively addressed and rejected by the Court of Appeal in the joined appeals *Z.M. v IPAT* and *N.G. v IPAT*

[2025] IECA 208, (Unreported, Court of Appeal (Whelan, Butler and Meenan JJ), 21 October 2025) (*ZM and NG*).

6. While acknowledging that this court is bound by the decision of the Court of Appeal in *ZM and NG*, the applicant did not formally abandon those grounds because an application for a certificate granting leave to appeal in that case was pending before the Supreme Court. However, after the applicant's written submissions were filed but before the hearing of the application, the Supreme Court delivered a determination refusing that application; *Z.M. v IPAT* [2026] IESCDET 10.
7. Accordingly, I must reject each of the first two grounds advanced by the applicant, *in limine*.
8. I think it is fair to say that the third and fourth grounds are also closely linked.
9. In substance, the third ground is that the IPAT decision is bad for inconsistency or for failure to give reasons, or both, in that it fails to address previous IPAT decisions on the general availability of effective state protection against domestic violence in Georgia and, in particular, fails to distinguish previous IPAT decisions that held that such protection was not available there ('the inconsistency ground').
10. The fourth ground is that the IPAT decision is bad in that it fails to address why it preferred certain parts of the country-of-origin information ('COI') before it over other unspecified parts of that information or to the information relied on by other tribunal members in other cases where effective state protection against domestic violence in Georgia was held to be unavailable ('the irrationality ground').

Procedural history

11. The applicant filed a statement of grounds on 19 March 2025, seeking as a primary relief an order of *certiorari* quashing the IPAT decision. That statement is grounded on an affidavit of the applicant, sworn on 18 March 2025, and an affidavit of the applicant's solicitor, Mary Trayers, sworn on the same date (*'the first Trayers affidavit'*). Ms Trayers swore a second affidavit in support of the application on 28 March 2025 (*'the second Trayers affidavit'*). Leave was granted to seek that relief on 31 March 2025. A statement of opposition was filed on 11 September 2025, grounded on the verifying affidavit of John Moore, a higher executive officer in the Department of Justice, Home Affairs and Migration, sworn on 28 August 2025.

Background

12. The IPAT decision accepts (at para. 27), on the balance of probabilities, the credibility of the applicant's claim that she is a 50-year-old woman from Poti, Georgia; that she is separated and has two adult children – a daughter in Georgia and a son in Ireland; that she is well-educated and managed a restaurant in Georgia for a number of years; and that she has family living in Georgia.
13. The IPAT decision also accepts (at para. 26) the credibility of the applicant's account that she met her husband when she was kidnapped in 1990 and that they were married a year later; that her partner was violent, controlling and verbally abusive towards her; that her partner was violent towards her son; and that, on one occasion, he wanted to injure the appellant and her son with a wood-cutting implement.
14. Hence, the IPAT decision accepts (at para. 27) that the applicant suffered domestic violence in her marriage.

15. On the basis of those facts, the IPAT decision finds (at para. 31) that the applicant has a well-founded fear of persecution, specifically applying the presumption under s. 28(6) of the 2015 Act whereby, where an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or serious harm, that is a serious indication of the applicant's well-founded fear of persecution, unless there are good reasons to consider that such persecution or serious harm will not be repeated.
16. The IPAT decision next finds (at para. 32) that there is a convention nexus in that the applicant is identified as a member of a particular social group comprising the victims of gender-based violence or domestic violence, or both. The implication is that the applicant has a well-founded fear of persecution for reasons of her membership of that social group.
17. The IPAT decision then considers (at para. 34 *et seq.*) the availability of effective state protection for the applicant – in other words whether, due to her well-founded fear of persecution, the applicant is unable, or owing to that fear, unwilling to avail herself of the state protection in Georgia.
18. In doing so, the IPAT decision addresses (at para. 34) the necessary requirements for effective state protection against persecution or serious harm, as set out in s.31(2) and (4) of the 2015 Act and reformulated by Barrett J in *B, C, D and E v IPAT and the Minister for Justice* [2019] IEHC 763, (Unreported, High Court, 14 November 2019) ('*B & Ors*') (at para. 10) in the following way:
 - (1) The state in question takes reasonable steps to prevent the persecution or serious harm feared.

- (2) Those steps include the operation of an effective legal system for the detection, prosecution and punishment of acts constituting such persecution or serious harm.
- (3) The protection resulting from those steps is both effective and enduring (*i.e.* non-temporary).
- (4) And the applicant has access to that protection.

19. The IPAT decision correctly notes (at para. 35) that a proper ‘availability of effective state protection’ analysis necessitates having regard to the individual position or circumstances of the applicant; see, for example, *Abdulla*, above (at paras. 68-71). That will be particularly so where the threat of persecution is from a non-state actor; see, for example, *ZM and NG*, above (at para. 45).
20. The IPAT decision records (at para. 20) that the Tribunal has had regard to the applicant’s notice of appeal and all of the documentation it referred to in it, as well as the IPO recommendation report and all of the documentation that it referred to. In conducting its ‘availability of effective state protection’ analysis, the IPAT decision specifically cites, and quotes from, those parts of the UN Women publication *Country Gender Equality Profile of Georgia* (2021) and of the United States Department of State *Georgia 2023 Human Rights Report* that address the issue of domestic violence.
21. The IPAT decision finds (at para. 41):

‘Georgia has made considerable strides to improve the level of state protection in gender-based violence and domestic violence cases. Shortcomings remain, rates of domestic violence are high, and there have been calls for more to be done. There are now a number of procedures in place to combat such violence

and there have been improvements in recent years.... Georgia has a police force and judiciary, and these matters are strong indicators of effective state protection being provided but are not decisive because the particular case of domestic violence and the [applicant's] personal circumstances must be considered.'

22. The IPAT decision then addresses the applicant's narrative of domestic violence, noting that in her personal interview, pursuant to s. 35 of the 2015 Act, she had stated that she had gone to the local police when her - now adult - daughter was small but that her husband had a good relationship with the police, so that he had simply apologised before continuing with his (abusive) behaviour. The applicant described lying to the police that she had slipped and fallen when they spoke to her in hospital after her husband had slapped her, causing her to fall downstairs. The applicant described an incident in 2020 in which her husband struck her on the head with an ashtray but which she did not report to the police because she did not believe that reporting it would have any result. The IPAT decision finds that the available evidence does not establish that the applicant's husband has a level of influence over the police or police oversight bodies that would prevent the investigation or prosecution of a crime of domestic violence committed by him.
23. On the availability of effective state protection, the IPAT decision concludes (at paras. 43 and 44):
 - '43. Taking everything into consideration in the context of the individual circumstances of the [applicant's] claim and having regard to the four-part test set out in [*B & Ors*, above], the Tribunal is satisfied by the

country-of-origin information that Georgia takes reasonable steps to prevent the kind of persecution feared by the [applicant].

44. Having regard to the foregoing, the Tribunal having reviewed the COI considers that while there are shortcomings with the system of state protection in Georgia, those problems are not such that it could be concluded that there is a lack of effective, non-temporary protection available to the [applicant] as a victim of domestic violence or gender-based violence.'

24. For those reasons, the IPAT decision affirms (at para. 45) the recommendation of the IPO that the applicant should not be given a refugee declaration, before going on to affirm (at para. 52) the recommendation of the IPO that the applicant should not be given a subsidiary protection declaration.

The inconsistency ground

25. The applicant contends that the Tribunal erred in failing to consider recent decisions where state protection was held to be unavailable to other applicants in a similar situation.
26. In support of that argument, the second Trayers affidavit exhibits five other decisions of the IPAT delivered on various dates in 2024 and 2025 that Ms Trayers has assembled in which effective state protection was found to be unavailable in each case to a Georgian applicant found to be a victim of domestic violence in that state. The applicant places particular emphasis on the fact that one of those decisions was given just four days after the IPAT decision in this case and that another was given by the

same Tribunal member who gave the decision in her case, albeit ten months previously. It is important to note, as Ms Trayers accepts, that this was not a balanced exercise. There is no suggestion that these decisions are a comprehensive collection or a representative sample of those in which the IPAT was required to consider the availability of effective state protection for victims of domestic violence in Georgia. Rather, the criterion for the selection of these cases appears to have been the identification of those decisions capable of providing support for the applicant's argument – an exercise that, albeit in a different context, has been referred to as impermissible 'cherry-picking' from the available material; *DVTS v Minister for Justice* [2007] IEHC 451, (Unreported, High Court (Edwards J), 30 November 2007).

27. The applicant accepts that the doctrine of *stare decisis* does not apply to the decisions of the Tribunal, acknowledging the judgment of Humphreys J in *R.C. (Algeria) v IPAT* [2018] IEHC 694 (*'RC (Algeria)'*) as authority for that proposition, while suggesting that the single identified qualification on that proposition contained in that judgment is mere *obiter dicta* and neither 'exhaustive nor exclusive'. The qualification concerned - a statement of established legal principle, rather than mere *obiter dicta* – is that the doctrine does not apply to the decisions of the Tribunal 'apart, of course, from cases where the applicants are all part of the same transaction, such as being family members.'
28. While disavowing the proposition that the doctrine of *stare decisis* should apply to Tribunal decisions, the applicant argues that there is another necessary qualification on that principle. It is that there is a duty on the Tribunal, where relevant, to consider recent decisions of the Tribunal on – to borrow from the England and Wales jurisprudence - 'the general situation in a particular part of the world' and, where

departing from any such decision to give cogent reasons for doing so. This duty is said to arise from the principle of consistency or as an aspect of natural and constitutional justice and fair procedures, or both. Should the application of the principle of consistency impose so broad a duty on the Tribunal (the duty not to depart from any previous decision of the Tribunal on the same (or a similar) issue of fact without giving cogent reasons for doing so), it might be thought that this would be to apply something very closely akin to the doctrine of *stare decisis* (a duty to follow any previous decision on the same issue of law unless giving cogent reasons for distinguishing it) to Tribunal decisions.

29. Nonetheless, in considering that submission, it is useful first to recall the objective test that must be applied in determining the presence or absence of effective state protection from the risk of persecution feared, namely (a) whether the state in question takes reasonable steps to prevent the persecution or serious harm feared, including the operation of an effective legal system for the detection, prosecution and punishment of acts constituting such persecution; (b) whether the protection resulting from those steps is both effective and enduring (*i.e.* non-temporary); and (c) whether the applicant has access to that protection. While it is true that the first two components involve an assessment of the general situation on that issue in the state in question, it is equally true that the last component necessitates having regard to the individual position or circumstances of the applicant. Thus, a proper assessment of the availability of effective state protection involves an objective assessment of both the general situation and the applicant's personal circumstances.
30. What does the principle of consistency require in the conduct of such an assessment?
The law in that regard is now well-settled.

31. In *TNF v Refugee Appeals Tribunal* [2005] IEHC 423, (unreported, High Court, 21 December 2005) (*'TNF'*), O'Leary J observed (at para. 11) that 'the decision of a body in a particular case is neither evidence in another case nor does it create a binding authority for future cases.' In that case, the applicant had been refused refugee status, but her daughter had been granted it. O'Leary J commented, 'Imagine the outrage there would be if an application was refused because the applicant's daughter had previously been refused [refugee status]', before continuing:

'In the view of this court, the Refugee Appeals Tribunal in its decision correctly stated the law when it held that it could not be influenced by the decision in the daughter's case.'

32. In *PPA v Refugee Appeals Tribunal* [2007] 1 ILRM 288 (*'PPA'*), the Supreme Court (*per* Geoghegan J; Murray CJ, Denham, McGuinness and Hardiman JJ concurring) framed the question before it as whether an appellant before the Refugee Appeals Tribunal (the predecessor of the IPAT) was constitutionally or legally entitled to access previous decisions of that tribunal in which similar and, therefore, relevant issues of law arose (at 290). However, as the judgment of Geoghegan J later makes clear, the question that was before the court more obviously related to previous decisions of that tribunal in which findings were made concerning generic problems in the country-of-origin relevant to the fear of persecution claimed (at 298), that is to say it more obviously relates to previous decisions on similar issues of fact, rather than on similar issues of law.

33. In that regard, the Geoghegan J observed (at 298):

'Where there are such problems, it is blindingly obvious in my view, that fair procedures require some reasonable mechanisms for achieving consistency in

both the interpretation and the application of the law in cases like this of a similar category. Yet, if relevant previous decisions are not available to an appellant, he or she has no way of knowing whether there is such consistency. It is not that a member of a tribunal is actually bound by a previous decision, but consistency of decisions based on the same objective facts may, in appropriate circumstances, be a significant element in ensuring that a decision is objectively fair rather than arbitrary.’

34. Geoghegan J went on to quote with approval the following passage from the decision of Lord Woolf MR for the England and Wales Court of Appeal in *Manzeke v Secretary of State for the Home Department* [1997] Imm AR 524 (‘*Manzeke*’):

‘Particularly when determining appeals brought where it is necessary to give consideration to the general situation in particular parts of the world, it is important for Tribunals, when appropriate, to give their views as to that situation, so far as relevant, to claims for asylum in that part of the world. In administering the asylum jurisdiction, the tribunal (whether it be a Special Adjudicator or an Appeal Tribunal) has to consider not only whether the individual asylum seeker has the necessary subjective fear to be regarded as someone who is entitled to asylum, but in addition it has to be satisfied that that fear is well-founded. Whether or not that fear is well-founded involves applying an objective standard, a standard which will depend upon the state of affairs in that particular country as well as the circumstances of the individual asylum seeker.

It will be beneficial to the general administration of asylum appeals for Special Adjudicators to have the benefit of the views of a Tribunal in other cases on

the general situation in a particular part of the world, as long as that situation has not changed in the meantime. Consistency in the treatment of asylum seekers is important in so far as objective considerations, not directly affected by the circumstances of the individual asylum seeker, are involved. In this case those comments have an application.’-

35. Shortly after the judgment of the Supreme Court in *PPA*, the High Court gave judgment in *COI v Minister for Justice, Equality and Law Reform* [2007] 2 ILRM 471 (*‘COI’*). In that case the applicant had arrived in Ireland with his sister-in-law, with whom he had resided as part of the same family unit in Nigeria. Each sought refugee status claiming a well-founded fear of persecution on grounds of race and political opinion after the disappearance of the applicant’s brother and his brother’s family following an attack by ethnic militia. The applicant’s claim for refugee status failed at first instance and on appeal. The applicant sought permission to make a further application on the basis of fresh evidence. The fresh evidence relied on was that the applicant’s sister-in-law’s application for refugee status had succeeded on appeal. The Minister refused that application on the basis that the new evidence did not significantly add to the likelihood of the applicant qualifying for refugee status on the totality of the available evidence, given that each asylum application must be assessed on its own individual merits and that, consequently, comparisons could not be accepted as having relevance.
36. McGovern J quoted the passage I have already cited from the decision of O’Leary J in *TNF*, before continuing (at 478):

‘On the particular facts in that case the application for leave was refused. But the observations of O’Leary J point out the dangers that can arise in adopting too simplistic an approach and saying that because a favourable decision has been given in one case it should be given in another similar case. It could equally be argued in the context of the present application perhaps that the decision in favour of the sister-in-law was wrong and that the RAT was correct in its decision in the applicant’s case. But this would require entering into the merits of the case itself. What I am dealing with is whether or not the minister should, in the circumstances of this particular case, have permitted the applicant to proceed to a further application under the asylum process. It is clearly undesirable for the jurisprudence of the Tribunal to be variable or haphazard since it is a fundamental principle of justice that people should be treated equally and similar cases should be treated alike. In *Shirazi v SSHD* [2003] EWCA Civ 1562; [2004] INLR 92 (*‘Shirazi’*), Sedley LJ stated (at para. [29]):

‘I accept readily that it is not a ground of appeal that a different conclusion was open to the Tribunal below on the same facts, nor therefore that another Tribunal has reached a different conclusion on very similar facts. But it has to be a matter of concern that the same political and legal situation, attested by much the same in-country data from case to case, is being evaluated differently by different Tribunals.... The differentials we have seen are related less to the differences between individual asylum seekers than to differences in the Tribunal’s reading of the situation on the ground in [the state of origin]. This is understandable, but it is not satisfactory. In a

system which is as much inquisitorial as it is adversarial,
inconsistency on such questions works against legal certainty.’

37. McGovern J later continued (at 479):

‘How can it confidently be said that the reasoning in the applicant’s case was correct *when his sister-in-law achieved a different result on the same facts and in circumstances where there were so many common features between the two applicants based on their relationship and family history?* It cannot be conducive to the proper conduct of the asylum process if this should occur.’

(emphasis added)

38. McGovern J concluded (at 480):

‘I take the view that the refusal of the minister [to refuse consent to the applicant to make a subsequent refugee status application] *in the particular circumstances of this case* is a denial of justice and fairness to the applicant who should be entitled to [make a further application] *in the light of the fact that his sister-in-law has been successful in her application on, essentially, the same facts.*’

(emphasis added)

39. In the subsequent case of *JN v Minister for Justice Equality and Law Reform & Ors* [2008] IEHC 214 (‘*JN*’), the applicant and a companion had travelled to Ireland from Uganda. Each claimed to have been politically active in the same women’s rights organisation and to have been persecuted by the state as a result. At the applicant’s hearing before the RAT, her legal representative sought to refer to the

recommendation that had already been made by the Office of the Refugee Applications Commissioner ('ORAC') that the applicant's companion be granted refugee status. After that application was refused, the applicant's representatives unsuccessfully applied to have the hearing re-opened to adduce evidence from the applicant's companion. The application for refugee status was then refused.

40. Birmingham J quashed that decision noting that, while it is very easy to imagine reasons why different conclusions would be arrived at in cases that seemed very similar or which were clearly linked in some fashion, that did not mean that an earlier decision could not have a clear relevance. Before concluding, Birmingham J observed, 'consistency is as desirable in the asylum system as it is in other areas of the legal world.'
41. Thus, in stating that *stare decisis* does not apply to the decisions of the Tribunal 'apart, of course, from cases where the applicants are all part of the same transaction, such as being family members', it seems to me that, in *RC (Algeria)*, Humphreys J was, with his usual admirable concision, correctly identifying the single established qualification upon that proposition. To place that *dictum* in context, it is worth quoting the relevant passage from that judgment in full (at para. 7):

'Stare decisis does not apply to the tribunal. To say that some super-special weight has to be attached to previous decisions would create an irresistible levelling-up whereby any decision, however outlying, would have to result in a general grant of protection that could in any way be viewed as similarly situated. That would amount to a one-way ratchet system that would rapidly render the asylum system unsustainable. It is not necessary for the tribunal to distinguish any previous different decision as each turns on its own facts under

our system; apart, of course, from cases where the applicants are part of the same transaction, such as being family members. For any given country there are bound to be some favourable decisions and some unfavourable. It is not a legitimate process for an applicant to try to gather together any favourable ones and cry foul if they are not “followed”. That would be a massive distortion of the process and would compromise the statutory independence of the decision maker as well as obscuring the inherent differences on the facts between different cases.’

42. The analysis in *RC (Algeria)* was endorsed and adopted by Phelan J in *MH v IPAT & Anor* [2023] IEHC 372, (unreported, High Court, 28 June 2023). Indeed, in a more recent case, *LA v IPAT* [2026] IEHC 49, (Unreported, High Court, 29 January 2026), Phelan J provides a vivid illustration of the soundness of Sedley LJ’s ready acceptance of the proposition that it is not a ground of appeal that another Tribunal has reached a different conclusion on very similar facts, in concluding (at para. 22):

‘I have carefully considered both the decision in the Applicant’s case and in his mother’s. It seems to me to be patent from the terms of those decisions why one succeeded and one failed. While the cases were linked there were material differences between the two cases. These differences resulted in different decisions. There can be no requirement on the Tribunal member to explain in its Decision in the Applicant’s case why he was not successful when his mother was as the reasons for each decision were given individually. In other words, the decisions speak for themselves.’

43. Against the background of that jurisprudence, the applicant contends for the recognition of a further extremely broad qualification on the principle that *stare decisis* does not apply to the tribunal. It is that, based on the principle of consistency in administrative decision making, the tribunal is under a duty to take steps to identify all of its recent decisions (however the term ‘recent’ may be defined) on the general situation in the relevant country-of-origin – in this instance, on the availability of effective state protection against domestic violence as the type of persecution feared – and, where departing from the conclusions reached on that issue in any such decision, to give cogent reasons for doing so. It seems tolerably clear that, in advancing that argument, the applicant is contending for a one-way ratchet system, that is to say, that the applicant does not contend for a duty on the tribunal to give cogent (or any) reasons for departing from the conclusion in any recent decision that effective state protection *is* available if holding that it is not. It is also clear that the applicant is seeking to shift the burden from the applicant to the Tribunal in that regard. In all of the case law considered above, it was the applicant who sought to rely on recent decisions of the Tribunal whereas in this case, the applicant contends for a duty on the Tribunal to identify and consider such decisions, even where – as in this instance – a legally represented applicant chooses to sit on his or her hands.
44. I have not been referred to any authority in this jurisdiction on the point.
45. The desirability of consistent decision-making on the general state of affairs in a particular country has been directly addressed in England and Wales, beginning with the decision of the Court of Appeal there in *S v SSHD* [2002] EWCA Civ 539 (‘S’). That was a case involving the joined appeals of a number of Croatian Serbs from a decision of the Immigration Appeals Tribunal (‘IAT’) refusing their applications for

refugee status. The IAT had heard all eight appeals together. It had done so against the background of a very large number of appeals relating to ethnic Serbs. As the IAT explained, in a passage quoted at para. 3 of the Court of Appeal judgment:

‘2....While the results have varied, the approach has been consistent, but the tribunal has had to rely on whatever material has been put before it. This has meant that there has been a degree of apparent inconsistency and so it was thought desirable that there should be an authoritative decision as to what the current situation is to enable consistent results to be achieved because this tribunal has been able to consider all relevant evidence.

3. ... [T]hese cases are to be regarded as definitive unless there is a material change in the situation in Croatia. Since, as will become apparent, we are persuaded that none of the eight individuals concerned here have established a well-founded fear of persecution, such a change will only be for the worse if most applications involving ethnic Serbs are not to fail.’

46. In addressing the novel concept of a decision of this kind, Laws LJ had this to say (at paras. 26-28):

‘26. Now, the notion of a judicial decision which is binding as to *fact* is foreign to the common law, save for the limited range of circumstances where the principle of *res judicata* (and its variant, issue estoppel) applies. This principle has been evolved – we put the matter summarily – to avoid the vice of successive trials of the same cause or action between the same parties. By contrast, it is also a principle of our law that a party is free to invite the court to reach a different conclusion on a particular factual issue from that reached on the same issues in earlier litigation to which, however, he was a

stranger. The first principle supports the public interest in finality in litigation. The second principle supports the ordinary call of justice, that a party have the opportunity to put his case: he is not to be bound by what others might have made of a like, or even identical case.

27. The stance taken by the IAT here, to lay out a determination intended in effect to be binding upon the appellate authorities as to the factual state of affairs in Croatia absent a demonstrable change for the worse *vis-à-vis* the plight of Serbs, to an extent sacrifices the second principle to the first. By no means entirely: an applicant will of course be heard on facts particular to his case, and (as the IAT made clear) evidence as to any deterioration in the state of affairs in Croatia would be listened to. Otherwise, however, the debate about the conditions in Croatia generally affecting Serbian returnees or potential returnees has been had and is not for the present to be had again.

28. While in our general law this notion of a factual precedent is exotic, in the context of the IAT's responsibilities it seems to us in principle to be benign and practical. Refugee claims *vis-à-vis* any particular State are inevitably made against a political backdrop which over a period of time, however long or short, is, if not constant, at any rate identifiable. Of course, the impact of the prevailing political reality may vary as between one claimant and another, and it is always the appellate authorities' duty to examine the facts of individual cases. But there is no public interest nor any legitimate individual interest, in multiple examinations of the state of the backdrop at any particular

time. Such revisits give rise to the risk, perhaps the likelihood, of inconsistent results; and the likelihood, perhaps the certainty, of repeated and therefore wasted expenditure of judicial and financial resources upon the same issues and the same evidence.’

47. Laws LJ went on to state (at para. 29) that, if there were to be such factual precedents, the decisions concerned would require significant safeguards, including a particular rigour in the duty to give reasons and a special care to be comprehensive in addressing the issues and the evidence.
48. The innovation has been subject to both praise and criticism. As an example of the latter, the authors of *McDonald's Immigration Law and Practice* (7th edn, LexisNexis 2008) (at para. 18.67) noted that there were difficulties and tensions inherent in the ‘country guidelines’ approach to bind immigration judges; see, for example, the Immigration and Advisory Service report, *Country Guideline cases: benign and practical?* (February 2005). Nonetheless, since then, successive Practice Directions governing the relevant UK tribunals have stipulated that tribunal decisions bearing the letters ‘CG’ shall be treated as an authoritative finding on the country guidance issue identified in the decision, unless expressly superseded or replaced by another ‘CG’ decision. A list of current CG cases is maintained on the tribunal’s website. Practitioners are expected to be familiar with them. Any failure by the tribunal to follow a clear, apparently applicable CG case or to show why it does not apply to the case in question is likely to be regarded as a ground for appeal on a point of law. Parties who wish to rely on other country background information must make that clear in advance of the tribunal hearing.

49. Whether any comparable measure should be adopted in Ireland, either under s. 41(4) of the 2015 Act – whereby the Minister may, in consultation with the Chairperson of the Tribunal, and having regard to the need to observe fair procedures, prescribe procedures for and in relation to appeals against the refusal of refugee status or subsidiary protection – or by further legislation is entirely a matter for the Minister or the Oireachtas as the case may be.

50. I mention the development of the law in England and Wales solely to emphasise that, in that jurisdiction as well as this one, absolute consistency between decisions on the relevant state of affairs in a particular country, where relevant, is recognised as a goal of the refugee status decision-making process overall, rather than a condition precedent to the validity of a particular refugee status decision. An objective assessment of both the general situation and the applicant's personal circumstances, where relevant, on the other hand, is an essential component of every refugee status decision. Consistency is desirable, objectivity is essential.

51. At pain of repetition, the position is, of course, entirely different where the relevant country-of-origin information and the individual circumstances of different applicants, are effectively the same, rather than merely 'similar' or 'closely comparable'. It is only in the former instance that the principle of consistency is capable of operating to render a negative decision in one case – where there has been a positive decision in another – tantamount to a denial of justice and fairness to the applicant concerned.

52. For those reasons, I reject the applicant's argument that the objective standard in the assessment of well-founded fear that must be applied to the state of affairs in a particular country (as well as to the circumstances of the individual asylum seeker) requires not merely an objective assessment in a given case but also a consistent assessment between similar cases. I am not persuaded by an analysis that, in my view, wrongly conflates the absolute requirement to make an objective assessment in each case with the goal of consistent decision-making in similar factual situations across different cases.
53. Further, I reject the applicant's submission that the asserted failure by the IPAT to consider (of its own motion) recent decisions where state protection was held to be unavailable to other applicants represents a failure to meet the requirements of effective judicial review under *Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*, ('*the Procedures Directive*'), interpreted in light of Article 47 of the Charter of Fundamental Rights of the European Union ('*the CFREU*'), on the authority of the decision of the CJEU in Case C-556/17 *Tourbarov v Bevándorlási és Menekültügyi Hivatal*, ECLI:EU:C:2019:626 ('*Tourbarov*').
54. *Tourbarov* is a case concerning the proper application of Article 46(3) of *Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)* ('*the recast Procedures Directive*'). Of course, Ireland opted out of the adoption of that legislation and, so, remained bound by the *Procedures Directive* at the material time. I do not think that anything turns on the point because it seems to me that Article 39(1) of the *Procedures Directive* imposes essentially the same obligation on each Member State as Article 46(3) of the recast

Procedures Directive, that is to say, the obligation to ensure an effective remedy before a court or tribunal against a negative refugee status decision.

55. The issue identified in *Tourbarov* was whether the relevant court or tribunal in Hungary, the Administrative and Labour Court (*'the court'*), was able to provide an effective remedy against negative decisions of the Hungarian Immigration Office (*'the office'*) because, despite twice annulling the decision of the office in the case of a particular applicant; despite providing detailed guidance on the factors that the office was required to consider; and despite the court's own conclusion that, on the material presented, the applicant had a well-founded fear of persecution on account of his political opinion, the office rejected that application for refugee status for a third time and, what is more, legislation was introduced in the interim withdrawing the power of the administrative courts to vary administrative decisions on international protection.
56. It is not surprising that, in its judgment, the CJEU pointed out that Article 46(3) of the recast Procedures Directive, read in conjunction with Article 47 of the CFREU, must be interpreted as meaning that, where the relevant court or tribunal has found – after making a full and *ex nunc* examination of all of the relevant elements of fact and law submitted by an applicant for international protection – that the applicant concerned is entitled to international protection but where, after that, a contrary decision is made by an administrative body, without establishing any new facts or circumstances that justify a new decision, then the relevant court or tribunal must vary the decision that does not comply with its own previous judgment and substitute its own decision on the application, disapplying as necessary the national law that would prevent it from proceeding in that way.

57. In Ireland, it is plain that the relevant court or tribunal for the purposes of Article 39(1) of the Procedures Directive is the IPAT, as the successor under the 2015 Act to the Refugee Appeals Tribunal established under the Refugee Act 1996, and that it has all of the characteristics necessary to enable it to provide an effective remedy, as required under that article, and to provide the effective judicial protection that is required as a general principle of European Union law under Article 47 of the CFREU; see, for example, Case C-175 *HID and BA v Refugee Applications Commissioner* ECLI:EU:C:2013:45 (at paras. 94 to 105) and Case C-756/21 *X v IPAT & Ors* ECLI:EU:C:2023:524 (at paras. 64-66).
58. Against that background, it is not tenable to suggest, as the applicant does, that, on the authority of *Tourbarov*, the IPAT, which has the full powers necessary to make a full and *ex nunc* examination of all of the relevant elements of fact and law submitted by an applicant for international protection and to substitute its own decision for that of IPO, has failed to provide the effective remedy required under Article 39(1) of the Procedures Directive because it has failed to consider of its own motion all recent IPAT decisions in which state protection was held to be unavailable to other applicants in similar cases, as that failure is to be directly equated with the failure of an administrative body to have proper regard to the guidance of an appropriate court or tribunal that is powerless to vary the decision of that administrative body or to substitute its own decision for it.
59. Hence, I reject that submission.
60. The applicant simply relies upon a difference of outcome in the five other IPAT decisions exhibited on her behalf to suggest that the principle of consistency has been

breached, despite expressly conceding that the country-of-origin information considered in one was ‘similar’, rather than identical, to that considered in this case, and that there was ‘a considerable degree of overlap’, rather than a complete overlap, between the country-of-origin information considered in another case and this one, and despite not dealing with any of the other three cases in any detail whatsoever. No attempt is made to suggest that the personal circumstances of each of the five applicants concerned were the same as, rather than similar to, those of the applicant in this case. Shortly put, the applicant has failed to establish that these are ‘same transaction’ cases.

61. Hence, for all of the reasons I have given, I reject this ground of challenge to the IPAT decision.

The irrationality ground

62. The fourth ground is that the IPAT decision is bad in that it fails to address why it preferred certain parts of the country-of-origin information (‘COI’) before it to other unspecified parts of that information or to the information relied on in tribunal decisions in other cases where effective state protection against domestic violence in Georgia was held to be unavailable (‘the irrationality ground’).
63. On that point, it is first necessary to reiterate that the IPAT decision records (at para. 20) that the Tribunal has had regard to the applicant’s notice of appeal and all of the documentation it referred to, as well as the IPO recommendation report and all of the documentation that it referred to. In conducting its ‘availability of effective state protection’ analysis, the IPAT decision specifically cites, and quotes from, those parts of the UN Women publication *Country Gender Equality Profile of Georgia* (2021)

and of the United States Department of State *Georgia 2023 Human Rights Report* that address the issue of domestic violence.

64. Insofar as it is submitted that the decision is vitiated by an irrational failure to consider unspecified information relied upon by other tribunal members in other cases where effective state protection against domestic violence in Georgia was held to be unavailable, as I have already found that there was no obligation on the tribunal to identify and consider any or all such ‘similar’ cases of its own motion, I reject that submission.
65. Insofar as it is submitted that the decision is vitiated by an irrational failure to consider conflicting evidence or material that was before the tribunal, thereby presenting the tribunal with a ‘mixed picture’, it is necessary to consider the ‘conflicting’ evidence relied upon in that regard.
66. That evidence is identified as the judgment of the European Court of Human Rights (‘ECtHR’) in *Tkheldidze v Georgia App no 33056/17* (ECtHR, 8 October 2021) (‘*Tkheldidze*’). That was a case in which the ECtHR found a breach of Article 2 of European Convention on Human Rights (‘*the ECHR*’), whereby everyone’s right to life must be protected by law. According to the jurisprudence of the ECtHR, that positive obligation involves, firstly, a primary duty on the State to secure that right by putting in place a legislative and administrative framework designed to provide effective deterrence against threats to life and, secondly, a duty on the authorities in appropriate circumstances to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. However, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices that must be made in

terms of priorities and resources, the latter duty must be interpreted in a way that does not impose an impossible or disproportionate burden on authorities.

67. In *Tkheldidze*, the issue was whether the authorities had complied with the duty to take preventative measures to protect the applicant's daughter from the criminal acts of her daughter's partner, who shot and killed her on 17 October 2014, and then immediately committed suicide. Reports of the partner's threats against, and assaults upon, the applicant's daughter had been made to the police repeatedly between April and October 2014. After her daughter's death, the applicant sought to have the district public prosecutor's office investigate the conduct of the police officers who had received the earlier reports of alleged domestic violence. No steps were taken.
68. In finding a breach of Article 2 of the ECHR, the ECtHR was satisfied that there existed in Georgia an adequate legislative and administrative framework to combat domestic violence against women in the country in general. The breach of Article 2 arose from the authorities' failure to comply with the duty to take preventive operational measures to protect the applicant's daughter. The ECtHR stated that, according to the jurisprudence, in making an assessment on that issue, the following three questions must be answered: first, whether a real and immediate danger emanating from an identifiable individual existed; second, whether the domestic authorities knew or ought to have known of the threat; and third, if the answer to the first two questions is 'yes', whether the authorities displayed special diligence in their response to the threat. The ECtHR found that the authorities had failed to show special diligence, so that they had failed in that duty, before going on to find that they had also failed in a further positive obligation to investigate the alleged inaction of the law-enforcement officials involved and to hold them to account if necessary.

69. In reaching the conclusion that there had been a breach of the duty to take preventive operational measures, the ECtHR noted systemic problems concerning protection against domestic violence in Georgia, citing a periodic report on Georgia of the UN Special Rapporteur on Violence against Women, dated 9 June 2016; a periodic report on Georgia of the United Nations ('UN') Human Rights Committee, dated 19 August 2014; and report on the mission to Georgia of the UN Special Rapporteur on Violence Against Women, dated 9 June 2016.
70. The submission of the applicant in this regard, as I understand it, is that the contents of the judgment in *Tkheldze* represent alternative country-of-origin information that was, or may have been, in conflict with the country-of-origin information relied on in the IPAT decision, so that it was incumbent on the tribunal to address it.
71. In considering that submission, it is important to reiterate that the IPAT decision specifically cites, and quotes from, those parts of the UN Women publication *Country Gender Equality Profile of Georgia* (2021) and of the United States Department of State *Georgia 2023 Human Rights Report* that address the issue of domestic violence.
72. The IPAT is required to conduct a full and *ex nunc* examination of all of the relevant elements of fact and law on each application for refugee status before it. That means that, in this instance, the IPAT had to assess the availability of effective state protection against domestic violence in Georgia as the situation stood in 2024 and 2025. Reliance on more up-to-date country-of-origin information over older country of origin information in the conduct of that exercise is not the same thing as an unexplained preference for one broadly contemporaneous source of country-of-origin information over another conflicting one.

73. Accordingly, I reject that submission.

Extension of time

74. Under s. 5(2) of the Illegal Immigrants Trafficking Act 2000, as amended, an application for judicial review of a decision of the IPAT under s. 46(3) of the 2015 Act shall be made within the period of 28 days commencing on the date on which the person was notified of the decision unless this court considers that there is good and sufficient reason for extending the period within which the application shall be made.
75. Under Order 84, rule 21(1A) of the Rules of the Superior Courts, as inserted by art. 3(ii) of the Rules of the Superior Courts (Order 84) 2024 (S.I. No. 163 of 2024), which came into effect from 26 April 2024, an application for leave is made when the relevant papers are filed in the Central Office or, in cases of urgency, the Court.
76. The first Trayers affidavit acknowledges that the impugned decision is dated 6 February 2025 and that the applicant was informed of it on that date, so that the 28-day time-limit to apply for leave expired on or about 6 March 2025. Ms Trayers then avers as follows. The applicant instructed her office to challenge the decision in the High Court on 6 February 2025. Counsel was briefed on the same day. Counsel reverted on 17 February 2025 (11 days into the 28-day period) to state that he was not in a position to act. Alternative counsel was briefed on the same day. That counsel furnished draft proceedings on 17 March 2025, a bank holiday. The proceedings were finalised, and the necessary grounding affidavit was sworn by the applicant, on 18 March 2025. The proceedings are stamped as filed in the Central Office on 19 March 2025, approximately 13 days outside the time-limit.

77. It is, therefore, necessary to consider whether there is good and sufficient reason for an extension of time to make the application.
78. The explanation given for the delay cannot constitute a good and sufficient reason to extend time. The applicant is bound by the actions (or inaction) of her agents. Legal advisors must be taken to know the relevant time-limits for bringing proceedings. As Barr J observed in *GK v IPAT & Ors*, [2022] IEHC 204, (Unreported, High Court, 1 April 2022) (at para. 57) to grant an extension of time on the basis of such an explanation would render the legislative time-limit completely ineffective, as any applicant could claim that his or her legal representatives had ‘other commitments’ to attend to.
79. However, in requiring the court to consider whether there is good and sufficient reason for extending time, the rule confers a broader discretion; *Thomson v An Bord Pleanála* [2025] IESC 31, (Unreported, Supreme Court, 10 July 2025) (at paras. 67). As Simons J did in *P (Zimbabwe) v IPAT & Ors* [2025] IEHC 403, (Unreported, High Court, 16 July 2025) (at para. 9), I find the non-exhaustive summary of factors relevant to the exercise of the analogous discretion to extend time under O. 84, r. 21, provided by the Court of Appeal in *Arthroparm (Europe) Ltd v Health Products Regulatory Authority* [2022] IECA 109 (at para. 87), instructive. Those factors include the nature of the decision under challenge; the conduct of the applicant; the conduct of the respondent; the effect of the decision under challenge; any steps taken by the parties subsequent to the decision; the public policy that proceedings relating to the domain of public law take place promptly except where good reason is furnished; and the ‘*blameworthiness*’ of the applicant (albeit as only one such factor to be weighed in the balance).

80. Without addressing each of those factors individually, I am satisfied – principally by reference to the relatively short period by which the time-limit was exceeded – that, on balance, I should exercise the relevant discretion to extend time.

Conclusion

81. In summary, for the reasons I have given, each of the reliefs sought is refused, with the exception of an extension of time within which to bring the application.
82. As this judgment is being delivered electronically, the parties should correspond with each other forthwith on the appropriate form of order to be made, including as to costs. In default of agreement, the parties will have two weeks within which to furnish brief written submissions of not more than 1,000 words on the terms of the final order and on costs and any other matters that may arise.
83. The matter will be listed for mention at 10.30 hours on 22 September 2026 for the purpose of making final orders.

Appearances

Conor Power SC with Philip Moroney BL, instructed by Trayers & Co, Solicitors, for the applicant.

Cormac Hickey BL, instructed by Ruth Lynch of the Chief State Solicitor's Office, for the respondents.