

**THE HIGH COURT  
JUDICIAL REVIEW**

[2015 No. 121 J.R.]

**BETWEEN**

**TRAIAN BALC, DOINA BALC AND ALINA BALC (A MINOR) SUING THROUGH HER NEXT FRIEND AND MOTHER DOINA BALC  
APPLICANTS**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT****JUDGMENT of Mr. Justice Eagar delivered on the 16th day of February, 2016**

1. This Court has granted a certificate allowing leave to appeal and the only outstanding issue is the question of costs. Mr. Donnelly B.L., on behalf of the Minister, stated that costs in this case should follow the event and he cited the well-known judgment of the Supreme Court of *Dominic Dunne v. The Minister of Environment, Heritage and Local Government, Ireland, the Attorney General and Dun Laoghaire-Rathdown Co. Council* [2008] 2 IR 775. In that case it was argued on behalf of the plaintiff, that the plaintiff was acting in the public interest in a manner which involved no private personal advantage and that the issues raised by the proceedings were of sufficient general public importance to warrant an order for costs to be made in his favour. The decision of the Supreme Court was given by Murray C.J. and he said at para. 26:

*"26 The rule of law that costs normally follow the event, that the successful party to proceedings should not have to pay the costs of those proceedings which should be borne by the unsuccessful party, has an obvious equitable basis. As a counterpoint to that general rule of law, the court has a discretionary jurisdiction to vary or depart from that rule of law if, in the special circumstances of a case, the interests of justice require that it should do so. There is no predetermined category of cases which fall outside the full ambit of that jurisdiction. If there were to be a specific category of cases to which the general rule of law on costs did not apply that would be a matter for legislation since it is not for the courts to establish a cohesive code according to which costs would always be imposed on certain successful defendants for the benefit of certain unsuccessful plaintiffs.*

*27 Where a court considers that it should exercise a discretion to depart from the normal rule as to costs, it is not completely at large but must do so on a reasoned basis, indicating the factors which, in the circumstances of the case, warrant such a departure. It would neither be possible nor desirable to attempt to list or define what all those factors are. It is invariably a combination of factors which is involved. An issue such as this is decided on a case by case basis and decided cases indicate the nature of the factors which may be relevant but it is the factors or combination of factors in the context of the individual case which determine the issue."*

2. In this case the Supreme Court took the view that the ordinary rule would apply in respect of costs for the High Court proceedings and that costs should follow the event.

3. Peter Leonard B.L., on behalf of the applicants, pointed to a recent judgement of Humphries J. in the case of *R.A. v. the Refugee Appeals Tribunal, the Minister for Justice and Equality the Attorney General and Ireland* [2015] IEHC 830, delivered on 21st December 2015, in which Humphries J. took the view that it was appropriate for him to certify a case as being one of exceptional public importance and in which he exercised his discretion to award costs to the unsuccessful applicant. The case involved was an application for judicial review seeking to quash the decision of the Refugee Appeals Tribunal and in this case Humphries J. quoted a number of cases which were cases in which costs were awarded in part and full to the unsuccessful plaintiff.

4. Humphries J. said, at para. 18:

*"While some of the foregoing cases are truly exceptional in constitutional and public law terms, others are less so, and in reality they fall on a spectrum of public interest up to and including unique exceptionality, but the latter requirement is not a precondition without which there can be no departure from the normal rule."*

5. It is clear that s. 5 of the Illegal Immigrants (Trafficking) Act 2000 requires that in order to appeal a decision of the High Court in these cases there was a requirement that the High Court certify that the case involved a point of exceptional public importance. However this Court is of the view that the certification of a case involving a point of exceptional public importance does not indicate that this is a case which justifies a departure from the normal rule.

6. It is hard to see that a certification in the case of a judicial review of the Refugee Appeals Tribunal would justify the awarding of costs to an unsuccessful applicant. The grant of costs to the unsuccessful applicant in that case, seemed to suggest that in the context of refugee cases, the very fact of certification suggests that they require a departure from the general rule. This in my view is not in accordance with the judgment of Murray C.J. in *Dominic Dunne v. The Minister of Environment, Heritage and Local Government, Ireland, the Attorney General and Dun Laoghaire-Rathdown Co. Council* [2008] 2 I.R. 775, which requires the factors in the circumstances of the case to be set out.

7. As Mr. Donnelly points out, the applicants in this case were not successful in any points of their challenge to the Minister's decision and I propose to follow the rule that costs in this proceeding follow the event and I award costs to the Minister for Justice and Equality. If I am correct in this matter obviously the Court of Appeal will deal with this issue.