

SUBMISSION TO THE INTERNATIONAL
PROTECTION APPEALS TRIBUNAL
STAKEHOLDER CONSULTATION ON REMOTE
AUDIO-VIDEO TRIBUNAL HEARINGS OF
INTERNATIONAL PROTECTION AND DUBLIN
III APPEALS

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SUBMISSION TO INTERNATIONAL PROTECTION APPEALS TRIBUNAL STAKEHOLDER CONSULTATION ON REMOTE AUDIO-VIDEO TRIBUNAL HEARINGS OF INTERNATIONAL PROTECTION AND DUBLIN III APPEALS

This submission has been prepared by Nasc, the Migrant and Refugee Rights Centre as a contribution to the Houses of the International Protection Appeals Tribunal Consultation on remote audio-visual tribunal hearings of international protection and Dublin III appeals. This submission has been authored by Julie O’Leary BL, Legal Service Manager.

About Nasc

Nasc, the Migrant and Refugee Rights Centre is a non-governmental organisation based in Cork. Nasc, the Irish word for ‘link’, empowers migrants to realise and fulfil their rights. Nasc works with migrants and refugees to advocate and lead for change within Ireland’s immigration and protection systems, to ensure fairness, access to justice and the protection of human rights. Our goal is to realise the rights of all migrants and refugees within Irish society.

Nasc has almost two decades of experience supporting refugees, asylum seekers and ethnic minority communities in Ireland. Through our free legal service, Nasc provides information, advice and support to over 1,300 people annually. Our policy and campaigning work are directly informed by our day-to-day experiences working with migrants, refugees, asylum seekers and ethnic minorities living in Ireland. More information on our service is available at www.nascireland.org.

Introduction

IPAT appeals are hugely significant for the individual involved and have serious consequences for that individual’s future. These appeals already take place in a context where there may be cultural or linguistic barriers to the appellant in expressing themselves in a full and free manner. Appellants are often very anxious in the lead up to these hearings and can be quite nervous regarding the procedures involved and the evidence to be given. It is therefore extremely important that these appeals are carried out in a manner that allows the appellant and their legal representatives to put forward their case in the most effective way possible.

- 1. Have you any concerns regarding the use of audio-video hearings in the context of international protection or Dublin III appeals?**

We would have the following concerns regarding the use of audio-video hearings in the context of IPAT appeals:

1. In-person oral evidence should always be the preferred option in legal and administrative proceedings, particularly where credibility is in question. We would be concerned that the impact and quality of evidence would be impaired if relayed through video link, which would make it more difficult for the IPAT member to correctly assess the credibility of the appellant.
2. Many solicitors will not have adequate room in their offices to facilitate the appellant, their legal representative and an interpreter.
3. Evidence given at the IPAT can often be very upsetting for appellants, as it requires them to recount traumatic experiences. If an appellant and their legal representative cannot be physically in the same room, it becomes more difficult for the legal representative to guide the appellants examination-in-chief, or to reassure the appellant if they become upset.
4. Issue may arise during cross examination. Cross examination may require interjection from the appellant's legal representative should they have an issue with questions posed to their clients. It is more difficult to do this over a video link, and particularly if the video link is not reliable.
5. Issues may arise regarding interpretation. As stated above, it may not always be possible for the interpreter to be present in the same room as the appellant. This may cause difficulties as the interpreter will have more difficulty judging the appellant's tone and body language. Further, the interpreter would also require access to a quiet secure area, and secure reliable broadband. Interpreters in Ireland would generally not require access to these facilities in the course of their work. Our experience is that many interpreters work in the area due to the flexibility of the work involves. In cases where the appellant's solicitor could in fact facilitate the appellant and interpreter in their offices, the interpreter may be required to travel long distances, particularly where the appellant is resident in a rural area, or speaks a language where there are a limited amount of interpreters available (generally, such interpreters would be available in the Dublin area). Interpretation in Ireland is not regulated, and this would leave little remedy for issues that might arise in the course of a hearing. It is likely that the IPAT contracts for interpretation would need to be renegotiated and possibly retendered.
6. There is no precedent in the Irish legal system for audio-visual hearings to be used for high-stakes, contested proceedings that require cross-examination. While there were some small number of examples in the past months, remote hearings were largely confined to procedural matters and matters being dealt with on affidavit. Video-link evidence is normally used in the Irish courts system where this will facilitate the individual giving evidence e.g. a child or a victim of sexual violence, and a judge must normally be confident that this will not affect the procedural fairness of the hearing. The use of video-link evidence in IPAT proceedings risks sacrificing administrative fairness for the sake of expediency.

Alternatives to Audio-Visual Hearings

Our preferred option would be that the IPAT use appropriate venues around the country to facilitate appellants and their legal representatives for hearings, in a similar manner to how WRC and RTB hearings are operated. If necessary, the IPAT should consider appointing more members on a temporary basis to address the backlog of cases created by Covid-19 related delays.

2. If so, how could those concerns be addressed and remedied?

It would be imperative that audio-visual hearings are only used where the appellant consents to this process, and where they are fully advised as to what is involved. Audio-visual hearings would **not** be appropriate where:

1. The appellant is a minor;
2. The appellant is a victim of torture or sexual violence;
3. The appellant is a vulnerable applicant within the meaning of the Reception Conditions Regulations 2018;
4. The appellant's solicitor cannot facilitate the appellant and their legal team in a secure, quiet room with adequate Wifi for the duration of the hearing;
5. The appellant require interpretation for the hearing;
3. **Would you be able to facilitate the appellant and his or her legal representatives to participate in an audio-video hearing from the same location, e.g. the solicitor's office or counsel's chambers?**

N/A

4. **Would you be of the view that – in so far as an appellant has access to suitable hardware and to a room in which he or she would be undisturbed for the full duration of a hearing – it would be appropriate for an appellant to participate in a hearing from his or her home location (e.g. apartment or accommodation centre)?**

Our experience of accommodation centres in Cork is that it would be unlikely that any centre could appropriately accommodate the appellant for the duration of the hearing. We would further be concerned at the impact that it may have on the appellant to be left alone after recounting traumatic evidence during the hearing. While a legal representative can talk to the appellant on the phone or by video after the hearing, this may not be sufficient if the appellant is upset due to the evidence recounted or due to the manner in which the hearing transpired. We would be most concerned at the impact that this might have on a vulnerable appellant.