



International Protection Appeals Tribunal

Decisions, Legal Issues and Judicial
Review

John Stanley BL, Deputy Chairperson, IPAT





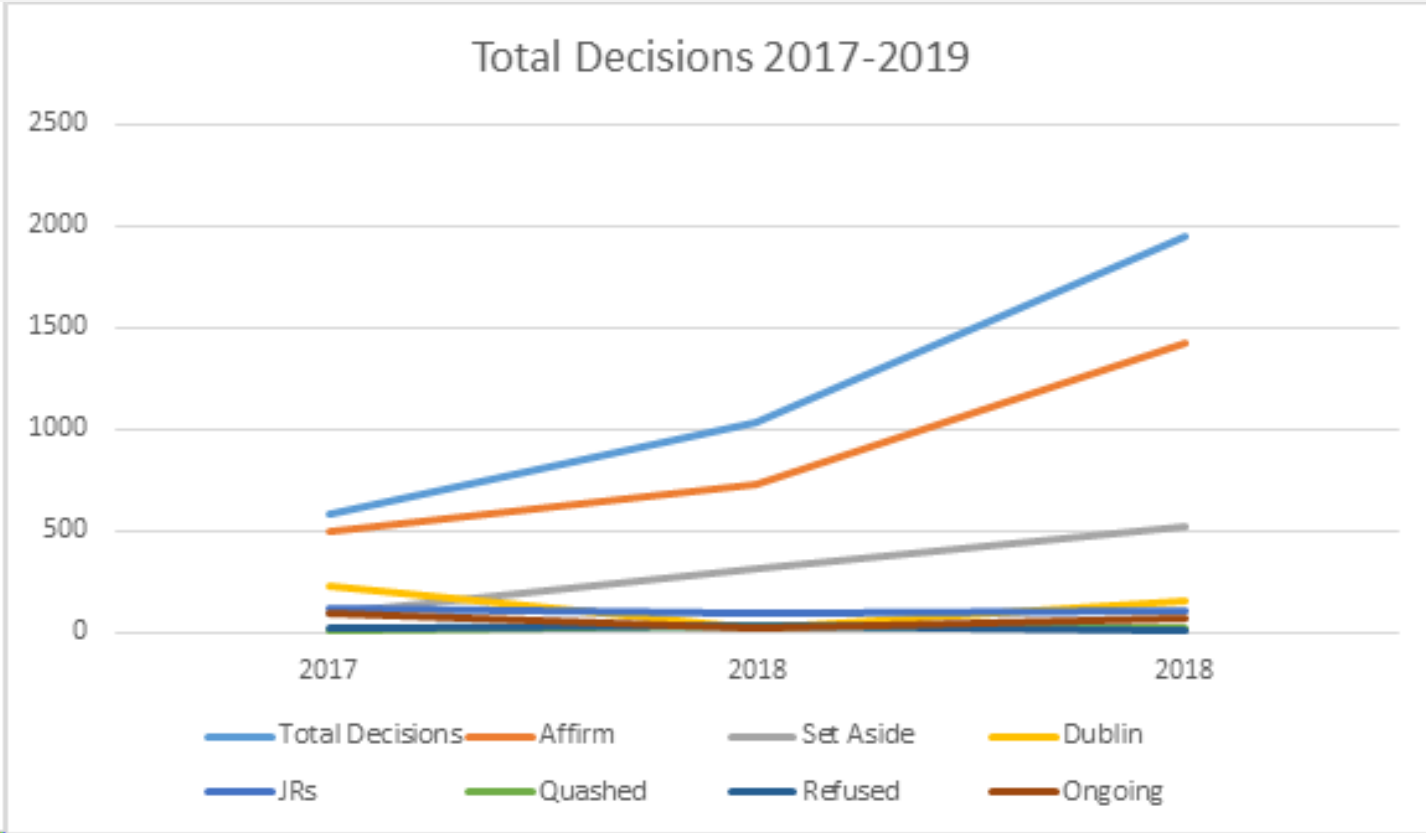
The Tribunal's Jurisdictions



- Reception Conditions
- Dublin III Transfers
- Inadmissible Applications
- Subsequent Applications
- International Protection Applications

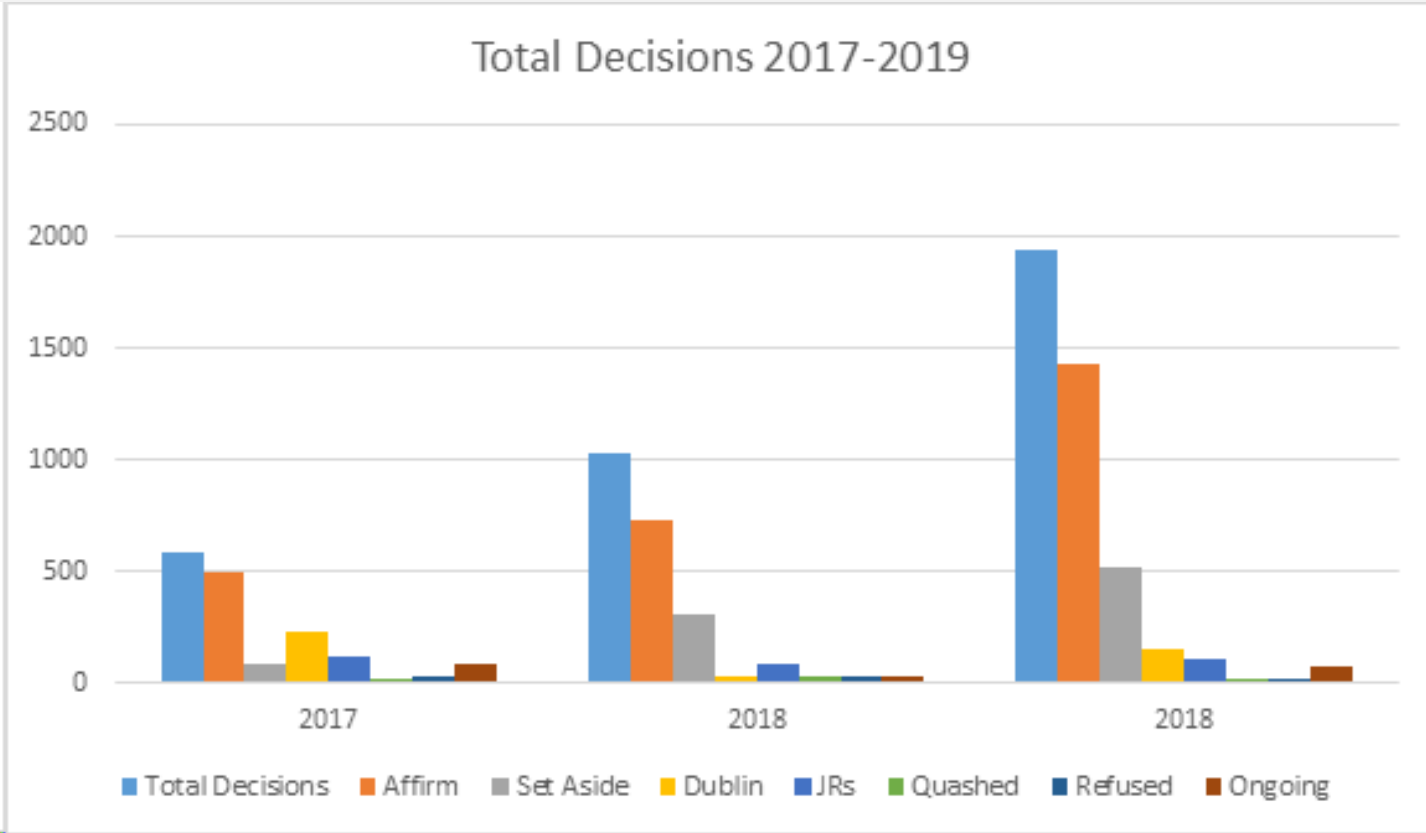


All IPAT decisions by year





All IPAT decisions by year (bar chart)



Key statistics

4008 decisions (from Jan 2017 to May 2020)
1038 set aside (26%)
2970 affirmed (74%)
326 JRd (8% of decisions)
70 JRs rejected (53% of concluded JRs)
62 quashing orders (47% of concluded JRs)
193 ongoing JRs (59.5% of JRs)



Things to remember

- The Tribunal is *functus officio* after it makes a decision
- The Minister for Justice is the *legitimus contradictor*
- The Tribunal's 'slip rule' (SI 116/2017, reg.10)
- 'Settled' JRs involving reconsideration require certiorari
- Role of the tribunal as a quasi-judicial statutory body
- Role of the tribunal for EU law purposes

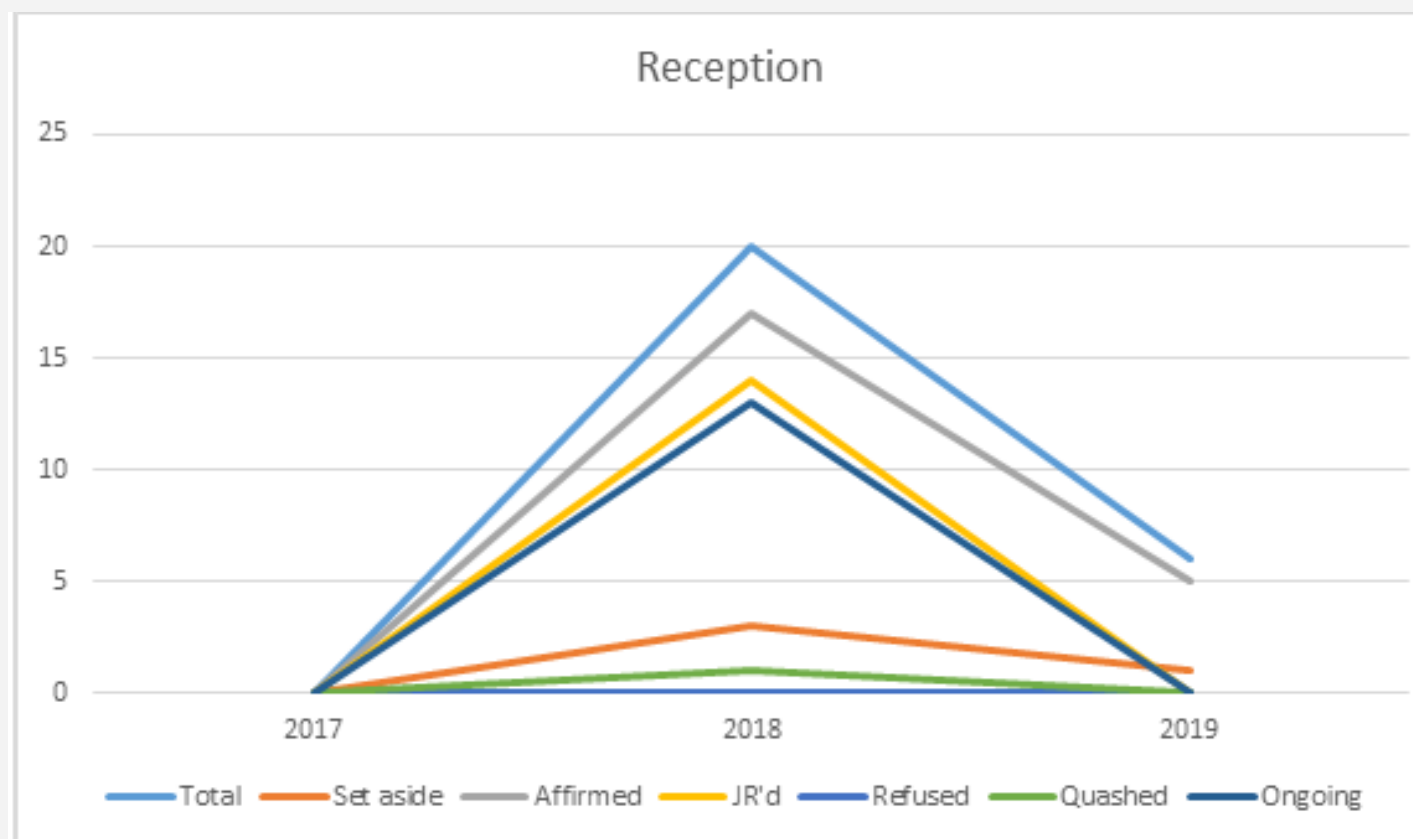


Reception Conditions

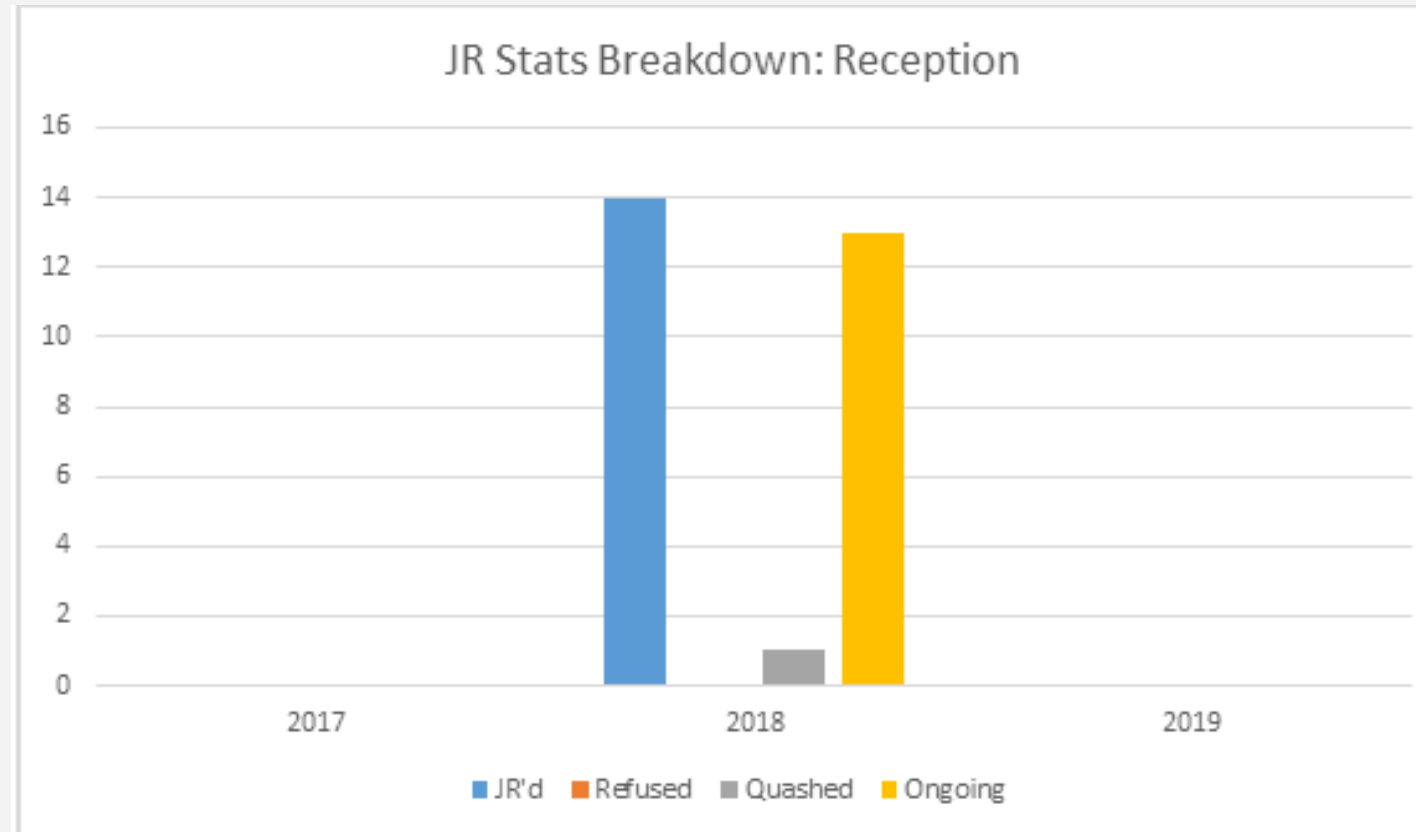
European Communities (Reception Conditions (Regulations) 2018 (S.I. No. 230/2018)



Reception conditions decisions by year



Judicial reviews of reception conditions decisions





Reception conditions – Key statistics

29 decisions (since 2018 to May 2020)
4 set aside (14%)
25 affirmed (86%)
14 JRd (48% of decisions)
0 JRs rejected (0% of concluded JRs)
1 quashing order (100% of concluded JRs)
13 ongoing JRs (93% of JRs)



Reception conditions – Key cases and issues

- **Access to the labour market for ‘transferees’?**
 - *KS (Pakistan) and MHK (Bangladesh) v IPAT* [2019] IEHC 176, Humphreys J.
 - Unknown Nationality [2019] IPAT 4 RC.
 - Thornton, ‘Clashing Interpretations of EU Rights in Domestic Courts’. European Public Law 26, no. 2 (2020): 243–264.
- **Damages for breach of rights?**
 - *X and Y v MJE* [2019] IEHC 133, Barrett J., 5 March 2019
 - *X and Y v MJE (No 2)* [2019] IEHC 226, Barrett J., 3 April 2019

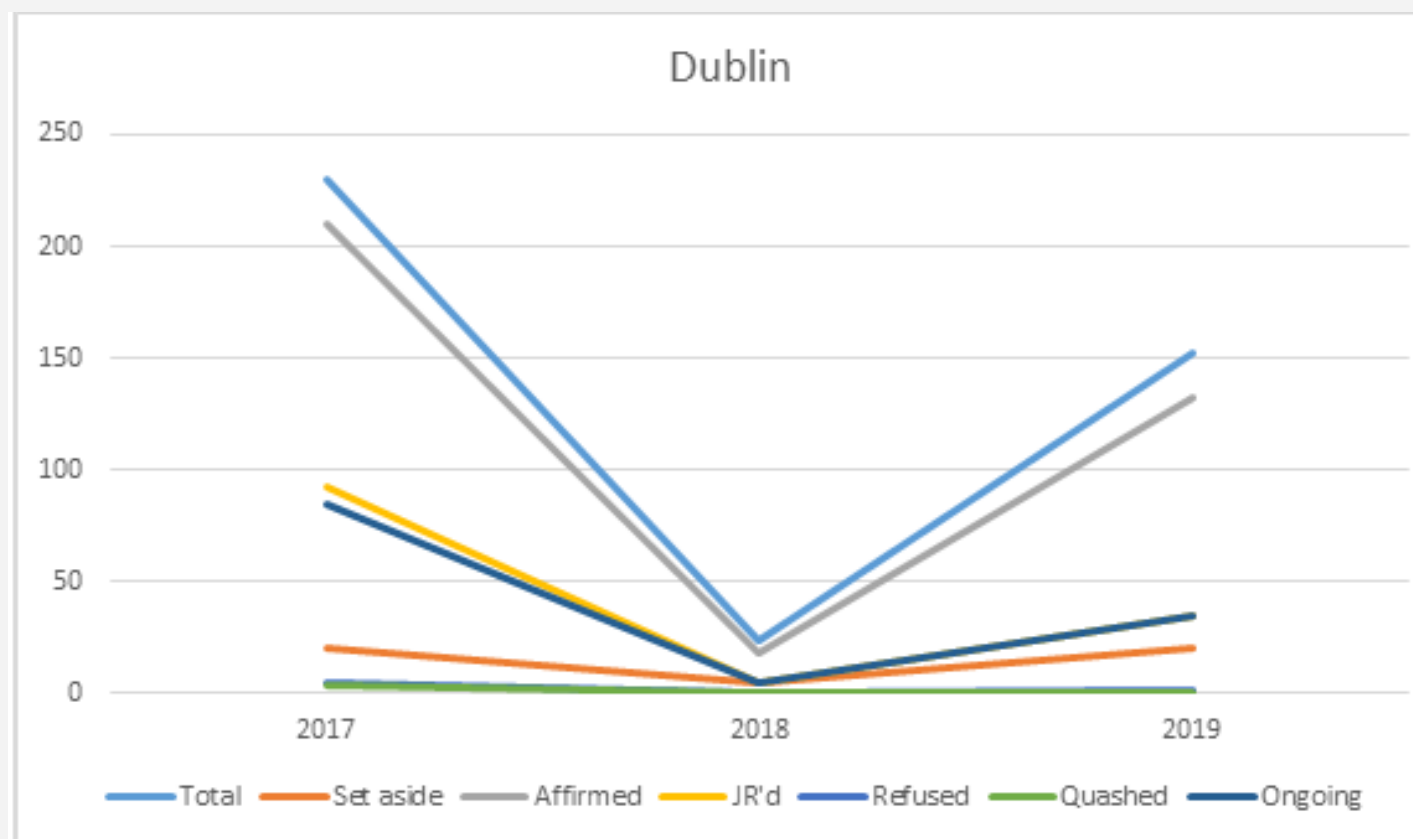


Dublin III

European Union (Dublin System) Regulations 2018 (S.I. No. 62/2018)

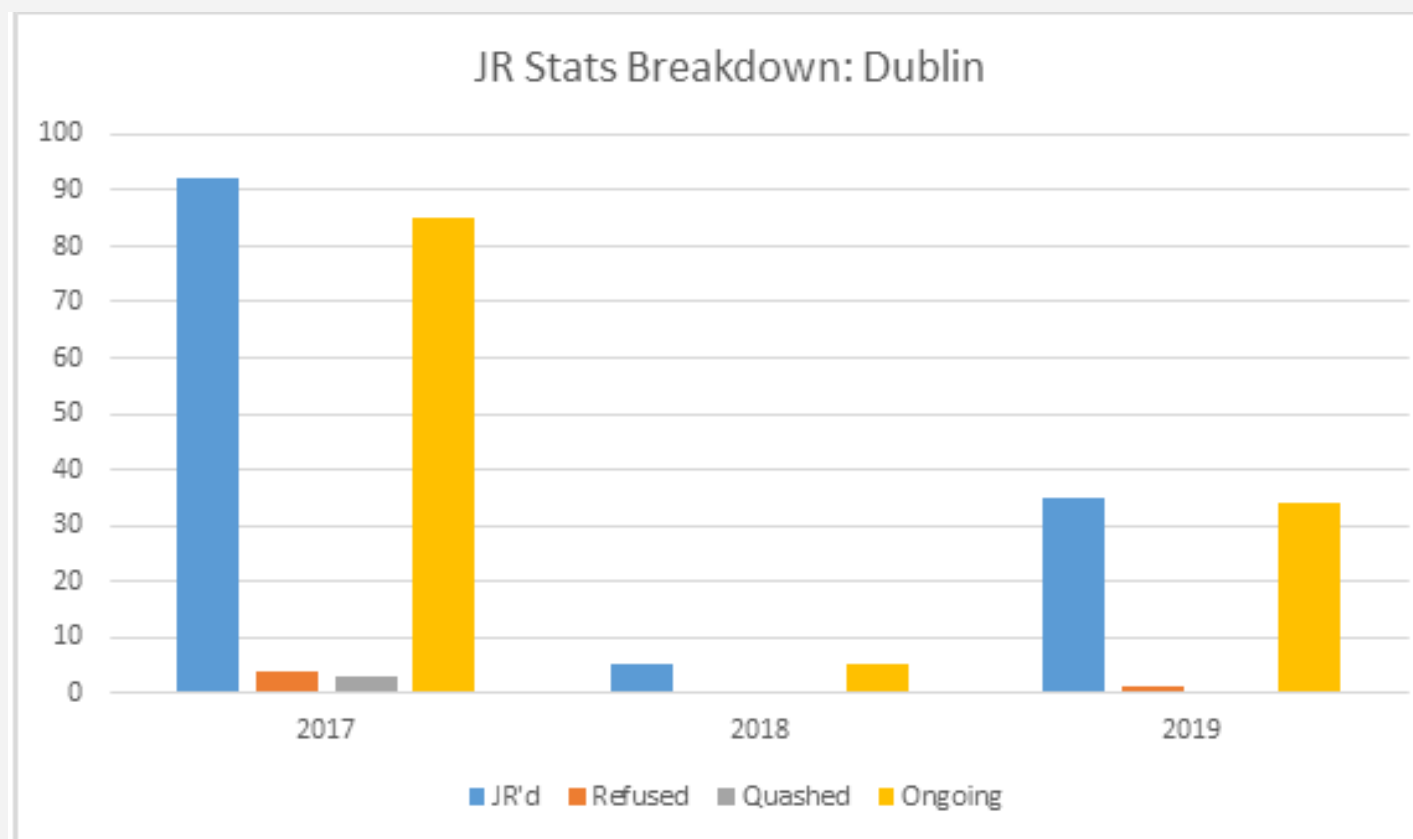


Dublin III decisions by year





Judicial reviews of Dublin III decisions





Dublin III decisions – Key statistics



457 decisions
50 set aside (9%)
407 affirmed (91%)
142 JRd (31% of decisions)
5 JRs rejected (62.5% of concluded JRs)
3 quashing orders (37.5% of concluded JRs)
134 ongoing JRs (94% of JRs)



Dublin III decisions – Key cases and issues



- **Article 17(1) Sovereign Discretion**
 - *MA v IPAT* [2017] IEHC 677, Humphreys J., 8 November 2017
 - Case C-661/17 *MA*, 23 January 2019
 - *HN v IPAT* [2018] IECA 102
 - *NVU v RAT* [2019] IECA 183, 26 June 2019 (under appeal)
- **Article 34 Request for Information**
 - *BS & RS v RAT* [2019] IESC 32, 22 May 2019
- **Right to choose country of asylum?**
 - *MIF v IPAT* [2018] IECA 36, 19 February 2018

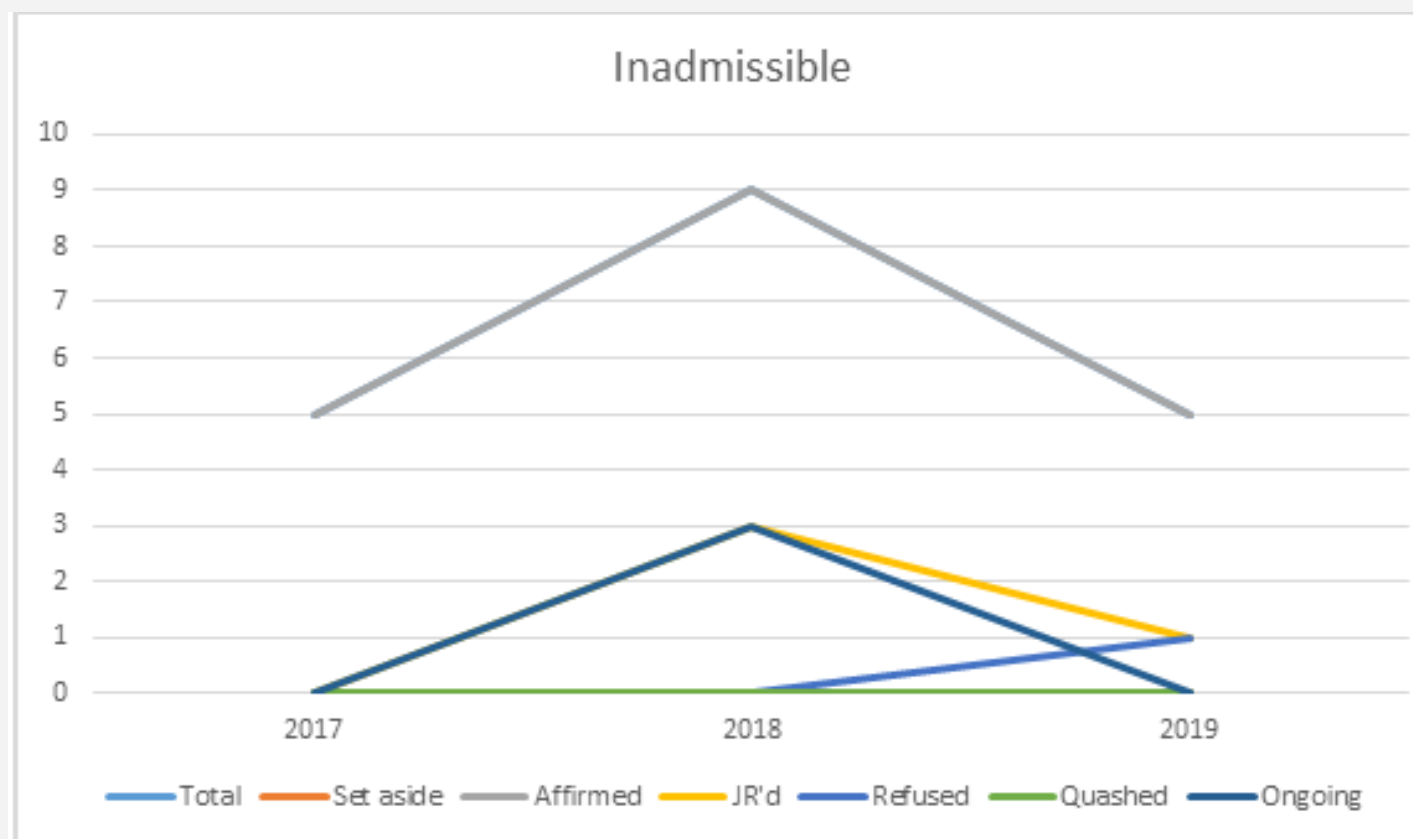


Inadmissibility

Section 21, International Protection Act 2015

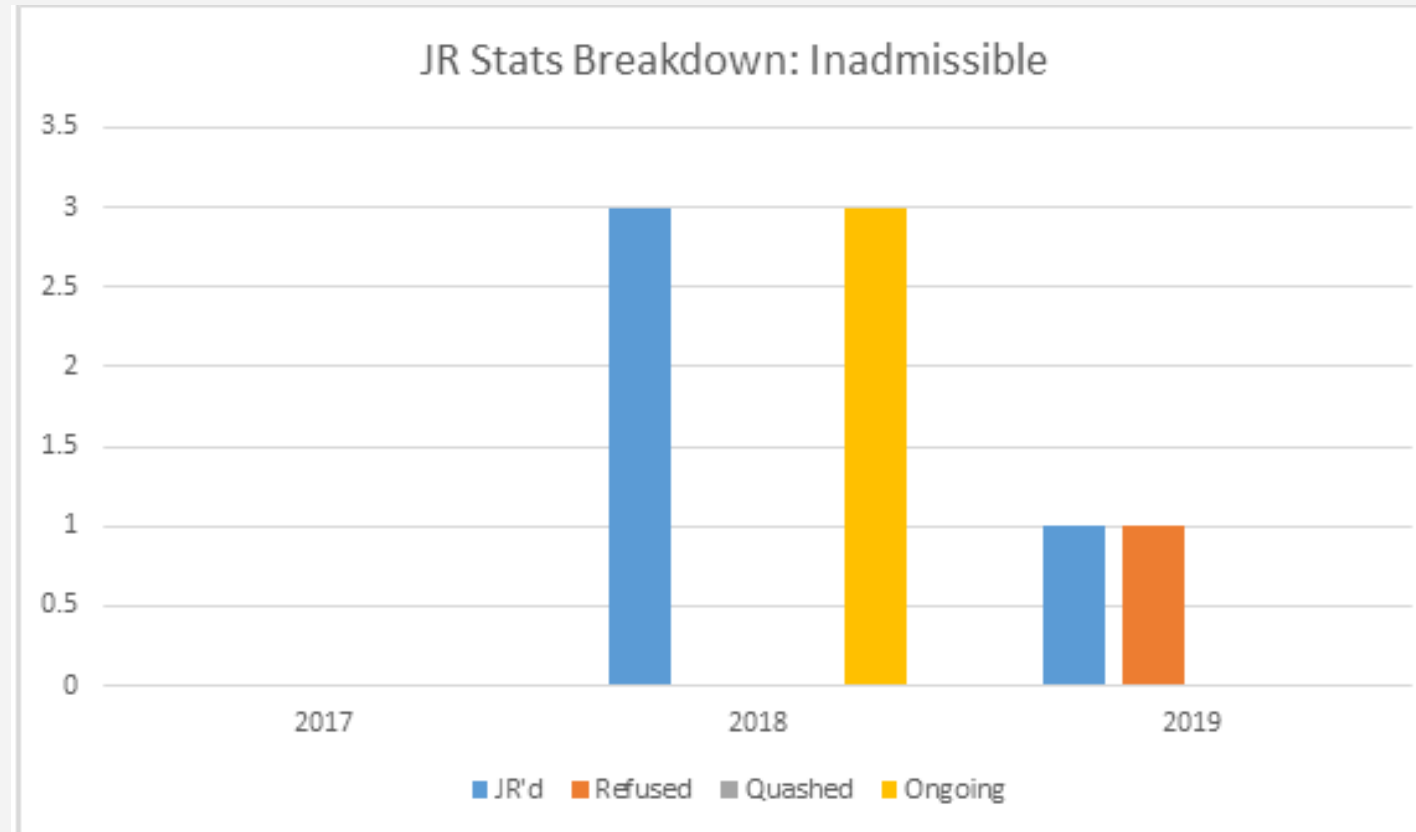


'Inadmissible' decisions by year





Judicial reviews of 'inadmissible' decisions





Inadmissibility – Key statistics



22 decisions
0 set aside (0%)
22 affirmed (100%)
4 JRd (18% of decisions)
1 JR rejected (100% of concluded JRs)
0 quashing orders (0% of concluded JRs)
3 ongoing JRs (75% of JRs)



Inadmissibility – Key Cases and Issues



- **Subsidiary protection in another Member State?**
 - *MS (Afghanistan), MW (Afghanistan, and GS (Georgia) v MJE* [2019] IEHC 477, Humphreys J., 2 July 2019
- **Destitution in another Member State?**
 - *HZ (Iran) v IPAT* [2020] IEHC 146, Humphreys J., 17 February 2020

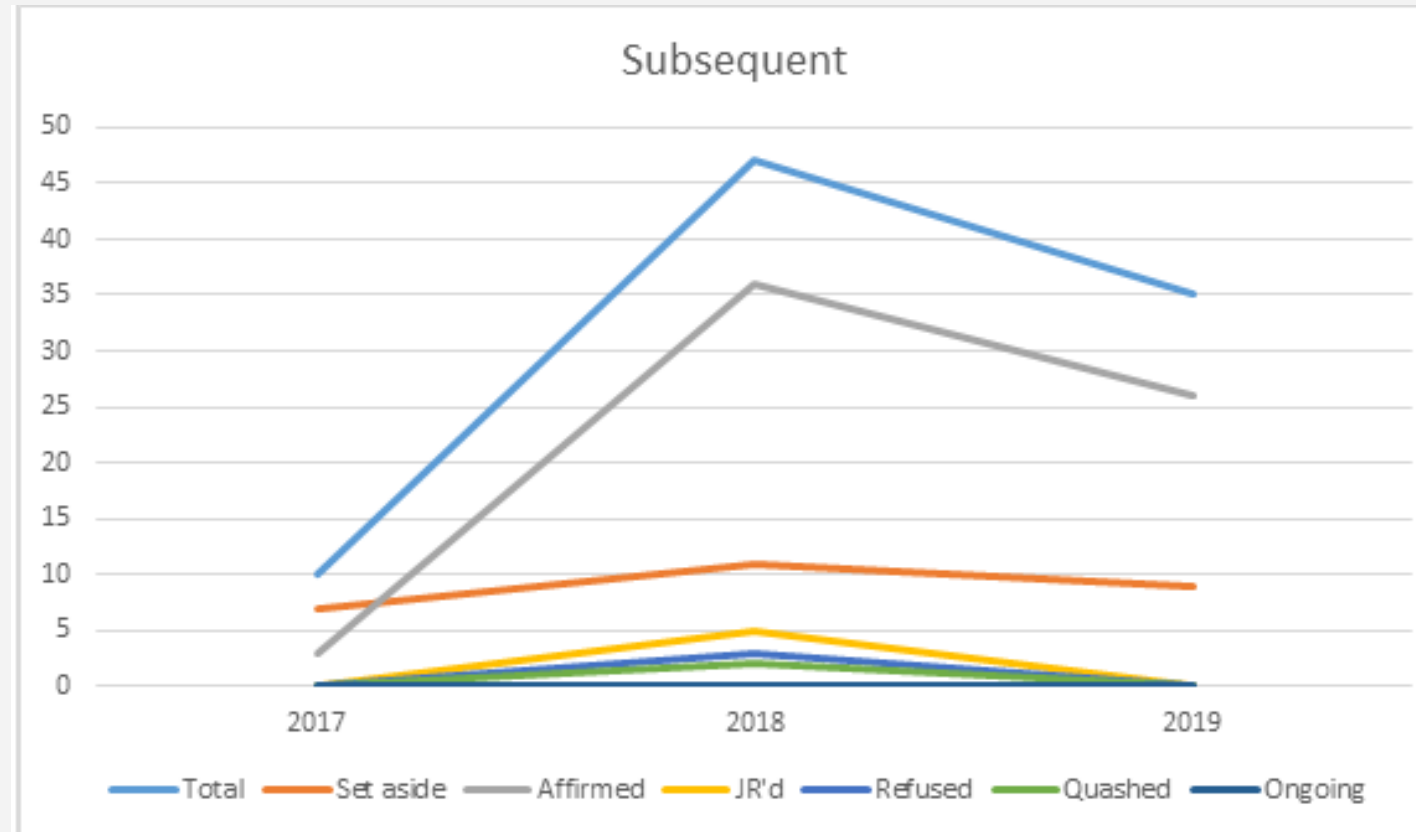


Subsequent Applications

Section 22, International Protection Act 2015

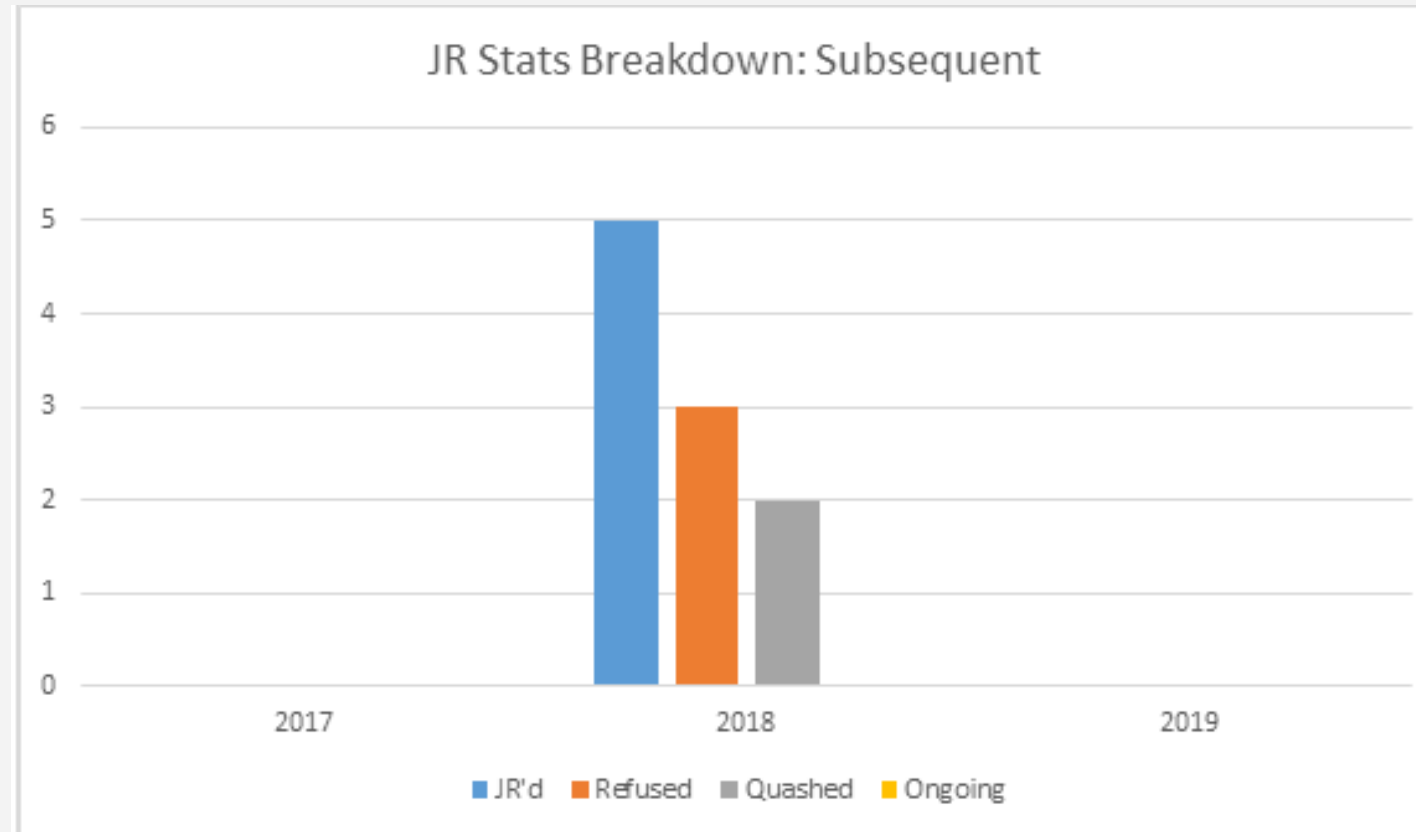


'Subsequent' decisions by year





Judicial reviews of 'subsequent' decisions





‘Subsequent’ decisions – Key statistics



98 decisions
29 set aside (30%)
69 affirmed (70%)
5 JRd (5% of decisions)
3 JRs rejected (60% of concluded JRs)
2 quashing orders (40% of concluded JRs)
0 ongoing JRs



‘Subsequent’ decisions – Key cases and issues



- **IPAT as effective remedy**

- *PNS (Cameroon) v MJE and Anor* (unapproved) [2020] IESC 11, 31 March 2020

- **Effect of IPAT appeal decision after deportation?**

- *Seredych v MJE (No 3)* [2019] IEHC 730, Humphreys J., 28 October 2019 (under appeal)

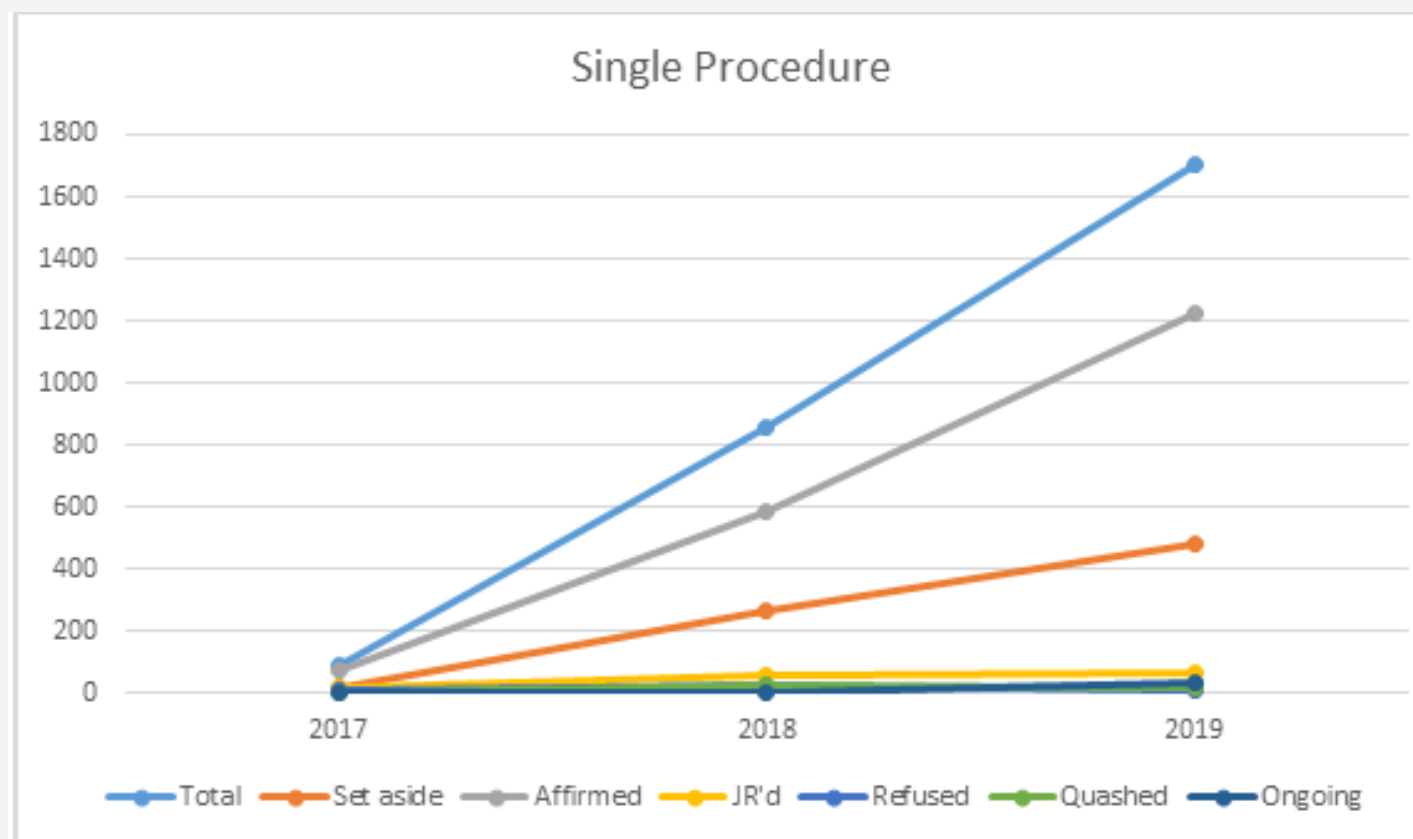


International Protection

Section 46, International Protection Act 2015

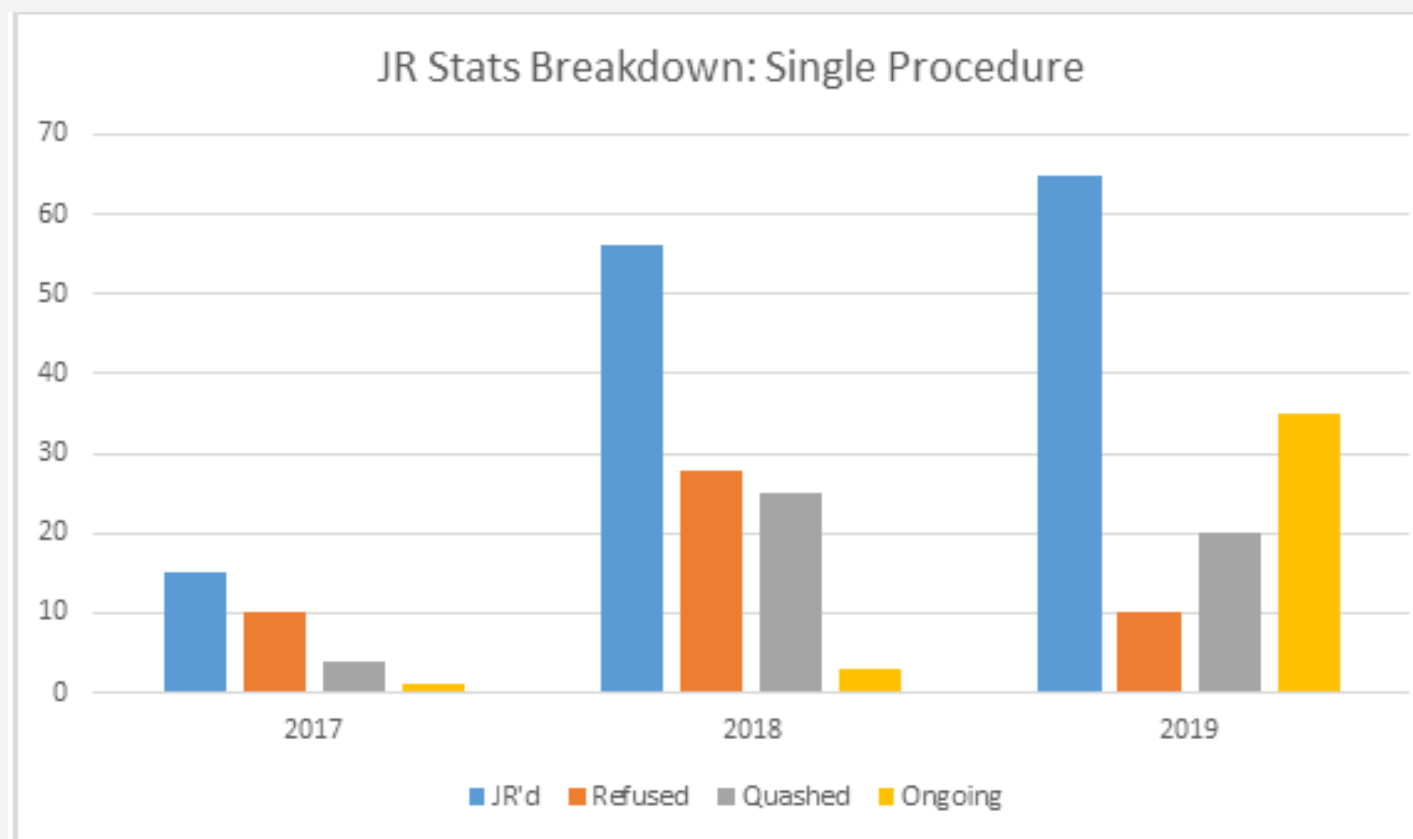


International protection decisions by year





JRs of international protection decisions





International protection – Key statistics



3025 decisions
879 set aside (29%)
2146 affirmed (71%)
139 JRd (5% of decisions)
48 JRs rejected (49% of concluded JRs)
49 quashing orders (51% of concluded JRs)
42 ongoing JRs (30% of JRs)



International Protection – Key Cases and Issues



- **The Tribunal's jurisdiction**

- *AL (Algeria) v IPAT* [2018] IEHC 553, Humphreys J., 24 Sep. 2018
- *JH (Albania) v IPAT* [2018] IEHC 752, Humphreys J., 14 Dec. 2018
- *JM (Malawai) v IPAT* [2018] IEHC 663

- **The Tribunal's methodology**

- *AJA (Nigeria) v IPAT* [2018] IEHC 671, Humphreys J., 14 Nov. 2018
- *SN (Ghana) v IPAT* [2019] IEHC 19, Humphreys J., 11 Jan. 2019



Standard(s) of proof



- **Standard of proof re assessment of facts**
 - *ON v Refugee Appeals Tribunal* [2017] IEHC 13
- **Benefit of the doubt**
 - *MR (Bangladesh) v IPAT* [2020] IEHC 41, Humphreys J., 29 Jan. 2020
- **Standard of proof re future risk**
 - *EL (Albania) v IPAT*, Humphreys J., 21 July 2019



Decision making generally

- **Duty to provide reasons for divergence in decision making?**

- *RC (Algeria) v IPAT* [2018] IEHC 694, Humphreys J., 3 December 2018
- *C v IPAT* [2018] IEHC 755, Barrett J., 21 December 2018
- *C v IPAT* [2019] IEHC 223, Barrett J., 3 April 2019
- *ES v IPAT* [2019] IEHC 449, Keane J., 21 June 2019

- **Alternative findings?**

- *RS (Ukraine) v IPAT* [2018] IEHC 512, Humphreys J., 17 September 2018
- *AL (Algeria) v IPAT* [2018] IEHC 553, Humphreys J., 24 September 2018



And everything else...

- Oral hearings
 - Assessment of facts (and credibility)
- Persecution (and objective basis for persecution)
 - Nexus
- State protection and internal protection
 - Subsidiary protection