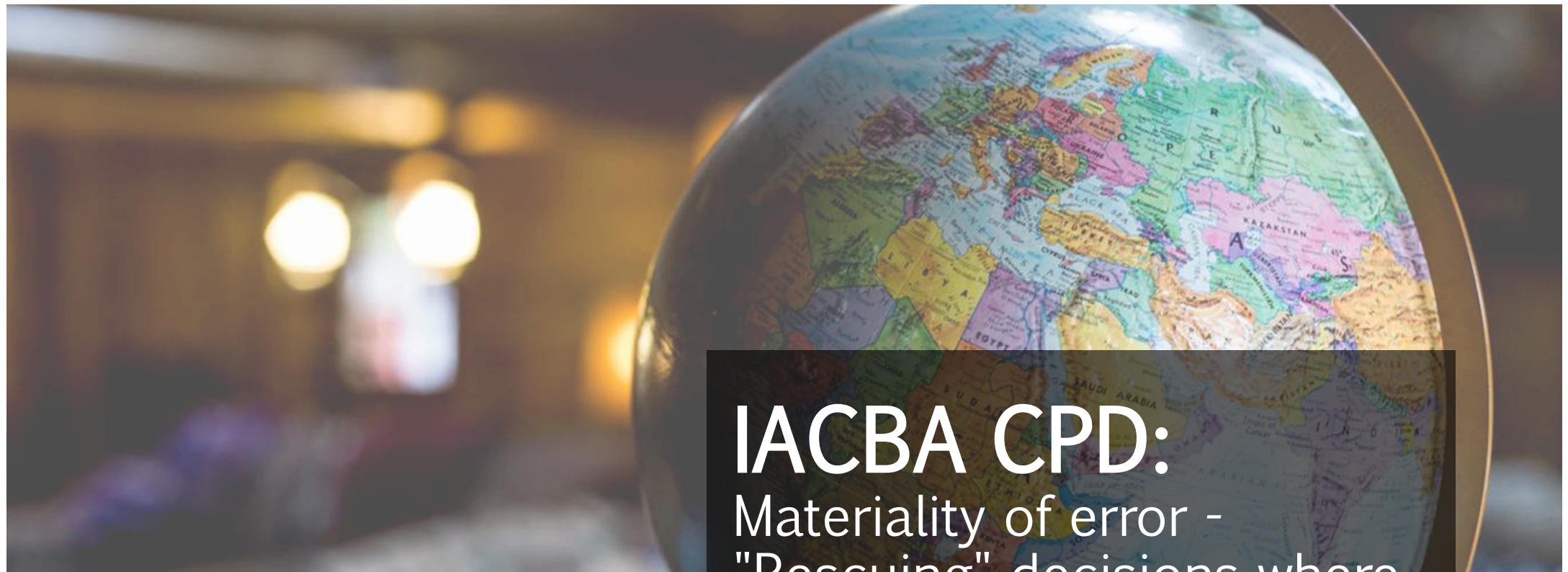




IACBA CPD:

Materiality of error -
"Rescuing" decisions where
documents were not
considered



11th March, 2026

Gaffney Room & Online



MATERIALITY OF ERROR

MISSING DOCUMENTS

Hugh Guidera BL

JUDICIAL REVIEWS

Top planning judge says courts 'don't quash developments over mere technicities'

The judge quashed planning permission for student accommodation over the developer's failure to erect a fresh planning site notice.

3.15pm, 30 Nov 2025 ↗17.7k

 Share

<https://www.thejournal.ie/top-planning-judge-says-courts-dont-quash-developments-over-mere-technicities-6889665-Nov2025/>

John v. Rees [1970] Ch. 345 at 402

Per Megarry J.; cited by Donnelly J. in *H.A. v. Minister for Justice* [2022] IECA 166

“‘When something is obvious,’ they may say, ‘why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start’ Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events.”

Doyle v ABP [2025] IEHC 158

“(i) A decision should not be quashed for error... if the error was harmless and did not materially affect the result...”

(iii) Whether the test should be set at the level of the error being unlikely to make a difference or one being satisfied that it would not make a difference may be semantic in most cases other than the borderline. A working approach is to phrase it by saying that the court should exclude a reasonable possibility that the error would have made a difference to the actual outcome. Obviously an error would definitionally make a difference to the wording of the reasoning but that can't be a barrier to the application of the doctrine because the doctrine would be meaningless on that impossible condition... Absence of reasonable doubt therefore does not mean “absolute certainty” ...

(iv) An applicant has the burden to establish the existence of error, but the successful demonstration of error shifts the onus. Therefore the onus of proof that a demonstrated error was harmless lies not on an applicant but on the party asserting harmlessness... ” [45]

F(V) v. R.A.T. [2009] IEHC 268

The Court is satisfied that even if the Tribunal Member had engaged in such a consideration, it would not have made any difference to the outcome: the applicant could not have succeeded as the evidence before the Tribunal Member was nowhere near as cogent as would be required to show a well-founded fear of persecution as a failed asylum seeker such as to bring the applicant within the definition of a "refugee" contained in s. 2 of the Refugee Act 1996." [50]

Okito v. The Refugee Appeals Tribunal [2010] (Unreported, 16th of July, 2010)

"If the material achieves a certain minimum level of materiality and credibility, then it should have been taken into account and the method by which it should have been weighed and considered and balanced out in the context of the case as a whole is a matter for the Tribunal. So in those circumstances, if the material does achieve this standard, then judicial review ought in general to follow.... On the other hand, if the material does not achieve this standard of relevance and credibility, then it is legitimate for the court to say that it is not sufficiently important to warrant the remedy of judicial review and the discretion is appropriately and properly exercised in refusing relief".

M.T.T.K. (DR Congo) v. R.A.T. [2012] IEHC 155

“I do not see any conflict between the observations of Irvine J. in F.V. and Ryan J. in Okito. The evidence must be cogent, authoritative and objective but that does not mean that the court should in any way engage in a judgmental issue to determine its merits... but the level of materiality and credibility as stated by Ryan J. need only achieve a minimum of standard that would require them to be assessed as evidence by the RAT. When the court is assessing whether there is in existence, cogent, authoritative and objective COI, it must not fall into the trap of weighing up and coming to any decision on the merits of this evidence”. [36]

West Cork Bar Association v. Courts Service [2016] IEHC 388

“There is no dispute about the fact that an error was made. The material put before the Board before it reached its decision was manifestly mistaken... The respondent submits that the differences were immaterial but there is no evidence of that as no member of the Board has sworn an affidavit. The mistake, had it been realised, might conceivably have lead to a different outcome. It seems to me that this is all that is required. It is not necessary to show that a different result would have ensued if the mistake had been discovered, merely that it might have. However, there is no way of knowing”. [25]

S.E. & Ors v. Minister for Justice & Equality [2022] IEHC 138

“It is no function of this Court to make decisions with which the respondent is tasked. It seems fair to say, however, that the foregoing letter is in the nature of a positive reference which is of potential relevance to the first named applicant's conduct and/or character... [I]t seems plain that this 14 March 2018 reference was tendered by the applicant with a view to demonstrating that he was and/or remained of good character... It is not in dispute that s.49(3)(c) mandates the Minister to have regard inter alia, to the character and conduct of the applicant including any criminal convictions.

*...
...What the respondent Minister might or might not have done with this information is unknown and unknowable but... I cannot agree that this Court can be ‘quite sure the material was not relevant’. It seems to me to be prima facie relevant, in particular to s.49(3)(c) which, it seems, played a crucial part in the decision which is challenged”. [20-22]*

“I fully agree with the submission that the respondent is not required to consider the contents of the telephone directory or irrelevant ‘bric-a-brac’...

It seems to me, however, that where documentation is prima facie relevant and does not constitute mere repetition of earlier documents... the court should set aside a s.49 review decision made by the respondent which was taken without the Minister having had regard to that ‘missing’ documentation”. [33-34]

S.E. & Ors v. Minister for Justice & Equality [2022] IEHC 138

(cont.)

“Although a judicial review application plainly constitutes proceedings on the civil side, it seems to me that something akin to the criminal standard would need to guide the court. In other words, it seems to me that unless this Court is satisfied, beyond a reasonable doubt, that the missing documentation could have made no difference to the Minister's decision, judicial review should be granted in respect of a decision made in the present circumstances where prima facie relevant documents were missing”. [35]

H.A. v. Minister for Justice [2022] IECA 166

“In considering whether the trial judge was correct in holding that the Declaration of Responsibility was a relevant and material consideration that the Minister failed to take into account in reaching her decision, this Court must return to what the Minister was asked to consider in that application and to the statutory provisions underpinning the decision she was required to make...

...

A suggestion by the respondent that the Declaration of Responsibility was relevant merely because she had referred to, and relied on it, must be rejected. An assertion that a thing or an issue is relevant and therefore ought to have been addressed (or at least considered) by a decision-maker does not, of itself, make it relevant and material to an extent that judicial review must lie where it was not considered. On the other hand, the Minister's response, that the lack of consideration given to that Declaration of Responsibility does not make the decision unlawful because the Declaration was irrelevant to the issue before her, will only have force if the Declaration was truly irrelevant to that issue”. [21]-[23]

H.A. v. Minister for Justice [2022] IECA 166

... (ii) Having already determined that a decision is vitiated by error of law, relief ought not to be refused on the ground of futility unless it is very clear that the granting of relief is futile in the sense of being incapable of benefitting the applicant for judicial review;

(iii) The onus of establishing that it is very clear that the granting of relief is futile remains on the party who makes that assertion;

...

(viii) Where truly there is no basis upon which the decision-maker could reach a different conclusion than the decision already reached but impugned in the proceedings, then it may be appropriate to exercise discretion to refuse relief;

(ix) Where, however, there are issues of fact upon which adjudication is required and which in themselves are material to success or failure, then their resolution must be left to the statutory decision-maker;

(x) Where there are issues of law which may be resolved by the Court, it may be appropriate to exercise the discretion to refuse to grant judicial review, but only if it is clear that fuller argument and greater thought is evidently not required for a better determination of such issues... ” [42]

O.M. v. IPAT [2025] IEHC 51

“The applicant submits and the respondent accepts that based on the caselaw hereunder identified where documents have been submitted but not considered judicial review should be granted unless:-

(i) the Court is satisfied beyond a reasonable doubt that the missing documentation could have made no difference to the decision (SE v Minister for Justice & Equality [2022] IEHC 138...);

(ii) there is no arguable case that the missing documents are relevant to the matter (HA v Minister for Justice [2022] IECA 166...);

(iii) the missing documentation does not achieve a minimum level of materiality (MTTK v The Refugee Appeals Tribunal & Ors. [2012] IEHC 155...)” [9]

GS v. IPAT [2025] IEHC 187

“Given the clear and reasoned rejection of the claim that the Applicant was a Jehovah's Witness at all on a rational basis which was in turn tied to the material before the IPAT, it seems to me that there can be no further obligation on the IPAT to engage in a reasoned fashion in its decision with COI which documents difficulties encountered by real or accepted Jehovah's Witnesses in Georgia. One might rhetorically ask what the point of such engagement would be where it is rejected that the Applicant has demonstrated that he ever converted and is a Jehovah's Witness”. [25]

C (Nigeria) v. IPAT & Anor [2025] IEHC 606

“The general rule is that a failure to have regard to a relevant consideration constitutes a good ground for judicial review. There is, however, a suggestion in some of the case law that an immigration decision will not be set aside on this ground unless the unconsidered document satisfies an additional threshold of ‘materiality’. What is meant by this is that an applicant for judicial review must establish that had the document been properly considered, the immigration decision would likely have been different. Put otherwise, the case law suggests that there may be a tolerance for the failure to consider a particular document in circumstances where consideration of same is not likely to have affected the outcome of the decision-making process.

...

The introduction of a threshold of materiality gives rise to some conceptual challenges. It appears to require the court of judicial review to engage, to a limited extent, with the substantive merits of the immigration decision-making process. An assessment of whether the unconsidered document is ‘material’, i.e. in the sense of being capable of affecting the outcome, necessitates some examination of the rationale for the immigration decision and whether same would likely have been different had, counterfactually, the unconsidered document been before the decision-maker...” [41] et seq.

C (Nigeria) v. IPAT & Anor [2025] IEHC 606

“It is no answer to suggest that there might be reason to doubt the authenticity of the document (by reference, in particular, to the discrepancy in dates)... The court of judicial review does not carry out its own credibility assessment: that is a matter for the IPAT... It follows, therefore, that any argument as to the authenticity of the police summons falls to be addressed as part of the reconsideration by the IPAT”.

...

Some scope for “...[A]n extreme case where a document, which has been proffered as corroborative, is self-evidently inauthentic”.

Masood v. Minister for Justice [2025] IEHC 485

“As to its materiality to the judicial review application, the applicant quite fairly accepted that had this error been the single issue in the impugned decision it may not have rendered the decision invalid, but clearly the decision is being impugned on more grounds than just the ‘head chef’ issue and the ‘head chef’ issue is of relevance to the consideration given by the decision-maker ‘in the round’ to the application.

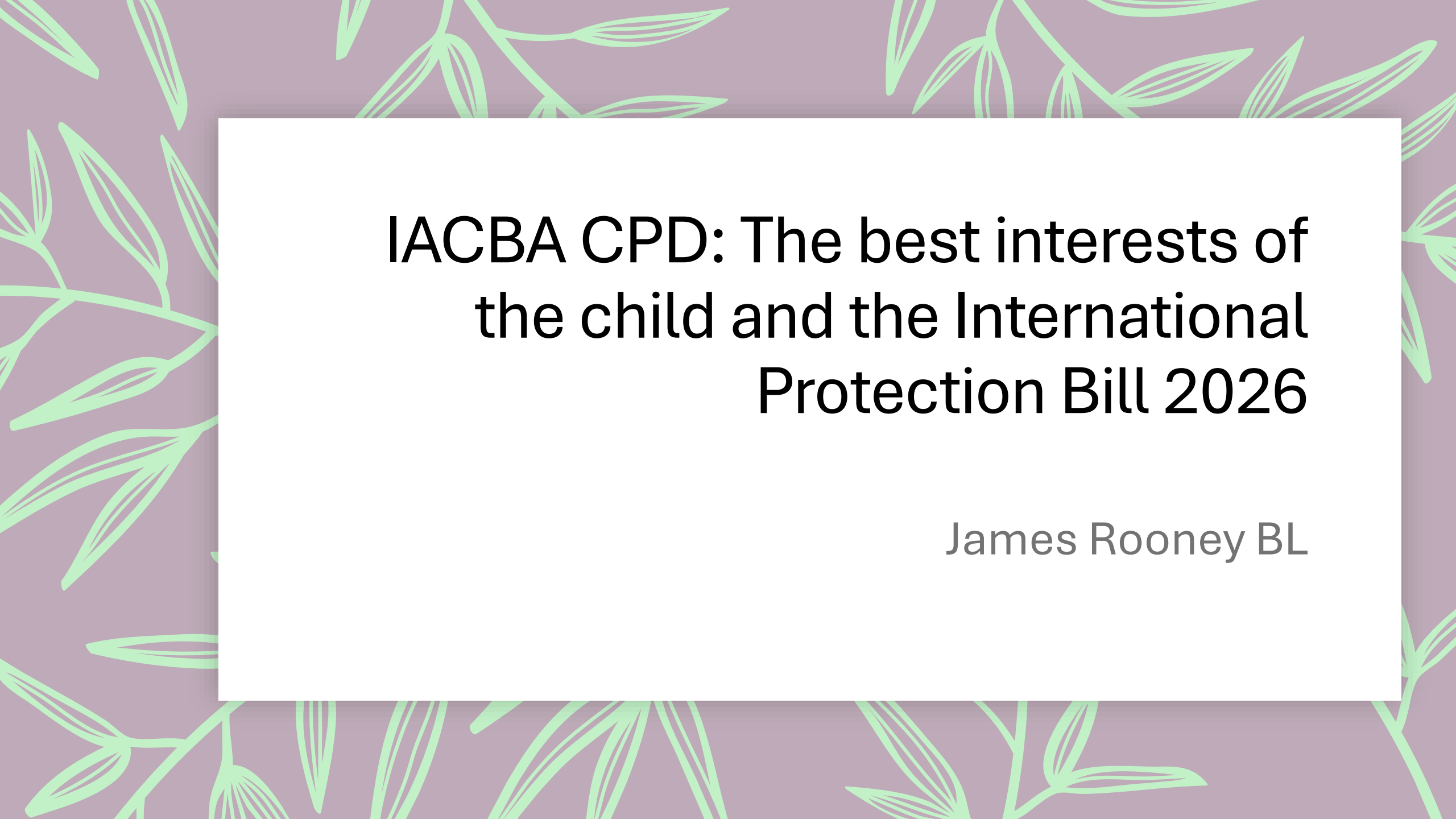
...

Clearly, relief may be refused on discretionary grounds if there are compelling reasons to believe that ordering a reconsideration would make no practical difference to the end result...

...

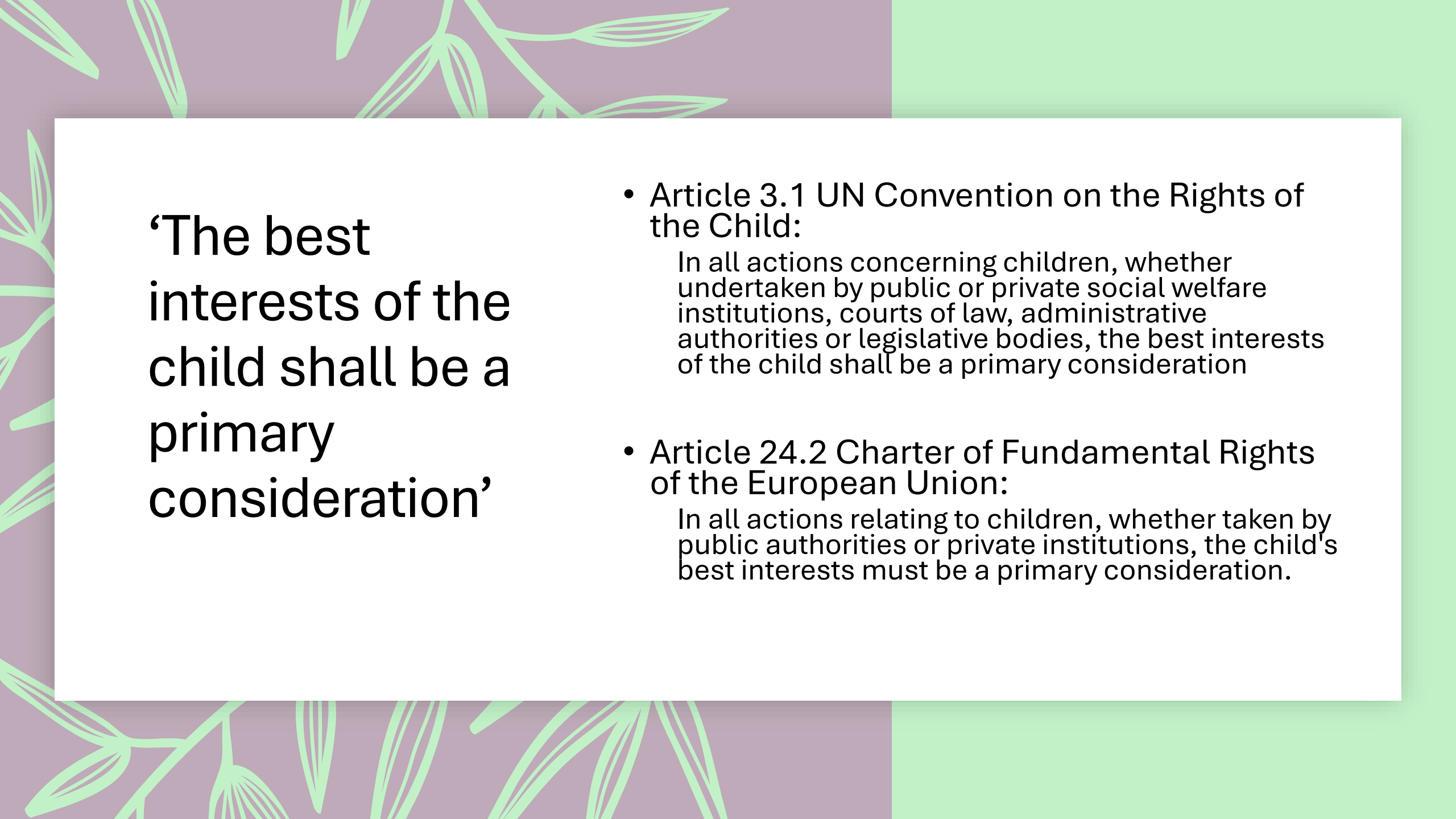
The respondent also observed that there was, a deep absurdity in the approach of the applicant where he could, whilst legally advised, make serious and material factual errors about his background and residence in his visa application, move a leave application on the grounds of incorrect facts, fail to submit sufficient documentary evidence to vouch his visa application and complain to the Court about the decision in the grounds set out...

... had I not found in favour of the applicant on all other grounds, the lack of candour would have been of greater significance and may have resulted in the exercise of my discretion against the applicant”.



IACBA CPD: The best interests of the child and the International Protection Bill 2026

James Rooney BL



**‘The best
interests of the
child shall be a
primary
consideration’**

- **Article 3.1 UN Convention on the Rights of the Child:**

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration

- **Article 24.2 Charter of Fundamental Rights of the European Union:**

In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

Art.42A of the Constitution of Ireland

1: The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.

4.1°: Provision shall be made by law that in the resolution of all proceedings—

- i. brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or
- ii. concerning the adoption, guardianship or custody of, or access to, any child,

the best interests of the child shall be the paramount consideration.

AZ v Minister for Justice [2024]

IESC 35

(Woulfe J)

- *[101] the obligation placed on the courts to have regard to Article 42A.1 of the Constitution [...] is of very wide application and includes application to these type of immigration decisions which may seriously affect children.*
- *[115] The Minister must consider the best interests of an Irish citizen child as a primary consideration in arriving at the decision whether to revoke the deportation*
- *[116] [42A.1] include the right to have his/her welfare considered, in the sense of what is in his/her best interests, in immigration decisions which impact upon custody and access.*
- *[120] while the values set out in Article 42A.4.1 might not be directly applicable outside the scope of that provision, nonetheless those values [...] those values can also indirectly inform the correct interpretation and operation of Article 42A.1.*
- *[122] In this context the best interests of the child are a primary consideration for the Minister, but unlike the special category of Article 42A.4.1 cases, they are not the paramount consideration.*

ZG v Ireland [2025] IESC 49

O'Donnell CJ (Charleton and Woulfe JJ concurring):

- [67] *The best interests test is one that applies in the case of individual decision making in respect of a particular child whose interests and needs are to be assessed. It was the failure to do so in a deportation decision that led to the decision in AZ. If however, it is said to be imported by Article 42A.1 into the legislative process, then that is much more than a subtle recalibration of the position as between parents and children when issues concerning children arise for determination.*
- Donnelly and Hogan JJ disagreed

IPAT Guidelines 2025/3: Appeals from Child Applicants

3.1. The best interests of the Child shall be a primary consideration of the Tribunal during all dealings with a Child, both in relation to procedure and the substantive consideration of the appeal. [...] This Child-centred process must be implemented on an ongoing basis.

3.5. EU Member States are obliged to assess and give primary consideration to the best interests of the Child in all actions concerning Children.

EU Asylum and Migration Pact and the International Protection Bill 2026

The International Protection Bill 2026 (**'The Bill'**) will implement in domestic law Ireland's obligations under the EU Asylum and Migration Pact (**'the Pact'**).

Ireland opted-into seven of the ten Acts – nine Regulations and one Directive - that make up the Pact, and have committed to implementing in domestic law the outstanding three.

EU Asylum and Migration Pact and the International Protection Bill 2026

Implements in domestic law Ireland's obligations under the EU Asylum and Migration Pact (**'the Pact'**).

Ireland opted-into seven of the ten Acts – nine Regulations and one Directive - that make up the Pact, and have committed to implementing in domestic law the outstanding three.

EU Asylum and Migration Pact and the International Protection Bill 2026

The best interests of the child as a primary consideration is referenced expressly in the following Acts to which Ireland has opted-in:

- Art.26 Reception Conditions Directive 2024/1346
- Art.20 Qualification Regulation 2024/1347
- Art.22 Procedures Regulation 2024/1348
- Art.5 Union Resettlement and Humanitarian Admission Framework Regulation 2024/1350
- Art.23 Asylum and Migration Management Regulation 2024/1351
- Art.14 Eurodac Regulation 2024/1358
- Recital (8) Force Majeure Regulation 2024/1359

EU Asylum and Migration Pact and the International Protection Bill 2026

The best interests of the child as a primary consideration is referenced expressly in the following Acts to which Ireland has not opted-in but agreed to domestically incorporate:

- Recital (5) Returns Regulation 2024/1349
- Art.13 Screening Regulation 2024/1356

EU Asylum and Migration Pact and the International Protection Bill 2026

The Bill does not incorporate into Irish law the requirement that the best interests of the child be a primary consideration in the parts concerning:

- The Asylum and Migration Management Regulation which replaces Dublin III, and includes transfers of minors
- The Procedures Regulation as applied to interviews, accelerated processes, assessments of claims, appeals, etc.
- The Returns Directive, which includes the detention of children until their age is determined where necessary for removal
- The Reception Conditions Directive, which is not yet incorporated by the Bill

Response from the Ombudsman for Children Office

While the OCO welcomes the application of the best interests principle to some aspects of the Bill, such as age assessments, screening procedures and reception facilities, this should be a primary consideration for all sections of the legislation relevant to children.

Each legislative instrument of the Pact sets out explicitly that the best interests of the child must be a primary consideration for States when implementing the provisions therein that affect children. However, this is not fully reflected in the Bill.

EU Asylum and Migration Pact and the International Protection Bill 2026

Dáil Éireann Debate Wednesday 25 February 2026
International Protection Bill 2026: Committee Stage (Resumed)
and Remaining Stages)



Deputy Matt
Carthy



I move amendment No. 17:

In page 26, after line 30, to insert the following:

"Matters concerning minors

14. The best interests of the child shall be primary consideration in the application of this Act, and the Minister shall have due regard to this principle in respect of all matters concerning minors."

Amendment put:

The Dáil divided: Tá, 67; Níl, 79; Staon, 0.



EU Asylum and Migration Pact and the International Protection Bill 2026: Conclusion

The Bill does not include all the guarantees of the best interest of the child contained within the Pact

Failing to treat the best interests of the child as a primary consideration in immigration and asylum decisions would, nevertheless, appear to be required under EU Law and Art.42A

Thank you



Complete our Feedback Survey: We hope you benefited from this event. As we are always interested in hearing your views to further improve our offering, we would be grateful if you could complete this 40 second feedback survey.

Please scan this QR code on your mobile.

Event Resources (Member Only Access): Paper(s)/ presentation(s) and the recording from today's session will be available in the association's Member Area in 1 week.

