THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 734 J.R.]

BETWEEN

S.G. (ALBANIA)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 14th day of May, 2018

1. In *S.G. (Albania) v. Minister for Justice and Equality (No. 1)* [2018] IEHC 184 [2018] 3 JIC 2311 (Unreported, High Court, 23rd March, 2018), I granted an order of *certiorari* in favour of the applicant in relation to a deportation order. The respondent now seeks leave to appeal and I have received helpful submissions from Ms. Siobhán Stack S.C. (with Ms. Grainne Mullan B.L.) for the respondent and from Mr. David Leonard B.L. for the applicant.

2. While seven questions are proposed, questions (a) to (e) and (g) are essentially reformulations of the basic point as to whether I was correct in applying s. 26 of the Interpretation Act 2005, as opposed to s. 27 of that Act.

3. The ramifications of the judgment are presented by the respondent, if I may respectfully say so, in a somewhat scaremongering way, and while I appreciate that Ms. Stack is constrained by her instructions, the suggestion that around 1,000 deportation orders are involved has to be seen in the context that to date only one or possibly two other cases, so far as I can recall, have been brought challenging such orders on the grounds that arose in *S.G. (No. 1).*

4. Furthermore, Ms. Stack says that the effect of the judgment was to strike out part of the statute. That is not an accurate description. The judgment sought to implement the statutory intention of continuity, set out in s. 26 of the 2005 Act, which necessitated reading in necessary modifications. The judgment stated that modifications are inherent in the process of reading one Act as referring to another, a process that is mandated by s. 26(2)(f). I have heard no plausible argument as to why that provision should be emasculated in the manner proposed by the State, requiring more or less word-for -word correspondence in such a way that material modifications would not be impliedly required.

5. The submissions made in relation to leave to appeal presented the judgment as if it were a challenge to the power of the Oireachtas; but the judgment in no way interferes with the freedom of the Oireachtas. It is an interpretative exercise where the Oireachtas has failed to clear up references to repealed Acts that are left behind by the repealing legislation.

6. Proposed question (f) is a completely fact-specific complaint regarding the second ground on which the State failed in this case. It is not a matter of either general or exceptional public importance.

7. It seems to me that there are a number of reasons why the application should not succeed in the light of the caselaw on leave to appeal, particularly *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250 (Unreported, MacMenamin J., 13th November, 2006), *Arklow Holidays Ltd. v. An Bord Pleanála* [2007] 4 I.R. 112, *S.A. v. Minister for Justice and Equality (No. 2)* [2016] IEHC 646 [2016] 11 JIC 1404 (Unreported, High Court, 14th November, 2016) para. 2, and *Y.Y. v. Minister for Justice and Equality (No. 2)* [2017] IEHC 185 [2017] 3 JIC 2405 (Unreported, High Court, 24th March, 2017) at para. 72.

8. The problem for the State is that their main point is not decisive because the respondent lost on a second, fact-specific, point. It seems to me that the State would have to await a case where the point was one on which the decision turned. It does not seem to me to be an answer to that that if a party loses on two grounds, one of which is not a point of public importance or exceptional public importance, that it is sufficient if there is a ground that involves such a point simply because the appellant could argue both grounds in the Court of Appeal if granted leave to appeal. It seems to me that to get leave to appeal in the first place, the point in question of exceptional public importance should be one on which the decision actually turned, in the sense that a different answer to it would produce a different result in the case.

9. Separately from that, I am not currently satisfied there is any real doubt about this issue or about the various interlocking legal questions which led to the order I made because as I pointed out in the No. 1 judgment, everything points to the application of s. 26(2)(f) as being the "obvious answer".

10. Of course judges should approach the question of leave to appeal against their own decisions with all due awareness of their fallibility (see *K.R.A. v. Minister for Justice and Equality* [2016] IEHC 421 para. 9). And there is no reason not to do so, because even if, counter-factually, one happened to be running on the reserve tank of humility at any given time, appellate courts are on helpful stand-by to top up the supplies. Nonetheless it is interesting to note that British judges do not seem to have a problem in principle with assessing the appeal prospects as minimal in comparable situations. For example, in *Siddiqui v. Oxford University* [2018] EWHC 536 (Q.B.) Foskett J. said in the context of an application for permission to appeal at para. 29 that the reasons for his conclusion were "*unassailable*", at para. 31 that the proposed appeal was "*groundless*", and at para. 32 that he rated the prospects of a successful appeal on the merits "*to be nil*".

11. While I certainly would not go that far here, I would say that the question of significant doubt as to the point has not been demonstrated because all of the elements of the discussion support the conclusion reached. The fundamental point is that the key matter under consideration has already been clarified by the judgment of O'Donnell J. in *Minister for Justice and Equality v. Tobin* [2011] IEHC 72 [2012] 4 I.R. 147, a principle which I simply applied here, albeit it with a degree of further discussion and elaboration (and albeit, I might add, that one might not at first recognise the simplicity, clarity and centrality of the punchline of O'Donnell J.'s judgment amidst the complex confection of intricate questions of law manufactured on behalf of the respondent for the purposes of the proposed appeal). I do not see how leave to appeal is necessary in those circumstances.

Order

12. The application is refused.