



**An Binse um Achomhairc i dtaobh Cosaint Idirnáisiúnta**  
**The International Protection Appeals Tribunal**

**REGULATION 21 OF THE EUROPEAN COMMUNITIES  
(RECEPTION CONDITIONS) REGULATIONS 2018**

**APPEAL AGAINST REFUSAL OF LABOUR MARKET ACCESS PERMISSION**

**CASE DATA**

**ATLM NUMBER:** 1982365-ATLM-20

**PERSON ID:** XXXXXX-XX

**APPELLANT:** XXXXX XXXXX

**NATIONALITY:** XXXXX

**SOLICITORS FOR THE APPELLANT:** XXXXX

**TRIBUNAL MEMBER<sup>1</sup>:** Cindy Carroll

**INTRODUCTION**

1. The within Decision concerns an appeal to the International Protection Appeals Tribunal against a decision of a Review Officer pursuant to Regulation 20(4) of the European Communities (Reception Conditions) Regulations 2018, which decision refused to grant the Appellant a labour market access permission.
2. The Tribunal has not been informed of the exact date of the Appellant's initial application for a labour market access permission pursuant to Regulation 11 (3) of the European Communities (Reception Condition) Regulations, 2018 (hereinafter "the Regulations"), or the date of refusal of same by the Labour Market Access Unit. The Appellant's legal representatives sought a review pursuant to Regulation 20(1)(e) by letter dated 11 September 2020.
3. The Review Officer, in a decision 2 December 2020, upheld the decision to refuse the Appellant a labour market access permission. The Review Officer deemed that the Appellant did not meet the conditions for the granting of a labour market access permission because he had failed to cooperate with the protection process by not attending his first section 15

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<sup>1</sup> Designated pursuant to Regulation 21(3) of the European Communities (Reception Condition) Regulations, 2018.

interview, and by failing to return his questionnaire in a reasonable timeframe, leading to a delay in the issuance of the first instance recommendation.

4. The Appellant's legal representative submitted an appeal to the International Protection Appeals Tribunal (hereinafter "the Tribunal") pursuant to Regulation 21 of the Regulations. The Schedule 7 Notice of Appeal was submitted by email on 27 January 2021. However, the appeal was submitted outside the statutory time period (although an extension of time was sought in the grounds of appeal) and the decision of the Review Officer was not included. Following correspondence from the Tribunal, a Schedule 8 Notice of Appeal and the impugned decision of the Review Officer were submitted, and the appeal was deemed accepted on 9 February 2021.
5. Written submissions were sought from both the Appellant and the Labour Market Access Unit, with same to be submitted by 16 February 2021. The Labour Market Access Unit responded by email dated 15 February 2021 and their comments were shared with the Appellant's legal representatives by email that same day, with a reply sought by 19 February 2021.
6. The Appellant's legal representatives sought, by email dated 15 February 2021, that the appeal be determined by way of an oral hearing and this request was refused on 23 February 2021. The Tribunal was of the opinion that any submissions and explanations which the Appellant wished to make to explain the delays in the process could be made in written submissions, including a written personal statement by the Appellant himself. The Tribunal advised that the submissions of both parties would be considered in the light of the Reception Conditions Directive (Recast) and the recent judgment of the Court of Justice of the European Union in Joined Cases C-322/19 and C-385/19.
7. The Tribunal afforded the Appellant's legal representatives until 4pm on 25 February 2021 to make further submissions, and advised that the decision of the Tribunal must be determined by 3 March 2021. Correspondence was received on 26 February 2021, and has been taken into account even though it was outside the time allowed for submissions.
8. This Decision has been determined within 15 working days from 9 February 2021, the date on which the complete appeal was accepted by the Tribunal as provided for in Regulation 21 (4) (a) of the European Communities (Reception Conditions) 2018.

#### **SUMMARY OF CASE FACTS AND DOCUMENTS**

9. The Appellant applied for international protection on 2 September 2019. He did not attend his section 15 interview on 16 September 2019 and did not attend same until 12 December 2019. The Appellant, having been granted several extensions, finally submitted his international protection questionnaire on 25 August 2020.
10. The Tribunal has considered all documentation submitted on behalf of both parties:
  - Schedule 7 Notice of Appeal accepted on 9 February 2021;

- Schedule 8 Notice of Appeal;
- Covering letter dated 8 February 2021;
- Review Officer's Decision dated 2 December 2020;
- Email from Labour Market Access Unit dated 15 February 2021;
- Email from Appellant's legal representatives seeking oral hearing dated 15 February 2021;
- Reply from Tribunal dated 23 February 2021;
- Correspondence from the Appellant's legal representatives on 26 February 2021.

### **RELEVANT LEGAL PROVISIONS**

11. Article 15 (Employment) of the Reception Conditions Directive (Recast) provides as follows:

*1. Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.*

*2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring that applicants have effective access to the labour market.*

*For reasons of labour market policies, Member States may give priority to Union citizens and nationals of States parties to the Agreement on the European Economic Area, and to legally resident third-country nationals.*

*3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.*

This Article was transposed into domestic law and given effect in Regulation 11 of the Regulations. Regulation 11 (4) provides as follows:

*(4) The Minister may, on receipt of an application made in accordance with paragraph (3), grant a permission to the applicant where satisfied that – (a) ..... a period of 9 months, beginning on the application date, has expired, and by that date, a first instance decision has not been made in respect of the applicant's protection application, and (b) the situation referred to in subparagraph (a) cannot be attributed, or attributed in part, to the applicant.*

### **ISSUE TO BE DETERMINED BY THE TRIBUNAL**

12. It is common case that the Appellant is an applicant for international protection. It is also common case that he has not received a first instance decision in respect of his protection application, and a period of 9 months has elapsed since he made his application for international protection.

13. In exercising its jurisdiction under the 2018 Regulations, the Tribunal must determine whether the delay in issuing a first instance decision in respect of his protection application can be attributed to the Appellant. A second issue has been raised by the LMAU, namely the fact that of the Appellant working illegally in the State.
14. The Tribunal notes a difference between the wording of the Directive - *the delay cannot be attributed to the applicant* – and the wording of the Regulations - *the situation referred to in subparagraph (a) [i.e. the delay] cannot be attributed, or attributed in part, to the applicant*.
15. As there is a difference between these two legal instruments, the Tribunal is obliged to apply the wording of the Directive in line with the judgment of the Court of Justice of the European Union in its judgment in ***C378/17 Minister for Justice & Equality & Others v Workplace Relations Commission & Others* ECLI:EU:C:2018:979**.
16. The Tribunal, having considered all the documents before it, is of the opinion that the Appellant has done little to ameliorate his situation. Applicants are not passive participants in the process.

## **REPRESENTATIONS**

### **(i) Review Officer's Decision 2 December 2020**

17. The Review Officer set out a number of dates which have been helpful in drawing up a timeline:
  - **2 September 2019:** Appellant applies for international protection;
  - **15 September 2019:** Appellant fails to attend for section 15 Interview;
  - **11 December 2019:** Appellant contacts IPO;
  - **12 December 2019:** Appellant attends section 15 interview and is given IP questionnaire in Georgian - to be returned by 6 January 2020;
  - **7 January 2020:** Extension of time granted until 6 February 2020;
  - **28 January 2020:** Gary Daly & Co assigned as Appellant's legal representatives;
  - **10 February 2020:** Extension of time sought by Gary Daly & Co, granted until 20 February 2020;
  - **26 February 2020:** Extension sought by Gary Daly & Co, granted until 4 March 2020;
  - **4 March 2020:** Extension sought by Gary Daly & Co, refused;
  - **11 March 2020:** Appointment cancelled as no interpreter available;
  - **16 March 2020:** Appointment cancelled as no interpreter available;
  - **16 March 2020:** Extension refusal relaxed due to Covid-19, granted until 1 May 2020;
  - **17 July 2020:** Extension sought by Gary Daly & Co, final extension granted until 24 August 2020;
  - **25 August 2020:** Questionnaire submitted by email.

(ii) **Schedule 7 Notice of Appeal**

18. In the Grounds of Appeal at Section 4.2, the Appellant's legal representative said that the Appellant was unaware of the appointment for 16 September 2019. When he did not hear anything from the IPO, he went to his social worker, who contacted IPO on 11 December 2019 and the Appellant did attend the interview arranged for him on 12 December 2019. It was stated that he *proactively arranged for an interview at the IPO*. The Appellant was unable to complete his questionnaire because of the unavailability of a Georgian translator, extensions were granted by IPO for that reason, and also because of the pandemic.

(iii) **Letter dated 8 February 2021**

19. In the cover letter sent with the Schedule 8 Notice of Appeal and Decision of the Review Officer, the Appellant's legal representatives reiterated the points made already, namely that the Appellant was unaware of the interview on 16 September 2019, and that the delays in completing his questionnaire were because of the pandemic and the unavailability of a Georgian translator.

(iv) **Email from LMAU on 15 February 2021**

20. The LMAU reiterated the points made in the impugned Decision and also noted that it had come to their attention that the Appellant *has been working illegally in the State*.

(v) **Letter of 26 February 2021**

21. The Appellant's legal representatives submitted that the Appellant worked from 8 December 2020 until 24 December 2020. He is no longer working and that he stopped of his own volition. It was urged on the Tribunal that the fact that the Appellant had worked for a few weeks and had stopped could have no bearing on the matters to be considered by the Tribunal in its determination of the Appeal. It was noted that the file handler in the legal representative's office had spoken to the IPO a number of times in relation to the short extensions of time sought, that there was no indication that these short extensions would have an impact on the Appellant's application, and that she was assured that Covid-19 had caused delays across many clients' applications.

**DETERMINATION OF THE TRIBUNAL**

22. The Tribunal relies on the judgment of the Court of Justice of the European Union in linked cases **C-322/19 and C-385/19 ECLI:EU:C:2021:11<sup>2</sup>**, which judgment was delivered on 14 January 2021, where the Court specifically examined the issue of delay on the part of an applicant in relation to permission to access the labour market.

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<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62019CJ0322&qid=1613054019743&from=EN>

23. The Court held, and the Tribunal adopts, as follows: (paragraphs 74-80):

*By the second question referred in Case C-385/19, the International Protection Appeals Tribunal asks, in essence, what acts may constitute a delay attributable to the applicant for international protection within the meaning of Article 15(1) of Directive 2013/33.*

*It should be noted at the outset, as the Advocate General noted in point 99 et seq. of his Opinion, that Directive 2013/33 gives no guidance in that regard.*

*Accordingly, it is necessary to refer to the rules of common procedures for granting international protection established by Directive 2013/32, which, as stated in paragraph 60 above, must be taken into account in interpreting the provisions of Directive 2013/33.*

*It thus follows from Article 31(3) of Directive 2013/32 that a delay in the examination of his or her application for international protection is attributable to the applicant where that applicant fails to comply with his or her obligations under Article 13 of that directive. That provision provides that applicants have an obligation to cooperate with the competent authorities with a view to establishing their identity and other elements referred to in Article 4(2) of Directive 2011/95, namely their age, background, including that of relevant relatives, nationality (or nationalities), country (or countries) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection. The applicant's obligation to cooperate means that he or she must supply, as far as possible, the required supporting documents and, where appropriate, the explanations and information requested (judgment of 14 September 2017, K., C-18/16, EU:C:2017:680, paragraph 38).*

*Article 13 of Directive 2013/32 also allows Member States to impose upon applicants other obligations necessary for the processing of their application, inter alia, to require them to report to the competent authorities or to appear before them at a specified time and place and to inform the authorities of their current place of residence, and even provide that applicants may be searched or photographed or have their statements recorded.*

*It follows, in essence, from the foregoing considerations that a delay in the processing of an application for international protection may be attributed to the applicant where he or she has failed to cooperate with the competent national authorities. Bearing in mind the need for uniform interpretation and application of EU law, as recalled in paragraph 57 et seq. above, this interpretation is called for even where, as a result of a specific derogating act, in the present case Protocol No 21, Directive 2013/32 does not apply in the Member State concerned.*

*In the light of the foregoing considerations, the answer to the second question referred in Case C-385/19 is that Article 15(1) of Directive 2013/33 must be interpreted as meaning that a delay in the adoption of a decision at first instance concerning an application for*

*international protection which results from a lack of cooperation by the applicant for international protection with the competent authorities may be attributed to that applicant.*

24. The Tribunal is of course well aware of the impact which Covid-19 has had in general, and more specifically in the context of international protection applicants. However, the Tribunal is of the opinion that Covid-19 is not the delaying factor in the instant case. The Appellant herein failed to engage in the process between 2 September 2019 and 11 December 2019 - a period of approximately 14 weeks during which time there was no pandemic. There is no explanation before the Tribunal in relation to the gap between the assignment of the Appellant's legal representatives by the Legal Aid Board on 28 January 2020 and what appears to be a first appointment on 11 March 2020; again, this is a period of approximately 6 weeks, and only the final weeks were affected by the pandemic. The Tribunal notes in passing that the Appellant's address is given as Bolton Street Dublin 1 and that his legal representative's office is located in the Capel Building, Dublin 7, approximately a 10/15 minute walk away. Even though some restrictions began to be imposed from 12 March 2020, the country did not enter full lockdown until 27 March 2020.
25. An applicant's questionnaire is an essential document in the process. It sets out a number of matters to be taken into account by decision makers in the international protection process. Despite the fact that a number of extensions were granted by IPO (and one was refused, a fact which was not mentioned by the Appellant's legal representatives in the Schedule 7 Notice of Appeal and the letters dated 8 and 26 February 2021), the Appellant's questionnaire was not submitted until 25 August 2020 (nearly 30 weeks after the Appellant's legal representatives were assigned). The Tribunal notes that the country emerged from the first lockdown in mid-June 2020, and still it took a further 2 months to submit the questionnaire.
26. The Tribunal cannot accept that there was a dearth of interpreters for such an extended time. The Tribunal also notes that a lack of interpreters was also given as a reason to explain the delay in submitting the within appeal.
27. The Tribunal, as stated already, is cognisant of the effects of the pandemic. However, the Tribunal also notes that, from the beginning of the pandemic, the legal services provided by solicitors and barristers were regarded as "essential services".
28. Looking at the history of the Appellant's application for international protection, the Tribunal rejects the explanations given for the delays by the Appellant. The Tribunal echoes the comment of the Review Officer in relation to the Appellant having *an established pattern of acting in such a way as to delay the processing of his application.*
29. The Appellant has delayed significantly, and has not co-operated in the international protection process. The only time he has acted with any alacrity is in his applications to enter the labour market.

30. As the Tribunal has, based on the evidence before it in relation to the Appellant's delay, decided to refuse the appeal, the Tribunal does not feel it necessary to make a finding on the fact that the Appellant worked illegally. However, the Tribunal is persuaded by the submission of 26 February 2021 by the Appellant's legal representatives that any such consideration would be outside its jurisdiction. The Tribunal is a creature of statute and may only consider matters within this remit.

31. Taking all of the evidence and documents into account, the Tribunal is satisfied that the delay in issuing the first instance decision can be attributed to the Appellant himself. He has not cooperated in the processing of his application for international protection.

**CONCLUSION**

32. The Tribunal finds that the delay in taking a first instance decision in the Appellant's international protection application can be attributed to the Appellant.

33. Having found that the delay in issuing the first instance decision is attributable to the Appellant, the Tribunal finds that the Appellant is not entitled to access the labour market and, under Regulation 21(5)(a) of the Regulations, affirms the decision of the Review Officer dated 2 December 2020.

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Cindy Carroll

Deputy Chairperson and Designated Member of the International Protection Appeals Tribunal

3 March 2021