THE HIGH COURT

[2020 No. 259 JR]

BETWEEN

Y

APPLICANT

– AND –

INTERNATIONAL PROTECTION APPEALS TRIBUNAL and THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Mr Justice Max Barrett delivered on 22nd July, 2021.

SUMMARY

This judgment has issued in an unsuccessful set of judicial review proceedings which have involved a challenge to an IPAT decision made in respect of an individual who, by his own admission, entirely fabricated the initial narrative by reference to which he sought international protection, and whose consistency/credibility was subsequently found wanting as regards the second narrative offered by him as the basis for seeking international protection. This summary forms part of the court's judgment.

I

Introduction

1. Mr Y initially claimed to be gay, to have suffered vehement family rejection after 'coming out', to have been suicidal, to have taken to drugs, to have quit an unhappy home, to have become a gay rights activist, to have suffered physical and verbal abuse as a result of having

been gay, to have been forced from his job because of homophobia, and eventually to have fled to Ireland because his life was in danger. At his s.35 interview, Mr Y indicated that all of the foregoing was a complete fabrication. He then outlined a new version of events for his asylum application, namely that he was a sometime election commission employee in his home country (Country Z) and that, as a consequence of his work, he had become subject to police persecution. When asked for a specific example of this persecution, he described an episode, some of the details of which have changed over time, about being confronted by a police officer at a restaurant where he was eating with his girlfriend, fleeing to Ireland some two years later.

2. Mr Y's application for asylum was refused. An appeal to the IPAT likewise failed. He now comes to court challenging the decision of the IPAT. Desperate people do desperate things and the court understands the desire of Mr Y for a better life than his home country can perhaps offer. Unfortunately, however, for Mr Y, the law requires that the within application must fail. It was indicated to the court that Mr Y has been suffering from very high levels of anxiety during his time in Ireland. The court is sorry that this is so. However, that he is suffering so does not, the court must regretfully advise, alter how Mr Y stands positioned as a matter of law.

II

Background

3. The applicable facts are perhaps best treated by way of summary chronology:

1993.	Mr Y born in a third country (Country Z) of which he is a national.
2016.	Mr Y claims to have worked at an election commission and to have come under pressure from a political party to engage in election fraud.
June 2016.	Mr Y claims to have been attacked at a restaurant by a policeman on this date. His story as to exactly what occurred has changed over time.

September 2018.	Mr Y comes to Ireland.
3 November 2018.	Section 15 interview with Mr Y.
26 November 2018.	Mr Y completes international protection questionnaire falsely claiming to be gay and to have suffered related discrimination and/or persecution. He later indicated that he engaged in these falsehoods because (i) a people trafficker told him that pretending to be gay was a good way of securing international protection, (ii) he was afraid that otherwise he would be returned to Country Z, and (iii) he was not acting with the benefit of legal advice at the time. Items (i) and (ii) suggest simply that Mr Y thought it would be to his benefit to completely fabricate his international protection application. As to item (iii), one does not need legal advice to know that it is wrong to tell lies. The court respectfully does not accept the submission in the written submissions of counsel for Mr Y that "*The Applicant provided a reasonable explanation as to why he initially lied on his application and…the first Respondent failed to take this into account.*" Nor does the court, with all respect, see that what occurred arose from "[m]*istrust of authority arising from dangers under an authoritarian regime from which the asylum seeker has fled*" (Hathaway, James and Michelle Foster, *The Law of Refugee Status*, 2nd ed. (Cambridge: Cambridge University Press, 2014), p.144).
21 March 2019.	At his s.35 interview Mr Y volunteers the truth that his claim to be gay and to have suffered related discrimination/persecution is a

	complete fabrication. He then recounts his story of election-related work and consequent police persecution.
17 April 2019.	IPO recommends that Mr Y not be given a refugee declaration or a subsidiary declaration.
from September 2019	Mr Y suffering from high levels of anxiety.
20 January 2020.	Following repeated adjournments as a result of Mr Y's continuing ill-health an IPAT appeal hearing takes place.
21 January 2020.	IPAT sends letter double-checking which elections Mr Y worked in. He had claimed that he had worked in national elections but only local elections were held at the relevant time.
24 January 2020.	Mr Y indicates that he meant to refer to local elections.
9 March 2020.	IPAT upholds the IPO decision.

4. It is useful to take up the statement of grounds from the point where it recounts the outcome of the IPAT decision (which is the impugned decision):

> "*14. On or about the 9th March 2020 the first respondent upheld the decision at first instance and recommended that the applicant should not be granted either refugee status or subsidiary protection. Under the heading of the 'assessment of facts and circumstances' the first respondent assessed the material facts of the claim to be:*
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> * *The appellant worked for* [the election commission in Country Z]*...in 2015/20216.*
> * *The appellant was working for the election commission at a polling station for elections in May 2016 and was threatened by members of* [a political party]*...in connection with his work at the polling station.*
> * *People made threats against the appellant to his family in the days after the May 2016 elections.*

** The appellant was assaulted in a restaurant on 6th June 2016 in an attack that was connected to the threats made against him in May 2016.*
** People made threats against the appellant to his family in the period between June 2016 and his departure from* [Country Z]*...in September 2019 and these threats have continued since the appellant's arrival in Ireland.*

15. In respect of the claim the applicant made that he faced persecution on the basis of his sexuality, which he subsequently withdrew, the first respondent found at para. 4.3 that 'looking at the case in the round, the Tribunal finds that the appellant has not offered anything remotely approaching a reasonable explanation for the huge inconsistency in the nature of his claim at different points in the protection process and find this inconsistency to be significantly undermining of his credibility.' *The decision does not refer to the written submissions of 16 August 2019 which extensively addressed this point or the fact that the applicant informed the international protection office that this claim was false at the earliest opportunity during the section 35 interview.*

[Court Note: The court does not wish to be harsh but it seems to the court that in seeking more credit for admitting to having completely fabricated his initial claim, Mr Y does not quite appreciate the significance of what he did. There are gay people who have a very hard time in some countries and who come to Ireland looking for international protection. Because being gay is something that one knows from within, one is very much dependent as a gay asylum seeker on others believing one's truth. That process of being believed becomes so much harder for gay men if people like Mr Y completely fabricate a claim about being gay.]

16. In respect of the applicant's claim that he was attacked at a restaurant, the first respondent stated at para.4.4 that 'During the hearing the presenting officer referred the appellant to question 53 of the section 35 interview where he stated that a man in a restaurant

showed him a gun. The appellant was asked why he had not stated, as he had at the appeal hearing, that the gun was fired in the air. The appellant responded that he had said this in the s.35 interview. The presenting officer then put it to the appellant that he had said this in the s.35 interview. The presenting officer then put it to the appellant that it was not in the record and that the appellant had signed each page of the record. The appellant agreed that he had signed each page but repeated that he had said that the gun was fired.' *The first respondent did not refer to the full answer the appellant gave in response to the question which was that the appellant felt anxious during the interview, that he felt that the person conducting the interview did not believe anything he said, and that he would have done anything to get out of that room. The first respondent also did not refer to the written submission of 16 August 2019 or the medical evidence of 1 November 2019.*

17. In respect of the timeline of the attack in the restaurant the first respondent stated at paragraph 4.5 that 'at the appeal hearing the presenting officer referred the appellant to Q.57 of the s.35 interview where he had stated that the incident in the restaurant took place on 6th July 2016 rather than 6th June 2016 as he had stated at the appeal hearing. The appellant said his account at the appeal hearing was correct and that he had made a mistake in the s.35 interview' *and determined that* 'looking at the case in the round the Tribunal finds that no reasonable explanation has been offered for the inconsistency in the appellant's account and finds the inconsistency to be undermining of his credibility.'

18. In respect of the medical evidence submitted as evidence of the applicant being hospitalised in Country Z following the restaurant attack, the first respondent noted at para.4.6 that 'at the appeal hearing the Tribunal referred the appellant to part 8 of the medical report from a…[Country Z] hospital (issued on 19th July 2019) that the appellant submitted as part of his claim where it states that the appellant's hospitalisation occurred on "*06/06/2016*" and his release occurred on

"*08/07/2016*". The appellant was asked how this squared with his earlier account at the appeal hearing that he was supposed to stay in hospital voluntarily after a few days. The appellant responded that the hospital could not write that he had discharged himself. When asked why they could not write that, he made no response. When asked why his date of release was given as more than a month after his date of hospitalisation, he gave no response.' *And determined that* 'the content of the hospital report, the authenticity of which the Tribunal is not in a position to verify, is inconsistent with the appellant's account in a fundamental respect, specifically the length of his alleged stay in hospital. Taking everything into account, the Tribunal rejects the hospital report as reliable evidence in support of the appellant's claim.'"

19. In respect of the applicant's claim to have worked for [the election commission] *in the run-up to the…201*[*] *election, the first respondent noted at para.47 that* 'the appellant was questioned closely on the nature of the elections that he said took place in [*Country Z*]….He was initially uncertain in his answers but eventually stated that they were combined national parliamentary and governorship elections. When it was put to the appellant that the parliamentary elections took place [*later in 201*[*]]…the appellant simply repeated his original answer.' *The first respondent determined that* 'taking everything into account, the Tribunal finds a completely unreasonable degree of uncertainty and inaccuracy in the appellant's account of the nature of those elections to a degree that is significantly undermining of the appellant's credibility.'

20. The first respondent rejected the material facts of the appellant's claim as not having been established on the balance of probabilities on the basis of the negative credibility findings made at paras. 4.3 and 4.7 and the only accepted fact in assessing whether the applicant has a well-founded fear of persecution or a real risk of serious harm was that he is from [Stated Place, Country Z]*....The first respondent then affirmed the recommendation of the International Protection Office.*"

III

Relief Sought

5. The principal relief sought by Mr Y at this time is an order of *certiorari* quashing the decision of the IPAT recommending that Mr Y should not be granted either refugee status or subsidiary protection dated 9th March 2020.

IV

Some Observations

6. [1] At some point in every set of judicial review proceedings, counsel for the decisionmaker reminds the court of the constrained nature of judicial review proceedings as opposed to appeal proceedings. This case was no exception; however it did seem to the court that the within proceedings came close at points to amounting to a form of appeal. In this regard, the court notes that the evaluation of Mr Y's evidence is a matter for the IPAT (see further point [7] below). Mr Y might prefer that his evidence had been approached or evaluated differently but there is nothing wrong in how the IPAT approached the evidence or evaluated it.

7. [2] As regards the new story as to police/political persecution, the court again notes that the evaluation of Mr Y's evidence is a matter for the IPAT. Moreover, the court cannot but note that, even as regards this new basis for his international protection claim, Mr Y's tale presents with difficulty: he confused his dates; his tale as to when he was in hospital did not tally with the hospital records provided; and his tale as to the policeman's gun changed such that when before the IPAT he came to remember a gun being fired when, at the s.35 interview, he had not recalled this. Of course, memory is a strange creature: one remembers at one point something which one did not remember at another point and the more one thinks about an episode the more one tends remember; however, not to remember for a time that a gun was fired beside one (a loud and very shocking event) seems quite a lapse in memory.

8. Ultimately, the court does not know where the truth lies as to the police/political persecution claim nor is it required to reach any finding in this regard. But it sees no difficulty to present in how the IPAT approached and evaluated Mr Y's evidence in this regard. The IPAT clearly

understood and weighed all the various factors in Mr Y's case concerning his changed claim, stood back from the explanations offered and considered the case as a whole to see if the explanation could be accepted. This consideration of matters 'in the round' seems consistent with the process contemplated by Cooke J. in *I.R. v Minister for Justice* [2015] 4 I.R. 144, at para.9.

9. In passing, the court respectfully does not see that the IPAT was acting on some 'gut sense' in this regard. Nor does it see any deviation between what occurred and the observation in Hathaway and Foster, *op. cit.,* at p.144, that "*A particularly pernicious practice is the assumption that evidence given upon arrival or application…is most likely…truthful, and…little faith should…be placed in any subsequent, inconsistent testimony*". No such assumption is stated or is otherwise discernible in the IPAT's reasoning.

10. The court has been referred by counsel for Mr Y to the observation in the UNHCR's *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status,* at p.44, that "[a] *Untrue statements by themselves are not a reason for refusal of refugee status and* [b] *it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case*". Here, the IPAT did not deviate from proposition (a) and acted in accordance with proposition (b).

11. [3] As regards getting credit for admitting to lies, so far as the IPAT is concerned, it was entitled to take the changed nature of Mr Y's claim into account and to reject the explanation offered for the changed claim. Moreover, what happened here as regards Mr Y's initial claim was not just a single untrue statement in a context where Mr Y was considered generally credible. His initial claim was, by his own admission, a complete fabrication from start to finish.

12. [4] The court does not see that *N.E. (Georgia) v. The International Protection Appeals Tribunal* [2019] IEHC 700 is applicable to the case at hand. There, the applicant gave a tale that appears to have been broadly true. Here, the tale as to Mr Y being a gay man was, by his own admission, a complete fabrication. His tale of police/political persecution also presented with difficulties as to consistency and credibility. International protection applicants are supposed to tell the truth; admitting to lies is simply admitting to having done what one should not do; and for genuine international protection applicants there is surely sufficient incentive

to tell the truth in that if they are entitled to international protection then the truth should only assist.

13. [5] It is contended that the IPAT failed to take properly into account the medical evidence concerning the impact of Mr Y's high-level anxiety on his ability to participate in the hearing process. It is suggested that there is a breach in this regard of the ninth of Cooke J.'s 'Ten Commandments' in *I.R.*, at para.10, that the reason for discounting/rejecting documentary evidence or information therein should be stated. If there has been a lapse in this regard, it is more technical than substantial: at its height, the medical report is evidence that Mr Y suffers from such high anxiety that he has had to receive medication. However, there is no medical evidence to suggest that this makes Mr Y unfit to give evidence or, for example, subject to memory lapses. The court is sorry for Mr Y that he suffers from high anxiety but it offers no basis on which to issue the order of *certiorari* sought.

14. [6] When it comes to the adequacy of the reasons for credibility, the longstanding test offered by Mac Eochaidh J. in *R.O. v. Minster for Justice* [2012] IEHC 573, at para.30, offers a balanced and reasonable means of identifying whether applicable reasoning is adequate and is as good a test as any. That test comprises the following five questions: (i) were reasons given or discernible for the credibility findings? (Here the answer is 'yes'), (ii) if so, were the reasons intelligible in the sense that the reader/addressee could understand why the finding was made? (Here the answer is 'yes'), (iii) were the reasons, specific, cogent, and substantial? (Here the answer is 'yes'), (iv) were the reasons based on correct facts? (Here the answer is 'yes'), and (v) were the reasons rational? (Here the answer is 'yes'). In short, the substantive basis for the IPAT's decision can be thoroughly understood from the terms of the decision. Any fair-minded reading of that decision points to the fact that the IPAT simply did not find Mr Y to be a credible witness. Mr Y doubtless does not like that conclusion but it is a conclusion that the IPAT was entitled to reach lawfully and did. The court accepts the proposition, in the UNHCR document *Beyond Proof*: *Credibility Assessment in EU Asylum Systems*, at p.39, that the fact "[t]*hat an applicant has told a lie(s), or concealed a fact(s) is not necessarily decisive in the assessment of credibility*". The difficulty for Mr Y is that the court does not see the IPAT to have acted in a manner contrary to that proposition.

15. [7] By way of general note, the court notes that in *SBE v. Refugee Appeals Tribunal* [2010] IEHC 133 it was held that credibility is exclusively for the decisionmaker and that a court in

ensuing judicial review proceedings is concerned only with process (see also *E.Y. (Pakistan) v. Refugee Appeals Tribunal* [2016] IEHC 340). Here it is accepted by Mr Y that it is for the IPAT to determine the issue of credibility. However, he considers that the process involved was flawed. For the reasons offered in this judgment, the court respectfully does not see that it was.

16. Two questions were contended by Mr Y to arise in these proceedings, *viz*:

> "*1.* *Did the first respondent err in law and/or fact by failing to conduct a rational analysis of the Applicant's claim that he is at risk of persecution on the basis of his political belief by rejecting his claim on the basis that he withdrew his earlier claim based on his sexuality?*
>
> *2.* *Did the first respondent err in law and/or fact by failing to conduct a rational analysis of the Applicant's claim and failing to give adverse reasons for making an adverse credibility finding?*"

17. Those questions seem somewhat loaded; suffice it for the court to note that it sees no errors of law and/or fact to present in the IPAT process/decision.

V

Conclusion

18. For the various reasons identified above, the court is, unfortunately for Mr Y, coerced as a matter of law into refusing to grant any of the principal and other reliefs sought by him. Although the result of this judgment will come as a disappointment to Mr Y, the court respectfully applauds him for having elected to volunteer the truth about having lied in his initial claim. Truth is its own reward, and in the longer term, if not already, he will doubtless find it an ease to his conscience that he has elected to proceed honestly.

19. As this judgment is being delivered remotely, the court notes its view that as Mr Y has lost in the within proceedings, it is appropriate that the court make an order for costs against him.

If either party takes a different view as to costs, counsel might kindly advise the court within 14 days of the date of this judgment and the court will schedule a brief costs hearing.

TO THE APPLICANT:
WHAT DOES THIS JUDGMENT MEAN FOR YOU?

Dear Applicant

I am always concerned that because applicants in international protection cases are foreign nationals for whom English may not be their first language, they should, if possible, be placed by me in a position where they can understand the overall direction of a judgment that has a sometimes great impact on them. I therefore briefly summarise my judgment below. This summary, though a part of my judgment, is not a substitute for the detailed text above. It seeks merely to help you understand what I have decided. The Minister requires no such assistance. So this section of my judgment is addressed to you, the applicant, though copied to all. Your lawyers will explain my judgment more fully to you.

The principal relief you asked of me was to quash the decision of the IPAT of 9th March 2020 (the 'Decision') which recommended that you should not be granted either refugee status or subsidiary protection. I must regrettably advise you that I do not see any cause in (a) how the IPAT approached the making of the Decision, or (b) in the substance of its Decision, that would justify me in quashing the Decision.

Although the result of my judgment will come as a disappointment to you, I respectfully applaud you for having elected to tell the truth about having lied in your initial claim. Truth is its own reward, and in the longer term, if not already, you will doubtless find it an ease to your conscience that you elected to proceed honestly.

Yours sincerely

Max Barrett (Judge)