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Submission of David Leonard BL to the Joint Committee on Justice, Home Affairs and Migration on the General Scheme of the International Protection Bill 2025

5 June 2025

Introduction

1. This submission is made in response to the Committee's invitation of 22 May 2025 to provide written observations on the General Scheme of the International Protection Bill 2025 ("the Bill"). The submission focuses on key provisions of the Bill concerning restrictions on oral appeal hearings. The submission is informed by relevant EU law, the EU Pact on Migration and Asylum, and Irish constitutional law. The aim is to assist the Committee in its scrutiny of the Bill and to make recommendations to ensure that the legislation is robust, fair, and compliant with Ireland's obligations under its Constitution.

Oral hearings

2. The General Scheme of the Bill proposes to overhaul Ireland's asylum procedures, including a drastic curtailment of the right to an oral hearing on appeal.

3. At present, under the International Protection Act 2015, the default position for certain appeals is that they would proceed without an oral hearing: for example, if they are from a designated safe country of origin. Some applicants have no right to an oral appeal hearing However, even in those cases, the International Protection Appeals Tribunal has discretion to direct an oral hearing if it considers it is not in the interests of justice to decide the case without one (s. 43(b)).

4. The current position is evidence that, at least in some cases, it would not be in the interests of justice for the appeal to proceed without an oral hearing. That suggests that any blanket ban on oral hearing may be contrary to the interests of justice and unconstitutional.

5. The General Scheme provides that the International Protection Second Instance Body (SIB) will generally make its decision without holding an oral hearing (Head 69(1)). However, an oral hearing may be directed by the Chief Appeals Officer if:

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- the applicant or person subject to withdrawal of international protection has requested an oral hearing in their notice of appeal, and

- the Chief Appeals Officer is satisfied that the applicant was not given the opportunity of a personal interview at first instance, or the record of such an interview is not available, and

- the Chief Appeals Officer considers an oral hearing necessary to ensure a full and ex nunc examination of both facts and points of law (Head 69(2)).

6. It will only be in very rare circumstances that an applicant will not be given the opportunity of a personal interview at first instance. Consider the example of a person who appeals a refusal of his or her international-protection application on the merits. At first instance, that person has the right to be given the opportunity of a personal interview before a decision on the merits of the application was made (Head 47(1)). Under Head 47(5)(a), the interview may be omitted only where:

    (i) the Minister is able to take a positive decision with regard to refugee status on the basis of the evidence available;

    (ii) the Minister is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control;

    (iii) for minors, where the Minister has established that an interview would be against the best interests of the child.

7. In the case of the omission of an interview where a positive decision can be taken without an interview, there will be no appeal to the SIB. It will be only in rare and exceptional cases that the Minister could decide that an applicant is unfit or unable to be interviewed owning to enduring circumstances beyond his or her control or that an interview would be against the best interests of the child.

8. If an applicant were wrongly deprived the opportunity of an interview at first instance, it is difficult to see on what basis he or

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she would not succeed in having the first-instance decision set aside on judicial review.

9. Accordingly, the circumstances in which an applicant could succeed in obtaining an oral hearing before the SIB would be very rare indeed.

Relevant case law

10. In principle, limiting oral hearings on asylum appeals is not in itself unconstitutional. The Irish courts have repeatedly held that constitutional justice does not invariably require a live hearing. See, for example, the discussion of the relevant law in *G.A. v. International Protection Appeals Tribunal* [2022] IEHC 440.

11. In principle, restricting the right to an oral hearing on appeal is not unlawful. However, if the restrictions go so far as to amount to a blanket ban, that is constitutionally suspect. Constitutional justice is ultimately case-specific, and a rigid statutory bar on oral appeals may go too far. In the particular circumstances of an individual case, an oral hearing may be required as a matter of fair procedures.

12. It may be fair to decide some cases involving credibility issues without an oral appeal hearing. However, in certain circumstances, constitutional justice suggests that an oral hearing is required as a minimum standard of fairness. Barr J., in *U.P. v. Minister for Justice* [2014] IEHC 567, stated at para. 41 that, where there are negative credibility findings made against the applicant, "the loss of the right to an oral hearing is a serious matter and would put the applicant in a very disadvantageous position in relation to his appeal." Irish constitutional justice leans heavily in favour of the requirement to hold an oral hearing where what is at issue is the personal credibility of a claim where there are contested facts. In *M.M. v. Minister for Justice* [2018] IESC 10, O'Donnell J. (as he then was) stated at para. 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.

13. In *N.H.V. v. Minister for Justice* [2017] IESC 35, [2018] 1 I.R. 246, the Supreme Court held that the absolute prohibition on asylum seekers entering employment was unconstitutional. The

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right to work would be seen as not as fundamental as the right to constitutional justice in an appeal hearing. It may happen that an applicant in an individual case may be able to demonstrate that what is in effect a blanket ban on an oral appeal hearing means that he or she cannot obtain a fair appeal.

SIB should have discretion to allow oral hearing in interests of justice

14. Giving the SIB discretion to allow an oral hearing in the interests of justice would be an important safeguard to guard against the restriction on oral appeals being held to be unconstitutional.

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