THE HIGH COURT

JUDICIAL REVIEW

[2008 No. 977 J.R.]

BETWEEN

G.D., M.D., E.D. (A MINOR SUING BY HER FATHER AND NEXT FRIEND G.D.) E.D. (A MINOR SUING BY HER FATHER AND NEXT FRIEND G.D.) E.D. (A MINOR SUING BY HER FATHER AND NEXT FRIEND G.D.) E.D. (A MINOR SUING BY HER FATHER AND NEXT FRIEND G.D.) E.D. (A MINOR SUING BY HER FATHER AND NEXT FRIEND G.D.) (SERBIA)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 16th day of April, 2018

1. Reduced to its essentials and leaving aside a great deal of tedious detail that is of no real relevance to the legal issues involved, the two critical matters at the core of the present application for costs of the proceedings are firstly, the attitude of the applicants to having been granted leave to remain, which was to not pursue the proceedings, and secondly, the state of the reliefs being sought at the time the applicants decided not to pursue the matter.

2. This action began as a *mandamus* application. Various versions of statements of grounds were filed dated 21st August, 2008, 24th March, 2009 and 26th March, 2009. By that stage, the applicants were challenging a decision that the first and second named applicants were not eligible for subsidiary protection and deportation orders against the first to sixth named applicants, as well as seeking determination of an application for leave to remain in the state. The case was then delayed due to issues related to Case C-277/11 *M.M. v. Minister for Justice and Equality* ECLI:EU:C:2012:744.

3. There was then an amended statement of grounds delivered by fax, date stamped 23rd March, 2016, although that is not recorded as filed on the Courts Service system. That is the version currently being relied on. The reliefs, as of the time the action was the subject of a decision not to proceed with it, are solely directed against the subsidiary protection refusal. On 11th July, 2017 the applicants' solicitors wrote seeking agreement that the deportation orders would be revoked and permission to remain granted and that a reasonable offer be made in respect of costs. The respondent's solicitor replied on 31st July, 2017 *inter alia* pointing out that that implied that the applicants were no longer pursuing subsidiary protection. On 18th January, 2018, the deportation order was revoked and the applicants given leave to remain. That decision was not conditional on the applicants dropping the proceedings. On 16th February, 2018 the applicants' solicitors wrote indicating that the matter would be struck out and that there would be an application for costs.

4. I have received helpful submissions from Mr. Michael Forde S.C. (with Mr. Patrick Killian McMorrow B.L.) for the applicants and from Mr. Daniel Donnelly B.L. for the respondent.

5. Mr. Donnelly is simply correct to state as he eloquently does at para. 40 of his written submissions that it is "*over-simplistic for the Applicants to assert that they have largely succeeded in the proceedings. They have 'declared victory' and quit the field, but this is only their subjective evaluation of success*." A fundamental difficulty for the applicant is the grant of permission to remain does not render a challenge to a protection decision moot: see *D.D.A. v. Minister for Justice and Equality* [2012] IEHC 308 (Unreported, High Court, 18th July, 2012) *per* Cooke J. at para. 13 and *I.E. v. Minister for Justice and Equality* [2014] IEHC 409 (Unreported, High Court, 31st July, 2014) at para. 12 *per* MacEochaidh J. That position is reinforced by my decision in *W.T. v. Minister for Justice and Equality* [2016] IEHC 108 [2016] 2 JIC 1514 (Unreported, High Court, 15th February, 2016) at paras. 29-33 where I rejected a submission by the State that a protection challenge was moot because an applicant had been granted family reunification status. There is a particular onus on the State to ensure that its submissions do more than serve the needs of expediency in the particular case at hand. The State above all other litigants must ensure that its approaches to legal submissions serve the overall integrity and coherence of the law. It is unfortunate that the State made such an unsustainable point when it suited them in *W.T.*, but that is corrected by the well-founded submission of Mr. Donnelly in the present case.

6. I therefore accept Mr. Donnelly's characteristically elegantly phrased and intellectually powerful submission at para. 43 of the written submissions that "*accordingly, this is not a situation where the Respondent rendered the proceedings moot. The Applicants have chosen to drop the cases because they did not consider it to be worth their trouble to continue with them, not because they obtained the benefit that they had sought in the proceedings. In the circumstances, they have unilaterally decided to abandon the litigation*". The case is not moot. The applicants have simply decided not to pursue it. Costs therefore follow the event, the event being that the applicants have abandoned the protection challenge. So costs will be awarded to the respondent to include reserved costs, to be taxed in default of agreement.