

THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 815 JR]

BETWEEN

MOEEN AKRAM

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY AND THE COMMISSIONER OF AN GARDA SÍOCHÁNA

RESPONDENT

EX TEMPORE JUDGMENT of Mr. Justice Richard Humphreys delivered on the 25th day of October, 2017

1. The applicant seeks an injunction restraining his removal from the State, in circumstances where he has been refused entry at the frontier of the State and is currently being detained in the vicinity of Dublin airport for the purpose of his immediate removal today. I have heard from Mr. Michael McNamara B.L. for the applicant and Mr. John Gallagher B.L. for the respondents. The application calls for consideration of the criteria as set out by Clarke J. in *Okunade v. Minister for Justice and Ors.* [2012] IESC 49 [2012] 3 I.R. 152.

2. The first relevant criterion is to give all appropriate weight to the orderly implementation of measures which are *prima facie* valid, and that leans in favour of refusing an injunction.

3. Secondly, I must give such weight as may be appropriate, if any, to any public interest in the orderly operation of a particular scheme in which the measure under challenge was made. It seems to me that the High Court cannot become an appeal tribunal from decisions of immigration officers at the frontiers of the State. An orderly operation of the control of the State's borders would be in significant difficulty if that was the case. That is not to say that challenges cannot be brought where appropriate, but the broad principle of permitting the orderly operation of the control of the State's border certainly leans against excessive interference in that operation by way of injunctions in real time.

4. The third issue is to give appropriate weight, if any, to any additional factors arising on the facts of the individual case which would heighten the risk to the public interest of the specific measure under challenge not being implemented pending resolution of proceedings and at the moment it does not seem like there are any issues under that heading.

5. The next heading is to give all due weight to the consequences for the applicant of being required to comply with a measure under challenge in circumstances where that measure may be found to be unlawful. There do not appear to be any severe consequences for the applicant in the sense that there is no protection issue (as Mr. McNamara acknowledges), the applicant will be sent back to Cyprus rather than any third country outside the EU, and he can certainly prosecute his judicial review from there.

6. The next issue is that the court should, in those limited cases where it may be relevant having regard to whether damages are available and would be an adequate remedy, and also whether damages could be an adequate remedy arising from an undertaking as to damages. It is submitted on behalf of the respondent that damages could be an appropriate remedy in this case given the nature of the trip in question being more of something in the nature of a holiday. That seems to lean against granting an injunction.

7. The last criterion is subject to the issues arising under judicial review not involving detailed investigation of fact or complex questions of law, the court can place all due weight on the strength or weaknesses of the applicant's case. While I am finding the applicant's case to be arguable I would certainly hesitate to say at this stage that it has been demonstrated that it is a very strong case. That, I think, awaits demonstration so consideration of that issue does not substantially reinforce the case for an injunction.

8. Finally, there is the fact that the application is very much of a last minute nature. The applicant was arrested on 21st October, 2017. The application was first moved after 11 o'clock on the 25th October, 2017 but the papers were not in order at that point, and it was only at approximately 12.30 pm that the application was properly launched. The plane removing the applicant from the jurisdiction is due to depart at 3.20 pm and it is now 2.33 pm, so as Mr. McNamara very fairly and I think very necessarily conceded, this is a case where quite literally the plane is on the tarmac. The State, like any state, is entitled to have an effective immigration system; and for that system to be effective the court would have to hesitate before stopping a plane that is about to depart. So certainly the delay on the part of the applicant and the fact that matters are at such an advanced stage do not add anything to the case for an injunction.

9. For those reasons I will refuse the application. Mr. McNamara has also raised the question of conditional release but it seems to me that that would only arise if an injunction had been granted. Given that it is proposed to remove the applicant within the next 45 minutes or so the question of conditional release does not really arise.