

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2009 No. 988 JR]**

**BETWEEN**

**C. I. T. T-I. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND C.I.) T. T-I. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND C.I.) T. T-I. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND C.I.)** **APPLICANTS**

**-AND-**

**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, ATTORNEY GENERAL AND IRELAND**

**RESPONDENTS**

**AND**

**THE HUMAN RIGHTS COMMISSION**

**NOTICE PARTY**

**-AND-**

**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2010 No. 1457 J.R.]**

**BETWEEN**

**M.A.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM**

**RESPONDENT**

**JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 31st day of July 2014**

1. This is a single judgement in two cases which made complaint about the manner in which rights pursuant to Article 8 of the European Convention on Human Rights were assessed by the Minister. The court, with the consent of the parties, decided to examine the Article 8 ECHR point in both proceedings together and supplemental submissions were produced by counsel. This judgment addresses this issue only.

**Procedural Background:**

2. The case of M.A. is a 'telescoped' application for judicial review of two decisions of the Minister. The applicant seeks *certiorari* of a decision refusing him subsidiary protection dated 8th October 2010 and he also seeks to have a subsequent deportation order made against him dated 20th October 2010 quashed.

3. The C.I. case is also a 'telescoped' application for judicial review of three decisions of the Minister. The first, second and third applicants seek *certiorari* of a decision to affirm deportation orders. The fourth named applicant seeks to quash a decision refusing her application for subsidiary protection and to quash a deportation order.

**The C.I. case:**

4. In C.I., the first named applicant is the parent of the second and third named minor applicants whose applications throughout were dealt with under the umbrella of their mother's application. The fourth named applicant is also a daughter of the first named applicant and was born in the State following the initiation of her mother's claim and this is why the fourth named applicant's claims were dealt with independently. In any event, having had their asylum claims fully assessed deportation orders were issued against the first, second and third named applicants individually on 4th May 2006. Following the making of the deportation orders a series of further representations were made on behalf of the first named applicant seeking re-consideration of the refusal of her application for temporary leave to remain in the State. The Minister completed an 'Examination of file' taking into account these further representations but his earlier decision was confirmed on 1st September 2009 (notified on 14th September 2009) and he affirmed the making of deportation orders. It is that decision which the first, second and third named applicants impugn in these proceedings.

5. Following her refusal of refugee status, the fourth named applicant made an application for subsidiary protection which was refused on 28th August 2009. A deportation order was duly made against her dated 2nd September 2009 with an attached 'Examination of file' and was notified to her by letter of 14th September 2009. The fourth named applicant seeks *certiorari* of both of these decisions in these proceedings.

6. In C.I. the Art. 8 ECHR assessment in respect of the first, second and third named applicants' reconsideration of their application for temporary leave to remain is contained in their 'Examination of file under section 3 of the Immigration Act 1999' and is in the following terms:

"If the Minister affirms the deportation orders made in respect of C.I. and her children T.T.I. and T.T.I., this decision may engage their rights to respect for private and family life under Article 8(1) of the ECHR.

**Private Life:**

It is accepted that a decision by the Minister to affirm the deportation orders made in respect of Ms. T.I. and her children T.T.I. and T.B.I. may constitute an interference with their right to respect for the private life within the meaning of Article 8(1) ECHR. This relates to their work, educational and other social ties that they have formed in the State as well as any matters relating to their personal development since their arrival in the State. Ms. T.I. submitted that she has worked as a volunteer for the Irish Wheelchair Association and for the Volunteer Centre and has also done work experience in St. Joseph's Hospital in Ardee. She also submitted that she has completed educational and safety courses with a view to making a valuable contribution to Ireland. Furthermore, Ms. T.I. submitted that she is a member of a church in the State and has integrated well into Irish society. It is submitted that T.T.I. and T.B.I. are both attending school in the State and are making good progress.

However, it is not accepted that such interference will have consequences of such gravity as potentially to engage the operation of Article 8. As a result, the decision to affirm the deportation orders made in respect of Ms. T.I. and her children T.T.I. and T.B.I. does not constitute a breach of the right of "respect" for their private life under Article 8 of the ECHR.

**Family Life:**

C.T.I. and her children, T.T.I. and T.T.I. arrived in the State on 17/02/2005. Ms. T.I.'s husband T.I. has been in the State since 31/05/2004. Their youngest daughter, T.T.I. (69/1246/06) was born in the State on 25/01/2006. By virtue of the Irish Nationality and Citizenship Act, 2004, the child is not an Irish citizen. However, under the Nigerian Constitution of 1999, S III, 25 (1)(c), this child is a citizen of Nigeria, as both of the child's parents are Nigerian citizens.

C.T.I. and her children, T.T.I. and T.T.I. are currently the subject of Deportation Orders. Ms. T.I.'s husband, T.I. (69/1392/04) and youngest child, T.T.I.'s (69/1246/06) cases are also the subject of a consideration under Section 3 of the Immigration Act 1999 (as amended) and a recommendation is being made that the Minister makes deportation orders in their cases also.

However, no separation of the family unit is envisaged by the proposed decision to deport this family from the State. T.P.I. and C.T.I. and their children, T.T.I., T.T.I. and T.T.I. will be under a legal obligation to remove themselves from the State and return to their country of origin, where T.P.I. and C.T.I. and two of their children were raised before their arrival in the State. In this regard, it is submitted that a decision to affirm the deportation orders made in respect of C.T.I. and her children, T.T.I. and T.T.I. does not constitute an interference with the right to respect for their family life under Article 8 of the ECHR."

7. The Article 8 ECHR assessment in respect of the fourth named applicant in the case of C.I. is contained in the 'Examination of file' appended to her deportation order and does not arise in the context of her application for subsidiary protection. The assessment of the Minister is in the following terms:

"If the Minister signs a Deportation Order in respect of Ms. I., this decision may engage her rights to respect for private and family life under Article 8(1) of the ECHR.

**Private Life**

It is accepted that a decision by the Minister to deport Ms. I. may constitute an interference with her right to respect for her private life within the meaning of Article 8(1) of the ECHR. This relates to her educational and other social ties that she has formed in the State as well as any matters relating to her personal development since her arrival in the State. It is noted that the applicant is attending play school in the State on a regular part-time basis since 25/08/2008. However, it is not accepted that such interference will have consequences of such gravity as potentially to engage the operation of Article 8. As a result, the decision to deport Ms. I. does not constitute a breach of the right of "respect" for Ms.I's private life under Article 8 of the ECHR.

**Family Life**

T.I. was born in the State on 25/01/2006. In accordance with the Irish Nationality and Citizenship Act, 2004, she is not entitled to Irish citizenship, however she is entitled to Nigerian citizenship as both of her parents are Nigerian citizens. T.L. is currently living in the State with her father T.I. (69/1392/04), her mother C.T.I. (69/405/05B), her brother T.T.I. (69/405/05C) and her sister T.T.I. (69/405/05D).

The applicant's mother, C.I. (69/405/05B) and her sister 69/405/05D) and her brother T.T.I. (69/405/05C) are currently the subject of Deportation Orders. The applicant's father T.I.'s (69/1392/04) case is also the subject of a consideration under Section 3 of the Immigration Act 1999 (as amended) and a recommendation is being made that the Minister makes a deportation order in that case also.

However, no separation of the family unit is envisaged by the proposed decision to deport this family from the State as they will be under a legal obligation to remove themselves from the State. In this regard, it is submitted that a decision to deport T.T.I. does not constitute an interference with the right to respect for his family life under Article 8 of the ECHR.

In this regard, it is submitted that a decision to deport T.T.I. does not constitute an interference with the right to respect for her family life under Article 8 of the ECHR."

**The M.A. case:**

8. In M.A. the applicant's Article 8 rights under the ECHR are considered in the 'Examination of file' appended to his deportation order and do not arise in the context of his application for subsidiary protection. The Minister addresses the applicant's rights in the

following terms:

"If the Minister signs a Deportation Order in respect of M.A., this decision would engage his rights to respect for private and family life under Article 8(1) ECHR.

#### Private Life

The House of Lords decision in *R. (Razgar) v. Home Secretary* [2004] 2 A.C. 368, sets out five questions which are likely to have to be addressed when considering Article 8 rights in the context of a proposal to remove an individual. Those questions are as follows:

- (1) Will the proposed removal be of an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
- (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
- (3) If so, is such interference in accordance with law?
- (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
- (5) If so, is such interference proportionate to the legitimate public ends sought to be achieved?

In considering the first question, it is accepted that if the Minister decides to deport M.A., that this has the potential to be an interference with his right to respect for private life within the meaning of Article 8(1) of the ECHR. This relates to his educational and other social ties that he has formed in the State as well as matters relating to his personal development since his arrival in the State. The applicant stated that he attended English language classes and that he has played soccer with other asylum seekers and locals in an effort to integrate into the local community in Ennis. He submits that since arriving here he has been warmly received by those with whom he has come into contact, and that he has integrated extremely well into the community and is held in the highest regard.

In addressing the second question, and having weighed and considered the facts of this case as set out above, it is not however accepted that an such potential interference will have consequences of such gravity as potentially to engage the operation of Article 8. As a result, a decision to deport M.A. does not constitute a breach of the right to respect for private life under Article 8 of the ECHR.

#### Family Life

Mr. A claims to be a single man with no children. He claims that his father is deceased and that the whereabouts of the rest of his family are unknown. He has no known family connections to the State.

In this regard, it is submitted that a decision to deport M.A. does not constitute an interference with the right to respect for his family life under Article 8 of the ECHR."

#### **Applicant's submissions:**

9. Mark de Blacam S.C. appeared on behalf of the applicants in the case of C.I. and submits that the author of the 'Examination of file' conducted in respect of the first, second and third named applicants erred in law. Counsel submits that this error occurred because the Minister failed to accept that their article 8 rights were engaged. In this regard, counsel refers to the *Razgar* principles (set in the text of the 'examination of file' quoted in paragraph 8 above) and contends that owing to the level of integration achieved by the applicants into Irish society, it was clear that their rights were engaged and that the Minister was required to address the remaining *Razgar* questions. Counsel makes a secondary complaint with regard to the requirement on the Minister to assess the best interests of the child in the context of the making of a deportation order (*Dos Santos v. Minister for Justice, Equality and Law Reform* [2013] IEHC 237), however that is not relevant to the substance of this decision on the assessment of Article 8 rights.

10. Counsel also submits that the foregoing contentions apply in equal, if not greater measure in the case of the fourth named applicant. It is submitted that the fourth named applicant was three and a half years old when the 'Examination of file' was compiled, that she had been attending play-school at the time and also that she had never been to Nigeria. In this regard it is submitted that despite the Minister concluding that her deportation would not "have consequences of such gravity as potentially to engage the operation of Article 8", that the fourth named applicant has a private life in the State and that if she does not have a private life here, then she does not have one anywhere. It is asserted that given the applicant has a private life here, then Article 8 must be engaged. Counsel accepts that this if this is correct it only means that the Minister is obliged to embark on the balancing exercise envisaged in *Razgar* before he can lawfully decide to deport the fourth named applicant

11. The applicants refer to the decision of this court in *A.M.S. v. Minister for Justice and Equality* [2014] IEHC 57 and the manner in which the *Razgar* questions were to be approached in the context of an application for family reunification. In this regard, counsel noted the clarification that:

"the phrase "consequences of such gravity" is derived from the jurisprudence of the European Court of Human Rights and has been explained by the Court of Appeal in England and Wales. Contrary to common usage in deportation decisions, the phrase does not mean that there must be grave consequences arising from a decision to deport before Convention rights are engaged. Decision makers are on the wrong path if they are in search of 'grave consequences'. In *V.W. (Uganda) v. The Secretary of State for the Home Department* [2009] EWCA Civ. 5, Sedley L.J. pointed out that:

"22. As this court made clear in *AG (Eritrea)* [2007] EWCA Civ 801, ss. 26-28, the phrase 'consequences of such gravity' in question (2) posits no specially high threshold for art. 8(1). It simply reflects the fact that more than a technical or inconsequential interference with one of the protected rights is needed if art. 8(1) is to be engaged.""  
[emphasis added]

12. In particular, counsel noted that following from this clarification that there is no especially high threshold which must be reached in order for Article 8 rights to be engaged and he submitted that the applicants in this case had put down sufficient roots in the community to demonstrate the engagement of such rights. Counsel also submits that the bifurcated nature of the asylum system in the State and the associated delays inherent in the system can lead to deeper roots being established in the community and a consequential strengthening of an applicant's claim under Article 8.

13. Mr. de Blacam S.C. also raises complaints with regard to the manner in which refoulement is considered in respect of the fourth named applicant's 'Examination of file' and also criticises the internal relocation and state protection findings reached in respect of her negative subsidiary protection decision. Once again, these matters are not germane to this decision on Article 8 rights.

14. Ian Whelan B.L. appeared on behalf of the applicant in M.A. and was happy to adopt the submissions of Mr. de Blacam S.C. in the above case, subject to certain matters particular to his own case. At the outset, counsel noted that the wording employed by the Minister in making his 'Examination of file' assessment in the case of M.A. was that "If the Minister signs a Deportation Order in respect of M. A., this decision would engage his rights to respect for private and family life under Article 8(1) ECHR" as opposed to the wording in the C.I. case that the decision "may engage her rights to respect for private and family life under Article 8(1) of the ECHR" [Emphasis added]. As such, it was contended that the applicant's case in M.A. is even stronger than that in C.I., in that it appears that the State accepted at first that his Art. 8 rights would be engaged and then later stated that they would not. Because of this contradiction on the face of the decision it is submitted that this decision flies in the face of common sense and is irrational as a result. Counsel also criticises the failure by the Minister to conduct an adequate balancing exercise. It is further stated that the Minister has failed to provide reasons as to why the interference does not have consequences of such gravity as to engage the operation of Article 8.

#### **Respondent's Submissions:**

15. Anthony Moore B.L. for the respondents in C.I. began by opening a series of case law to the court to highlight that the approach taken by the Minister in his assessment in this case was lawful. In particular, counsel referred to the decisions of the European Court of Human Rights in *Bensaid v. United Kingdom* (6th February 2001), *Nyanzi v. United Kingdom* (8th April 2008), *N v. United Kingdom* (27th May 2008) and also to the decision of this court in *A.M.S. (supra)* and that of the Supreme Court in *Smith v. Minister for Justice* [2013] IESC 4 with regard to the manner in which applications for revocation of deportation orders should be considered by the Minister.

16. Counsel submitted that the case law from the European Court requires an applicant who contends that a measure taken by the State constitutes an interference with the right to respect for private life to surmount a particular threshold. In this regard, it is submitted that an applicant must show the existence of "sufficiently adverse effects on physical and moral integrity" as per *Costello-Roberts v. United Kingdom* (25th March 1993) and *Dolenec v. Croatia* (26th November 2009). Counsel acknowledges that the key question is that assuming there is an interference, does it engage the rights protected by Article 8 as might warrant the Minister assessing the legality of it by reference to Art. 8(2) ECHR?

17. The respondent submits that the Minister was correct in holding that the removal of the applicants in C.I. would not have consequences of such gravity as potentially to engage the operation of Art. 8. In particular, counsel notes that the decisions in *Bensaid* and *Nyanzi* indicate the view of the European Court that any private life developed in a state by non-settled migrants would not be sufficient to come within the ambit of Art. 8. It is submitted that this conclusion was reached in *Nyanzi*, even where the facts seemed to indicate that an extensive private life had been developed. In any event, it is asserted that even if the applicants' private life came within the ambit of Article 8, the European Court has consistently taken the view that the removal of persons in their positions will comply with Art. 8(2) of the ECHR and will not result in a breach.

18. The decision in *A.M.S. v. Minister for Justice and Equality* [2014] IEHC 57 it is said does not avail the applicants in this case as that case concerned an interference with family life within the meaning of Art. 8 and key factors were overlooked by the Minister when making that particular decision according to the respondent. On the contrary, in this case it is submitted by the respondent that the applications were properly considered by the Minister and that in the words of Clarke J. in *Smith*, there was nothing significant put before the Minister in either application as might have persuaded him to conclude that deportation of the applicants was unlawful.

19. Counsel for the respondent in M.A., Sinead McGrath B.L. notes in the first instance that the Minister found that 'having considered the humanitarian information on file in this case, there is nothing to suggest that Mr. A should not be returned to Afghanistan.' Counsel submits that the circumstances in which such a finding can be quashed are limited and refers to the decision of Clarke J. in *Kouyape v. Minister for Justice* [2005] IEHC 380 who stated:

"The weighing of the various matters which might legitimately be taken into account under the section and which have been loosely described as 'humanitarian grounds' is, in accordance with those authorities, entirely a matter for the Minister. In the absence of evidence that the Minister did not give the person concerned an opportunity to make submissions in accordance with the statute or did not consider those submissions, it does not seem to me that that aspect of the Minister's decision is reviewable by the courts."

20. It is contended that the consideration of Article 8 of the ECHR is essentially an extension of the humanitarian considerations in the case and that the Minister noted the submissions of the applicant in relation to his private life in the State. Counsel contends that the Minister accepted that a decision to deport the applicant 'has the potential to be an interference with his right to respect for private life' and that this is an affirmative answer to the first Razgar question. The respondent is of the view that the Minister thereafter correctly applied the provisions of the *Razgar* test and in proceeding to answer the second question found that the proposed interference wouldn't have consequences of such gravity for Article 8 to be engaged.

21. The respondent examines the decision of this court in *A.M.S. v. Minister for Justice and Equality* [2014] IEHC 57 and submits that those criticisms cannot be levied in this case as the Minister identified and outlined in clear terms the nature of the private life which the applicant had proffered for consideration. Further, counsel submits that the submissions in respect of the applicant's private life in *A.M.S.* were limited in nature.

22. Counsel notes the dicta of Sedley L.J. in *AG (Eritrea)* [2007] EWCA Civ. 5 and records that the Minister stated that 'having weighed and considered the facts of this case as set out above' it was not accepted that the decision to deport would have consequences of such gravity such that the provisions of Article 8 were not engaged. Noting the dicta in *Costello-Roberts v. United Kingdom* (1993) 19 EHRR 112, counsel submits that the deportation "complained of by the applicant did not entail adverse effects for his physical or moral integrity sufficient to bring it within the scope of the prohibition contained in Article 8". The respondent submits that this was a decision which the Minister was entitled to reach on the facts of the case. Counsel notes that the applicant was a

single man, was not suffering from any illness, was not father to any children residing in the State and had outlined a limited set of facts to the Minister for consideration.

23. Ms. McGrath B.L. contends that the concerns and criticisms raised in *A.M.S.* relating to the manner in which the second *Razgar* question was examined in the context of family life do not apply in this case and that the underlying facts in *A.M.S.* are distinguishable from the case at hand. Finally, it is submitted that it was open to the Minister to find on the facts that the applicant had a private life in the State, that his deportation would interfere with that private life but that the deportation did not entail such adverse, effects or grave consequences on that private life so as to engage Article 8(1) of the ECHR.

#### **Findings:**

24. The first decision to be reviewed is the decision by the Minister to affirm the deportation orders made in respect of Ms. C.I. and her children, T.T.I. and T.B.I. The text of that decision is set out at para. 6 above.

25. As can be seen, its opening paragraph accepts that the deportation orders "may engage [the applicant's] rights to respect for private and family life under Article 8(1) of the ECHR". It is a peculiar feature of the decision that its author commences the Article 8(1) analysis at Question 2 of the *Razgar* questions, rather than at Question 1. I am aware that the series of questions, or hierarchy of questions, recommended by Lord Bingham is only that - a recommendation. But it is apparent to me that the decision maker is attempting to follow the *Razgar* questions and the language in the decision is taken directly from the judgment of the House of Lords in *Razgar*. Where a *Razgar*-type analysis starts at Question 2 and accepts that rights are or might be engaged, one then anticipates that the decision maker will then ask if the interference is in accordance with law, and then whether a measure is necessary in a democratic society and, if so, whether it complies with the principles of proportionality. That is not what happens in this first decision under analysis. The decision maker, having indicated engagement of Article 8 rights then goes back one step to the first of the *Razgar* questions, which, it is to be recalled, asks whether the proposed removal will be an interference by a public authority with the exercise of the applicant's right to respect for his private or family life? In the hands of the author of this decision, that question seems to be answered by conceding that the deportation order, if confirmed, "may constitute an interference" with rights under Article (8)(1) of the Convention.

26. Pausing there for a moment, it seems inappropriate for a decision maker, in handling Question 1, to equivocate in the answer. Either the proposed removal will interfere or will not interfere with private and family rights. If one has any sort of private life - and the concept is broadly understood in Convention terms - then it is impossible to imagine how removal from the State will not interfere with that private life. I can imagine circumstances where one has been in the State for such a short period that it might be said that no private life worthy of protection exists in Ireland. Similarly, if one had no family in Ireland, then removal from the State could not interfere with family rights. However, if one had family in Ireland and removal had the effect of separating the family, it would be impossible for there not to be an interference. Similarly where it is accepted that a person has a private life in the State, removal from the State will always interfere with that. Decision makers should not shy away from these rather simple questions. It may be that decision makers are fearful that if they answer positively the first of the *Razgar* questions that the remaining questions somehow fall like a house of cards. This, of course, is not so.

27. The second of the *Razgar* questions, it is recalled, asks "[if there is an interference] will such interference have consequences of such gravity as to potentially engage the operation of Article 8?" The author of the decision under analysis, having identified the aspects of private life with which there might be an interference, answers *Razgar* 2 as follows: "it is not accepted that such interference will have consequences of such gravity as to potentially to engage the operation of Article 8".

28. No reason is given as to why interference will not have consequences of such gravity as to engage the operation of Article 8. Indeed the consequences of the removal are not identified. Lord Bingham, in *Razgar*, explained the basis of the second of his questions by reference to the case law on the Convention which requires that conduct must attain a minimum level of severity to engage the operation of the Convention and cites the decision of the Court in Strasbourg in *Costello Roberts v. the United Kingdom* [1993] 19 EHRR 112. Though the decision maker identifies the area of private life with which there will be interference, no attempt whatsoever is made to identify the consequences of the interference. The obvious consequence is that the identified private life will cease.

29. It is simply not enough for a decision maker to say, without anything else, that deportation will not have consequence of such gravity as to engage the operation of Article 8. It is difficult to discern why the removal of the children from their school would not constitute a grave consequence sufficient to engage Article 8. The consequences of the removal of the children from an environment which they know is a matter which should be addressed by the decision maker - but only for the purpose of identifying whether rights under Article 8 are engaged. The obvious consequence of removal from the State is that the life of the deportee in Ireland will be terminated. How could this not be an interference with private life of the most extreme type?

30. The mere engagement of a right under Article 8 does not mean the State's proposed action will breach that right, nor does it mean that the State's proposed action will not be protected by the rule of necessity established in Article 8(2) of the Convention or by the principles of proportionality which may protect a decision, however negative the consequences might be for its addressee.

31. The author then proceeds to deal with the position of the mother and the children under the heading of 'Family Life'. Having set out the position of the children and in particular, the fact that no separation of the family unit is envisaged, the author, in my view, gives a clear answer to the first of the *Razgar* questions as follows:

32. "... a decision to affirm the deportation orders made in respect of C.T.I. and her children, T.T.I. and T.B.I. does not constitute an interference with the right to respect for their family life under Article 8 of the ECHR."

33. Therefore, I uphold the Minister's decision with respect to consideration of the applicant's family rights under Article 8 of 1the Convention, but I condemn that part of his decision with respect to their private life rights under Article 8 of the Convention.

34. The position of the fourth named applicant receives separate treatment and this is set out at para. 7. Again, the author begins with what might be regarded as step 2 of the *Razgar* hierarchy of questions. The conclusions on private life and family life are identical to the the decision on the mother and siblings. Therefore the criticism I made of the private life rights treatment in respect of the first three applicants is repeated with respect to this decision and the absence of fault with respect to the manner in which family life rights is analysed is also repeated and therefore the same conclusion is reached with respect to the fourth named applicant. The decision in respect of family life rights is upheld and the decision in respect of private life rights is condemned.

35. With respect to the decision taken in the case of M.A., the author quotes the *Razgar* questions in full. However, although this is done, the opening text proceeds straight to answer *Razgar* 2 and concedes that a deportation order would engage the applicant's

rights. As stated above, if this is accepted and the *Razgar* approach is being followed, then the next question is whether the interference with the rights is in accordance with law, and thereafter to ask whether the rule of necessity excuses it, and then to ask whether it survives a proportionality analysis.

36. It seems to me that the decision maker accepts that removal would constitute an interference with private life. However, the author addresses *Razgar* 2, without analysis, and by the bald statement that "it is not, however, accepted that such potential interference will have consequences of such gravity as potentially to engage the operation of Article 8". As with each of the other decisions analysed in this judgment, it is an unreasoned statement and is difficult to comprehend. As indicated in my judgment in *A.M.S. v. Minister for Justice and Equality* [2014] IEHC 57, decision makers are not required by this question to identify grave consequences of an interference before it can be said that rights are engaged.

37. As to private life, the author of the decision, again, equivocates as to whether or not there would be interference ("may constitute an interference") but denies that the interference will have consequences of such gravity as potentially to engage the operation of Article 8. This is an unreasoned statement with none of the consequences identified and in a similar vein to that what I have already said, it is difficult to comprehend how the removal of a person such as M.A. from the life and educational experience enjoyed in the State could not be enough to engage private life rights under Article 8. The mere fact that rights are engaged because interference is more than technical and cannot be said to be inconsequential, does not mean that removal from the State will breach Convention rights nor does it mean that the interference cannot be excused by reference to the doctrine of necessity in Article 8(2), or otherwise saved by the principle of proportionality.

38. With respect to the treatment of M.A.'s family life, the decision maker states that no separation of family unit is envisaged and therefore there would be no interference with the right to respect for family life. In my view, this is a clear and correct decision which follows a lawful application of the *Razgar* approach to Article 8 analysis. The decision on private life, therefore, falls to be condemned in the same way as the other decisions in this case. But with respect to the analysis of family life rights, the applicant here was a single man with no children and who has no known family connections in the State. In view of this, the author's conclusion that there can be no interference with the right to respect for family life is correct.

39. I have previously approved of the proper meaning of the phrase "consequences of such gravity" in *Razgar* Question 2 in my decision in *AMS v. The Minister for Justice and Equality* [2014] IEHC 57. Effectively, the question asks whether the interference can be described as merely technical or inconsequential. If the interference is of this order, the rights to respect for private and family life under Article 8(1) will not be engaged by the proposed removal of the persons from the State. Where it is accepted that a proposed deportee has a private life, it seems to me that the answers to Questions 1 and 2 can never be anything but affirmative. The removal of the applicant from Ireland will comprehensively end the private life experienced by the applicant in Ireland. This could never be anything other than an interference with that private life. In most cases this will be an interference which is greater than inconsequential and something other than merely technical. In other words deportation will always engage the right to respect for private life once it is established that private life as understood in Convention terms was experienced in the state.

40. Counsel for the respondents reliance on the decision of the Strasbourg Court in *Costello-Roberts* is misplaced. That case concerned corporal punishment of a young student. The punishment (referred to as 'slippering') was not serious enough to infringe Article 3. As for Article 8, it was argued that as the right to respect for private life incorporated a right to respect for physical and moral integrity, the punishment was said to infringe these rights. The Court found that the moderate punishment did not reach a level of gravity as to infringe Article 8.

41. Lord Bingham suggested answers to his questions when deployed in a deportation context. I have suggested answers to Questions 1 and 2 with respect to private life rights. As to Question 3, it seems to me that this will always be answered in the affirmative in a deportation context because the Minister is proposing to make a deportation order in accordance with a statutory provision. Thus, the deportation is in accordance with law. I agree with the analysis conducted by Lord Bingham as to whether the proposed interference with private life and family life is necessary in a democratic society. He said:

"Where removal is proposed in pursuance of a lawful immigration policy, Question 4 will almost always fall to be answered affirmatively. This is because the right of Sovereign States, subject to Treaty obligations, to regulate the entry and expulsion of aliens is recognised in the Strasbourg jurisprudence ... and implementation of a firm and orderly immigration policy is an important function of government in a modern democratic State. In the absence of bad faith, ulterior motive or deliberate abuse of power, it is hard to imagine an adjudicator answering this question other than affirmatively."

42. Where Question 4 is answered affirmatively, the adjudicator or decision maker should proceed to Question 5. Again, I adopt the reasoning of Lord Bingham in respect of the issues raised by Question 5 when he said:

"20. The answering of a question (5) where that question is reached must always involve the striking of a fair balance between the rights of the individual and the interests of the: community which is inherent in the whole of the Convention. The severity and consequences of the interference will call for a careful assessment at this stage."

43. In *Huang v. Home Secretary* [2007] UKHL 11, Lord Bingham made further comments on the fifth question in the *Razgar* formulation. He expressly stated that this fifth question deals with the application of the proportionality principles. A proper understanding of the approach to be adopted when asking and answering *Razgar* No. 5 can be obtained by studying Lord Bingham's comments in *Huang* as follows:

"... It is unnecessary for present purposes to attempt to summarise the Convention jurisprudence on article 8, save to record that the article imposes on member states not only a negative duty to refrain from unjustified interference with a person's right to respect for his or her family but also a positive duty to show respect for it. The reported cases are of value in showing where, in many different factual situations, the Strasbourg court, as the ultimate guardian of Convention rights, has drawn the line, thus guiding national authorities in making their own decisions. But the main importance of the case law is in illuminating the core value which article 8 exists to protect. This is not, perhaps, hard to recognise. Human beings are social animals. They depend on others. Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives. Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant's dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant. The Strasbourg court has repeatedly recognised the general right of states to control the entry and residence of non-nationals, and repeatedly acknowledged that the Convention confers no right on individuals or families to choose where they prefer to live. In most cases where the applicants complain of a violation

of their article 8 rights, in a case where the impugned decision is authorised by law for a legitimate object and the interference (or lack of respect) is of sufficient seriousness to engage the operation of article 8, the crucial question is likely to be whether the interference (or lack of respect) complained of is proportionate to the legitimate end sought to be achieved ....."

44. In that passage, it appears to me that what Lord Bingham was saying is that, save in the most unusual of cases, an adjudicator or a decision maker will ultimately spend much of the analysis on the issue of proportionality.

45. Decision makers are not required to find that a deportation measure offends proportionality because it comprehensively interferes with established private life in Ireland. Given that it is lawful for the State to regulate the presence of non-nationals on its territory and that immigration control does not *per se* offend rights protected by the Convention, something other than the natural consequence of deportation involving, as it does, the cessation or termination of private life in the deporting state, will be required if the proportionality analysis is to yield a positive result for an applicant. As for family life, the same sort of approach is appropriate, but because persons other than the proposed deportee may be affected, the consequences of the deportation for persons other than the deportee and the possibility of relocating family life in another State are matters which *may* be appropriate to weigh in the balance in conducting a proportionality analysis where this point is reached.

46. As this judgement deals with ECHR Article 8 issues only, I will hear the parties as to how to proceed with other issues in both cases and what Orders might be made.