Judgment

Title:	MM -v- The Minister for Justice & Equality & ors
Neutral Citation:	[2018] IESC 10
Supreme Court Record Number:	123/13, 404/13 & 212/13
High Court Record Number:	2011 8 JR
Date of Delivery:	14/02/2018
Court:	Supreme Court
Composition of Court:	Clarke C.J., O'Donnell Donal J., McKechnie J., MacMenamin J., O'Malley Iseult J.
Judgment by:	O'Donnell Donal J.
Status:	Approved
Result:	Appeal allowed

SUPREME COURT

Clarke CJ
O'Donnell J
McKechnie J
MacMenamin J
O'Malley J

Appeal No. 123/2013

Appeal No. 404/2013

Appeal No. 212/2013

High Court Record No. 2011/8JR

Between:

MM

Applicant/Respondent

AND

The Minister for Justice and Equality, Ireland

And the Attorney General

Respondents/Appellants

Judgment of O'Donnell J delivered the 14th day of February 2018

1 This is the latest, but it is probably too much to be hoped that it is the last, episode in a long running legal saga. In 2006 the applicant, a national of Rwanda, of Tutsi ethnicity, came to Ireland for the purposes of post graduate study of law at NUIG. His student visa expired in April 2008 and the following month he applied for refugee status. The essence of the claim

was, that having graduated from the University of Rwanda, he had been directed to work in the Office of the Military Prosecutor and given the rank of staff sergeant. He maintained that this was an effort to silence him and prevent him from divulging information about the prosecution or non prosecution of offences relating to the genocide in Rwanda.

2 The applicant was interviewed by the Office of the Refugee Appeals Commissioner ("ORAC") but his application was refused. The applicant appealed that decision to the Refugee Appeals Tribunal ("RAT") which on the 28th of December 2008 rejected his claim on what have been described as "general credibility grounds", essentially that it was difficult to believe that the applicant had been offered a position of prosecutor and given the opportunities he was, if he had been considered a threat or a nuisance by the Rwandan authorities. That decision was not challenged by judicial review.

3 On the 31st of December 2008, the applicant made an application for a subsidiary protection pursuant to European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518/2006) (The "2006 Regulations") which has become the subject matter of these proceedings. It was stated that he faced a real risk of "serious harm" within the meaning of Article 2 of Directive 2004/83/EC (the "Qualification Directive") on essentially the same grounds which had been advanced and rejected in relation to the application for asylum status. Further material was submitted on behalf of the applicant, but the application was rejected by the respondent Minister by a decision of the 24th of September 2009, which it is now sought to quash in these proceedings.

4 The assessment by the Minister was made within the Department of Justice and Equality originally by an Executive Officer, considered and approved by a Higher Executive Officer, and then determined by an Assistant Principal. The assessment considered country of origin information and concluded that while there had been incidents of violence, a situation of armed conflict did not exist in Rwanda at the relevant time and accordingly the relevant decision-maker was not satisfied that the applicant had demonstrated that he was without protection in Rwanda. There were not therefore substantial grounds for believing that he would be at risk of serious harm by death penalty or execution, torture or inhuman or degrading treatment or that there was a serious individual threat to civilian life or person by reason of indiscriminate violence or a situation of international or internal armed conflict (as set out in Article 15) in Rwanda, if returned there. The decision made specific reference to the prior decision of the RAT at subparagraph (vii). Subhead (viii) is headed "Applicant's credibility and whether benefit of doubt should be given: Re Regulation 5(3)". This section quoted in detail the assessment of the applicant's application for refugee status and concluded "because of the doubt surrounding his credibility the applicant does not warrant the benefit of the doubt". The reference to, and apparent reliance on, the RAT decision and in particular the reference to "credibility" has been central to this case.

5 At this point it may be useful to pause and recollect that as of the time of consideration of the application for subsidiary protection in 2009 despite the very significant degree of overlap between the tests for refugee status and subsidiary protection, Ireland operated what has been described as a bifurcated system of assessment for international protection. Applications for refugee status were dealt with under the refugee appeals process first before ORAC, and then on appeal to RAT, while as this case shows application for subsidiary protection pursuant to the Regulations of 2006 were made to the Minister. The development of these separate procedural strands may have reflected nothing more than an incremental development of the law, different legal sources, and different timing. Relatively recently, the two processes have been amalgamated in the application for international protection under the International Protection Act 2015. However at the time of MM's application, they were dealt with separately, and as can be seen, sequentially. Indeed Article 4 of the 2006 Regulations provided that the Minister was only obliged to consider an application for subsidiary protection from an applicant to whom s.3(2) of the Immigration Act 1999 applied, that is, a person whose application for asylum had been refused by the Minister. That bifurcated, sequential system gave rise to a number of systemic challenges which, by definition therefore affected almost all cases then being dealt with under the subsidiary protection regime. Accordingly once this case was

commenced and leave given to challenge the refusal by the Minister on what might be described as generic grounds, in that they were equally applicable to many if not all applications for subsidiary protection, a large number of cases which were being dealt with were put on hold, pending the determination of this case.

6 Here leave to seek judicial review was granted and the substantive hearing came on in the High Court before Hogan J in April 2011. As recorded by him, the principal issue then was whether the duty of cooperation imposed by Article 4(1) of the Qualification Directive ("in cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application") imposed a duty on the Minister to supply an applicant with a copy of any draft decision adverse to the applicant to allow the applicant to comment upon such findings before any final decision was made. Although this point had been rejected previously by the High Court in *Ahmed v Minister for Justice, Equality and Law Reform*, (Unreported), High Court, 24 March 2011, Hogan J considered nevertheless, that in the light of information submitted to him, it was possible that different views were taken by other Member States, and accordingly he made a reference to the European Court of Justice pursuant to Article 267 of TFEU and granted an interlocutory injunction restraining the deportation of the applicant pending the resolution of the matter.

7 The ECJ delivered its decision on the 22nd of November 2011. As Hogan J said when considering the further progress of the case in the light of the guidance offered by the ECJ, there can be no doubt whatever the ECJ rejected the applicant's central argument concerning the interpretation of Article 4(1). In normal circumstances that would have been the end of the matter, and the dismissal of the applicant's proceedings in the domestic courts would have been a formality.

8 However, and unusually, the ECJ went on to make further observations to assist the national court, since it considered that the case raised more generally the question of the right of foreign nationals to be heard in the course of the examination of the second application. It was at this point however where two aspects of the intersection between Irish proceedings, and those before the European Court of Justice combined to cause potential misunderstanding. First, the system of pleadings, particularly in judicial review where leave is sought and may be granted in relation to specified points, means that specific issues are identified, and only evidence relevant to those issues is marshalled and advanced in the proceedings. Such proceedings are not an appeal from, or a general review of, the application for subsidiary protection. The focus of the High Court when making the reference to the ECJ was therefore upon the single and substantive legal issue involved in the contention that it was necessary to provide a draft decision to an applicant prior to finalising the decision. Neither the proceedings themselves nor the reference to the ECJ were addressed to the more general question of the right to be heard or participate in the proceedings. Indeed that could not have been in issue in these proceedings. Undoubtedly the applicant had an entitlement to participate in the proceedings and to make representations: the specific question was whether that right extended to the procedure which was argued for. The second potential source of confusion was the meaning of the 'right to be heard'. In the common law world, and in particular in the field of administrative law, it is axiomatic that before a decision is made adverse to a person, they must be given the opportunity of making submissions in relation to it. A right to a hearing normally comprehends therefore an oral hearing. In Irish law, such a hearing invariably means that court like procedures in which evidence is given and the parties are permitted to challenge and cross-examine the witnesses. At the risk of oversimplification it may also be said that such an oral hearing must be held where it is necessary to accord fair procedures to an individual. That will arise most often where the decision may be dependent on the resolution of contested allegations of fact. See for example the decision in *Re Haughey* [1971] I.R. 217 and its extensive progeny such as *Gallagher v Revenue Commissioners (No.2)* [1995] 1 I.R.55. That in turn will often be the case where the credibility of a witness is asserted or challenged, as the case may be. It has become apparent that in the language of European law the right to a hearing has a broader meaning, comprehending simply the right to participate in proceedings. It has also become apparent therefore that in one sense the precise issue and what it required

as a matter of fact in the particular circumstances of this case, were, as it were, lost in translation.

The Decision of the ECJ of the 22nd of November 2012.

9 At paragraph 35 of the decision, it was recorded "that there is no provision in the 2006 Regulations for the applicant for subsidiary protection to be heard in the course of examination of his application". Paragraph 45 stated:

> "That application was rejected by a decision of the Minister of 24th September 2010. In his decision, the Minister relied to a *large extent* on his earlier decision of 2008 rejecting Mr M's asylum application for his conclusion that Mr M had not established that there was sufficient grounds to demonstrate that he was at risk of serious harm in his country of origin, since there were serious doubts as to the credibility of his claims."

10 Having rejected the applicant's contention the court proceeded to observe that the observations of the parties raised more generally the questions of the right of a foreign national to be heard in the course of the examination of his second application (seeking subsidiary protection) when that application is made following rejection of an initial application (which sought refugee status). At paragraph 76 the court said:

> "In order to provide the referring court with a useful answer, it is thus important to determine whether, in relation to a situation such as that in the main proceedings – a feature of which it is that there are two separate procedures, one after the other, for examining asylum applications and subsidiary protection applications respectively – it is unlawful under EU law not to hold a further hearing of the applicant in the course of examination of the second application and prior to rejection of that application on the ground that, *as both the High Court and Ireland have contended*, he has already been heard during the procedure relating to his first application (for refugee status)".(Emphasis added)

At this point it may be noted in relation to the portion italicised above that it does not appear that either Ireland or the High Court had contended that there was no necessity to hold a further hearing in the consideration of the application in which the applicant was entitled to participate. There was however a latent ambiguity as to what was meant by a "hearing" in this regard.

11 The observations of the Court were set out at paragraph 87 and it is desirable to set them out in full:

> 87. The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interest adversely …
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> 88. That right also requires the authorities to pay due attention to the observations thus submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision …; the obligation to state reasons for a decision which are sufficiently specific and concrete to allow the person to understand why his application has been rejected is thus a corollary of the principle of respect for the rights of the defence.
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> 89. It follows from the foregoing reasoning that the right, thus understood, of the applicant for asylum to be heard must apply fully to the procedure in which the competent national authority examines an application for international protection pursuant to rules adopted in the framework of the Common European Asylum System CEAS.
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> 90. In that regard, the court cannot accept the view put forward by the referring court and Ireland that, where – as in Ireland – an application for subsidiary

> protection is dealt with in a separate procedure, necessarily after the rejection of an asylum application upon conclusion of an examination in which the applicant has been heard, it is not necessary for the applicant to be heard again for the purpose of considering his application for subsidiary protection because the formality of a hearing in a sense replicates the hearing which he has already had in a largely similar context.
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> 91. Rather when a Member State has chosen to establish two separate procedures, one following upon the other, for examining asylum applications and applications for subsidiary protection, it is important that the applicant's right to be heard, in view of its fundamental nature, be fully guaranteed in each of those two procedures.
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> 92. Furthermore that interpretation is all the more justified in a situation such as that of the case in the main proceedings since, according to the information provided by the referring court itself, the competent national authority, when stating the grounds for its decision to reject the application for subsidiary protection, referred to a large extent to the reasons it had already relied on in support of its rejection of the asylum application, although, under Directive 2004/83, the conditions which must be fulfilled for the grant of refugee status and for the awarding of subsidiary protection status are different, as is the nature of the rights attaching to each of them."

12 Accordingly, the court having ruled that there was no obligation to provide a draft of the decision, nevertheless also continued:

> "However, in the case of a system such as that established by the national legislation at issue in the main proceedings, a feature of which is that there are two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection respectively, it is for the national court to ensure observance in each of those procedures, of the applicant's fundamental rights and, more particularly, of the right to be heard in the sense that the applicant must be able to make known his views before the adoption of any decision that does not grant the protection requested. In such a system, the fact that the applicant has already been duly heard when his application for refugee status was examined does not mean that that procedural requirement may be dispensed with in the procedure relating to the application for subsidiary protection."

13 In due course the High Court heard argument on the appropriate order to make in the light of the guidance offered by the decision of the ECJ. The point originally raised in the proceedings in which the reference had been made was easily disposed of: it was plain that the claim that the decision of the Minister should be quashed because the Minister had not furnished a draft prior to issuing a concluded decision, was one that could not be sustained and should be dismissed. However, the related question now emerged as to what process was necessary before a decision was made on a subsidiary protection application, particularly in a system such as Ireland where decisions were made subsequent to a decision on the closely related question of the entitlement to asylum status. In theory it was possible to argue for any process, from a consideration of the application taking into account the determination already made in the asylum process, to a process entirely independent of the asylum determination, or furthermore the process which normally would require a personal interview, and at the furthest extreme, a full oral adversarial hearing, which is often a required component of fair procedures in the Irish context.

14 The resolution of this particular case can be simplified: the procedure which had been applied here, had certainly not involved a separate interview of the applicant for the purposes of the subsidiary application, still less, any full adversarial hearing up to and involving cross-examination of witnesses. On the other hand, the subsidiary protection decision had clearly considered and placed reliance on the determination made by ORAC and RAT. Thus, if either of the first two steps were required (interview or adversarial hearing) or if the third was

prohibited (consideration of the asylum decision) then the decision here must be quashed. Put another way, unless the 'right to be heard' referred to by the ECJ could be satisfied by the process which had actually occurred here, the decision of the Minister was invalid. Inevitably however, the consideration of this issue involved the larger question of what the right to a hearing required as a matter of European law. Lurking in the background was the further question of whether domestic law required something more.

15 Once again this case illustrates therefore, perhaps negatively, the difficulties of communication between different legal systems, and perhaps more positively and optimistically, the substantial achievements of the European Union in achieving the degree of understanding and comprehension between the legal systems of the Member States and between those systems and the legal system of the European Union which it has. Nevertheless difficulties remain. Interpretation is more than translation, and translation itself is more than the mechanical replacement of words with words in another language which are deemed to correspond.

16 Here the parties took up widely divergent positions on the import of the observations made by the ECJ. The State parties maintained that the process followed here in fact was consistent with the right to a hearing within the jurisprudence of the ECJ. The applicant for his part contended that a full oral hearing was required, with, if necessary, a right to call witnesses and cross-examine adverse witnesses.

17 The decision of the High Court was delivered on the 23rd January 2013. The judgment sought a middle course. It was considered that a subsidiary protection decision required more than had been accorded here, but arguably less than the applicant contended for. At paragraph 31 the learned High Court judge deduced from the decision of the ECJ that:

> "…under our bifurcated system the subsidiary protection application must be considered distinctly and separately from the asylum application. This in turn means that the Minister must decide the subsidiary protection issue without any reliance on the prior reasoning contained in the asylum application ..."

At paragraph 47 of the judgment the minimum procedure which it was considered was now required was set out:

> "In order for the hearing before the Minister to be effective in the sense understood by the Court of Justice in such circumstances, such a hearing would, at a minimum, involve a procedure whereby (i) the applicant was invited to comment on any adverse credibility findings made by the Refugee Appeals Tribunal; (ii) the applicant was given a completely fresh opportunity to revisit all matters bearing on the claim for subsidiary protection and (iii) involve a completely fresh assessment of the applicant's credibility in circumstances where the mere fact that the Tribunal had ruled adversely to this question would not in itself suffice and would not even be directly relevant to this fresh credibility assessment."

18 Some observations have been made upon this test and it has been argued on behalf of the appellant Minister that there are internal inconsistencies in it. Thus, if (ii) states a principle, (i) would appear to be superfluous. Similarly, it is not perhaps easy to reconcile (i) with the requirement of a completely fresh assessment under (iii). These are however matters of detail, which in the circumstances of this case it is not now necessary to pursue. For present purposes it is enough to note that the learned trial judge sought an intermediate course, and deduced that certain procedures were required which bore traces of Irish administrative law concepts. Inevitably since the process adopted by the Minister had not accorded with this procedure, it followed that the High Court considered it was necessary to quash the determination of the Minister of the 24th of September 2010.

19 The Minister appealed the decision to this Court and the applicant for his part cross-appealed. Each side maintained the position it had argued for in the High Court. The matter came before this Court on the 6th of March 2014. Given the fact that there were now three different interpretations asserted as to the meaning of the decision of the ECJ, it was inevitable

that this Court concluded it was necessary to make a further reference to the ECJ. The question referred to the Court was as follows:

> "Does the 'right to be heard' in European Union law require that an application for subsidiary protection, made pursuant to Council Directive 2004/83/EC, be accorded an oral hearing of that application, including the right to call or cross-examine witnesses, when the application is made in circumstances where the Member State concerned operates two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection, respectively?"

20 Submissions were made by the applicant, and by Ireland, and observations also submitted on behalf of the Czech government, the French government, and the legal service with the European Commission. It is worth tracing the different submissions made, which are useful in illuminating the decision of the ECJ. The parties maintained the arguments they had made before the High Court and Supreme Court respectively. Both the Czech government and French government intervened in support of the decision of the Irish government. The European Commission, for its part, while rejecting the argument that a full oral hearing was necessary, nevertheless contended that:

> "The right to be heard in European Union law requires that an applicant for subsidiary protection be accorded an oral hearing of that application when it is made in circumstances where the Member State operates two separate procedures, one after the other for examining asylum applications and applications for subsidiary protection respectively. However that right does not require the authorities of the Member States concerned to establish a fully contradictory procedure. It is thus for national procedural law to determine whether, in a given case, the applicant is entitled to call or cross-examine witnesses, provided this is done in a way which neither treats Union law rights less favourably than those granted by national law nor undermines the effectiveness of Union law rights."

21 The opinion of Advocate General Mengozzi was delivered on the 3rd of May 2016. He did not consider that the right to be heard established by the case law of the ECJ necessarily included a right to call and cross-examine witnesses, however Member States could introduce or retain more favourable standards in that regard. However, he considered that the right did require a personal hearing which could only be omitted in exceptional circumstances. Thus, at paragraph 68 he stated:

> "Where an application for subsidiary protection within the meaning of Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted is submitted in a Member State which operates two separate procedures, one following the other, for consideration of applications for asylum and subsidiary protection respectively, the right to be heard in all proceedings, as it exists in EU law, must be interpreted as meaning that that right requires, in principle, a personal hearing of the applicant which can be omitted only in exceptional cases. In that context the right to be heard in all proceedings does not include, however, a right to call and cross-examine witnesses."

22 On the 9th of February 2017, the ECJ delivered its decision. Departing from the opinion of the Advocate General, and rejecting the submission made by the Commission it decided that a written procedure was <u>not</u> incompatible with the right to be heard in European law. Thus at paragraph 38 it stated:

> "That being so, the fact that an applicant for subsidiary protection has been able to set out his views only in written form cannot, generally, be regarded as not allowing effective observance of his right to be heard before a decision on his application is adopted.
>
> 39. Indeed, having regard to the nature of the elements referred to in paragraph 36 of the present judgment, it cannot, in principle, be ruled out that they may be effectively brought to the attention of the competent authority by means of

written statements by the applicant for subsidiary protection or of an appropriate form prescribed for that purpose, accompanied, where appropriate, by the documentary evidence which he wishes to annex to this application."

23 Furthermore it was permissible to take into account information obtained in the asylum application process:

> 44. "Accordingly, whilst an interview conducted during the asylum procedure is not, as such, sufficient to ensure observance of the applicant's right to be heard in relation to his application for subsidiary protection (see, to that effect, judgment of 22 November 2012, M., C 277/11, EU:C:2012:744, paragraph 90), it is, however, possible for the competent authority to take into account, for the purpose of examining the application for subsidiary protection, certain information or material gathered at such an interview which contribute to its ability to determine that application with full knowledge of the facts.
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> 45. In this connection, it should, moreover, be pointed out that the right of the applicant for subsidiary protection to comment in writing on the grounds that may substantiate his application provides him with the opportunity to set out his views on the assessment of such information or material by the competent authority in taking a decision on his asylum application."

That rule could however be subject to specific exceptions which may make it necessary for an interview to be arranged:

> 49. "Therefore, an interview must be arranged if the competent authority is not objectively in a position — on the basis of the elements available to it following the written procedure and the interview with the applicant conducted when his asylum application was examined — to determine with full knowledge of the facts whether substantial grounds have been shown for believing that, if returned to his country of origin, he would face a real risk of suffering serious harm, and whether he is unable, or, owing to such risk, unwilling, to avail himself of the protection of that country."

24 The conclusion of the Court was as follows:

> "The right to be heard, as applicable in the context of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, does not require, as a rule, that, where national legislation, such as that at issue in the main proceedings, provides for two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection respectively, the applicant for subsidiary protection is to have the right to an interview relating to his application and the right to call or cross-examine witnesses when that interview takes place.
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> An interview must nonetheless be arranged where specific circumstances, relating to the elements available to the competent authority or to the personal or general circumstances in which the application for subsidiary protection has been made, render it necessary in order to examine that application with full knowledge of the facts, a matter which is for the referring court to establish."

25 It remains only to apply that ruling to determine this appeal. The Court has received extensive argument, and a proliferation of materials. However, in my view the outcome of the case is clear and straightforward. The decision of the European Court of Justice makes it clear that it in the Irish context which existed at the time of the decision here, and where the decision on subsidiary protection was a separate decision taken after the determination of the asylum process, it was permissible to make that decision on the basis of a written procedure, so long as the procedures adopted were sufficiently flexible to allow the applicant to make his case. That was plainly the case here. Exceptionally, it may be necessary to permit an oral interview. It cannot be contended here however that such an exceptional situation arose: the

submission seeking subsidiary protection identified only those matters which had already been relied on in the claim for asylum. The decision of the ECJ also makes it clear that it is permissible to have regard to the information obtained in the asylum process, and the assessment of the decision-maker. There is in this case no basis for contending for an oral hearing, still less for an adversarial hearing. It was argued, faintly, that Irish law might require more in that procedure, but at this stage of the proceedings that argument is in my view as forlorn as a matter of procedure, as it is of substance. The appeal must be allowed and the order of *certiorari* made by the High Court must be set aside, and the application for judicial review dismissed.

26 In the light of the protracted procedure it may be unwise to make any additional observations. However, some avoidable confusion was caused in this case, arising from the characterisation of the decision of the RAT, as a matter of "credibility". The language of credible and credibility has important resonances in the Irish law relating to fair procedures. In its core meaning, credibility can mean that the account given by a witness of disputed facts is not believed by an adjudicator. If two witnesses as to fact give contradictory accounts of events which cannot be reconciled, then a resolution of the dispute may require an adjudicator to come to a conclusion as to which of the witnesses he or she believes, and to explain why. It is an ingrained part of the law of fair procedures that Irish courts considered it is only very rarely that such a conclusion could be arrived at on paper alone: normally the choice between disputed accounts of contested facts requires an oral hearing so that those accounts can be tested against each other, and, their own inherent internal consistency, and be tested in turn by the opposing party. In most cases, it is inevitable that this will lead to an oral hearing with cross-examination. It is not necessary here to consider the circumstances where that standard procedure can be departed from. Some familiar circumstances where the principle is applied, are when a court hearing an application for summary judgment, will refrain from entering into the likelihood of competing accounts given on affidavit, if it is unnecessary to do so to determine a relevant issue and will instead direct that an oral hearing be heard. Similarly, a court will rarely if ever address a conflict of fact at an interlocutory stage when an injunction is sought and where the competing assertions are made on affidavit evidence. It is taken for granted that the resolution of competing accounts will require an oral hearing.

27 If a decision requires credibility in this classic sense, that is, whether an account of disputed facts is to be believed or not, that, in Irish law can lead rapidly to the necessity for an oral hearing if fair procedures are to be applied. Thus, in the present context and applying the decision of the ECJ, one of the exceptional cases in which a hearing or interview may be necessary, might be, where although an adverse decision on certain facts had been made by ORAC/RAT, an application for subsidiary protection raised some substantial grounds for doubting that conclusion.

28 However, credibility is also used in ordinary language in a rather broader sense. "I believe" is often used as a synonym for "I think". If for example a person says that they "believe" that their amenity will be affected if a disputed development proceeds, that is not an assertion of the state of facts, and rejection of that conclusion does not reflect on their truthfulness or credibility. This may appear an insubstantial distinction, particularly to a losing party, but it is important to keep in mind these distinctions because procedural consequences may follow. Such consequences are not trivial, since they may in fact determine the outcome of the proceedings.

29 To take another example, the law may provide that if a certain legal test is satisfied on the facts, (in this case a risk of serious harm), then certain consequences must follow (subsidiary protection). Some applicants may therefore present a case on paper which if accepted would establish a classic case for subsidiary protection. They may for example argue that they have been tortured by a group still in power in the country. Or an applicant may say that he or she belongs to a particular grouping or family which has been subjected to serious violence in the country in question, and that that treatment of that group has been verified by unimpeachable accounts from reputable international agencies. Such cases may raise a question of credibility in the classic sense: is the applicant to be believed when they contend they have suffered that

treatment, or is the applicant to be believed when they say that they are a member of the particular group or family?

30 A different issue may arise when someone puts forward a number of matters arising from their background, education, and experience, and contends by consequence they are at risk of serious harm. In such a case, the issue may not be whether the applicant is telling the truth, but rather whether the asserted conclusion follows from those facts. Any such conclusion may be expressed in general terms of belief or credibility, i.e. that it is not credible that such matters would give rise to a risk of serious harm. Even if used in that way, it is quite a different conclusion from that in the example just discussed: in this case, any such conclusion does not reflect at all on the veracity of the account. It may be important in a particular case to distinguish clearly between these cases most particularly since the necessity for some oral or personal process is clearly more pressing where the veracity of the witness is the central issue.

31 The decision of this Court may bring to a close this act in this long running drama, but it is unlikely to be the last scene. Eleven years have elapsed since the applicant came to Ireland and it is fully nine years since he made the application for subsidiary protection. Circumstances have changed and developments may have to be taken into account in any further decision making process. It is difficult to be enthusiastic about the decision making process to date, even though characterised by conscientious and well meaning decisions at each stage, or to be optimistic about the future progress of this and related cases. Nevertheless the court can only deal with the issue raised and addressed in this appeal. On that basis, as already observed the appeal must be allowed.