

## THE HIGH COURT

## JUDICIAL REVIEW

[2017 No. 387 J.R.]

BETWEEN

B.E. AND A.B.E.

(A MINOR SUING BY HIS NEXT FRIEND, B.E.)

APPLICANTS

AND

INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

**JUDGMENT of Ms. Justice O'Regan delivered on the 17th day of July, 2017**

1. By *ex parte* docket bearing the date 11th May, 2017 the applicants are seeking leave to maintain judicial review proceedings for the purposes of securing an order of *certiorari* quashing the decision of the first respondent of 17th February, 2017, which decision affirms the prior ORAC decision to transfer the applicants to the United Kingdom pursuant to the provisions of Dublin III.
2. The applicants suggest that the first named respondent erred in law and in breach of its obligations in making the relevant decision, that it had no proper regard to the best interest of the minor children under Article 6 (1) and 6 (3) of Dublin III, that it had no proper regard to the applicants' right to family and private life in Ireland contrary to Article 8 of the European Convention on Human Rights, the second named respondent has failed to put in place a system to permit applications for discretionary relief under Article 17 and in addition interlocutory injunctive relief is also sought.
3. In the relevant grounds within the statement of grounds, eight grounds are enumerated.
4. Ground 1, 2, 5 and 6 relate to the application of Article 17. It is intended to open and adjourn with the benefit of a global injunction issues relating to Article 17 as this Court has on the 26th of June, 2017 delivered an unapproved judgment relative to Article 17. Pending completion of that judgment and any proposed steps by the parties to the relevant matter all the parties relying on Article 17 are being provided with the benefit of an opening together with an injunction and accordingly this judgment is confined to the reliefs sought concerning the best interests of the minor children, the failure to take into account Article 8 rights, the alleged error in the first named respondent's decision because of the takeback request under Article 18 (1) (b) of Dublin III in lieu of such request under Article 18 (1) (d) and ground 3 which relates to the extended application of Article 3 of Dublin III as identified in *C.K. v. Slovenia, Case 578/16 PPU*.
5. The applicants made an application for asylum in this jurisdiction on the 15th of March, 2016. ORAC made a decision to transfer the applicants to the UK pursuant to the provisions of Article 18 (1) (d) notwithstanding that the request made of the UK authorities on the 18th of April, 2016 wrongly identified the relevant article as being Article 18 (1) (b).
6. The applicants appealed ORAC's decision by way of an appeal of the 7th of June, 2016 wherein four grounds of appeal were raised namely that there was an error in the takeback request as to fact and in addition there was an error in the takeback request as to the correct provision of Dublin III under which the UK should be obliged to take back the applicant. Ground 3 related to Article 17 discretion. Ground 4 complained of the risk of serious harm to the applicant if returned to the UK. In this regard it was complained that the applicant suffered from trafficking while in the UK however the UK authorities were ineffective in protecting her.
7. Within the various statements and accounts given by the applicant to the authorities here at no time did the applicant suggest that she reported to the UK authorities the fact that she was trafficked within the UK. Insofar as this ground may possibly be (although not specified with certainty) included in the within application for judicial review, the relevant ground was confined to the claim that there was a failure to properly consider a real risk of being subject to inhumane or degrading treatment in the light of guidelines set out in the *C.K. v. Slovenia* judgment aforesaid.
8. In my view that case is authority for the proposition that in addition to a member state not being entitled to return an applicant to another member state where reception conditions or the system employed would result in a risk of in inhumane or degrading treatment as provided for by Article 3 (2) of Dublin III a member state is also precluded for returning an applicant to another member state, notwithstanding the identification of the applicant of one of the provisions in Chapter 3 of Dublin III if the particulars circumstances indicate that such transfer would in itself be contrary to Article 4 of the Charter (see paras. 94 and 96 of the *C.K.* judgment).
9. The height of the difficulty expressed by the applicant by virtue of a transfer to the UK is the possibility of a woman called Josephine in Manchester who ran a brothel locating the applicant and forcing the applicant into prostitution. I am satisfied that it is not arguable that the applicant cannot safely be returned to the UK given this alleged localised problem to Josephine in Manchester.
10. Notwithstanding reference to "children" in the statement of grounds, the second named application is the first named applicant's only child. No fears were expressed on behalf of the second named applicant by the first named applicant either in the notice of appeal or the interview of the 12th January, 2017 which pre-dated the first named respondent's decision nor indeed is there any mention thereof within the decision of the first named respondent. It is not suggested in the within application for judicial review that the first named respondent overlooked any material claim made by the first named applicant but rather it appears that the applicant is suggesting that even in the absence of any representation Dublin III requires that an investigation should be conducted into some possible danger which was not articulated on behalf of the applicants. It appears to this Court that such a suggestion is way beyond on the scope of judicial review. In this regard the words of Hogan J. in *M.N. v. Minister for Justice, Equality and Law Reform* [2016] IECA 217 are noted. The Court referred to the "limitations inherent in the judicial review process" and the finding that "the court was ... confined to the information which was before the decision maker at the time of the decision" (see para. 52 of that decision, see

also para. 10 of *I.S.O.F. v. Minister for Justice, Equality and Law Reform* [2010] IEHC 457 and page 6 of *Imoh & Ors v. Rent Appeals Tribunal & Ors* [2005] IEHC 220).

11. Similarly insofar as the applicants' complain in the within judicial review application of a failure to consider private life rights and family life rights in Ireland no such rights were in fact identified to the first named respondent by the applicants – in the judgment of Finlay Geoghegan J. delivered on 15th December, 2016 in *Luximon v. the Minister for Justice, Equality and Law Reform* at para. 27 the Court notes that as a matter of principle:-

“it appears correct that the Minister in an application under s. 4 (7) of the 2004 Act is only obliged to consider and take into account matters which have been raised on behalf of the applicant in the application or which objectively may be considered as having been brought to the Minister's attention or matters of which the Minister should be aware.”

12. Similar comments apply in respect of the IPAT decision making process.

13. It is noted that in the applicants' appeal of 7th June, 2016 it was asserted that the UK authorities were ineffective in protecting her from the harm of trafficking however at no point did the applicant suggest that there was any reporting by her to such authorities of such trafficking.

14. The first named respondent in the decision of 12th February, 2017 acknowledges that there was an error in identifying the correct provision in Chapter 3 under which the applicant might be transferred to the UK. However I am satisfied that the views expressed by IPAT that this error did not effect the acceptance by the UK in their letter of the 1st May, 2016 which refers to the correct provision nor did it effect the ORAC decision to transfer to the UK of the 17th May, 2016 where the correct provision was referred to and therefore it is not arguable that the error in the takeback requests overrides and contaminates the acceptance by the UK of 1st May, 2016 or the transferred decision of ORAC of 17th May, 2016 or indeed the decision of IPAT of 17th February, 2017.

15. In the events therefore the applicants' application for judicial review will stand opened insofar as relief sought at para. (d) 1, 5, 6, 8, 9 and 10 are concerned on the grounds identified at para. (f) 1, 2, 5, 6, and 8 are concerned. Leave is refused in respect of the balance of the claim.