APPROVED

REDACTED

THE HIGH COURT

[2024] IEHC 332

Record No. 2023/410JR

BETWEEN/

K

APPLICANT

-AND-

THE MINISTER FOR JUSTICE

RESPONDENT

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 29th day of May 2024

INTRODUCTION

1. In this application for judicial review, the Applicant (a Lithuanian national) seeks to challenge a '*reviewed decision*' made by the Respondent ("the Minister") on 23rd March 2023 in accordance with Regulation 25 of the European Communities (Free Movement of Persons) Regulations 2015 ("the 2015 Regulations") and the Citizens Rights Directive[1] which affirmed the previous decisions on 27th January 2023 to make '*Removal*' and '*Exclusion*' Orders in accordance with the provisions of, respectively, Regulations 20 and 23 of the 2015 Regulations (the latter for a period of 3 years).

2. The Applicant had resided in Ireland since February 2017. On 14th February 2020 he was convicted of four criminal offences relating to the cultivation of drugs and was sentenced to a term of imprisonment for 5 years, with the final 12 months suspended.

3. Consequent upon the reviewed decision, the Applicant was served with a further notification dated 23rd March 2023 and issued pursuant to Regulation 21(4)(b) and Regulation 23(6)(b) of the 2015 Regulations ("the Second Notification"). The Second Notification required the Applicant *inter alia* to present himself to the Garda National Immigration Bureau ("GNIB") on 27th April 2023 at 12:00 for the purpose of making arrangements for his removal from the State. The First and Second Notifications are referred to collectively in this judgment as "the Notifications".

4. Conor Power SC, together with Ian Whelan BL, appeared for the Applicant. Eoin Carolan SC, together with Mark William Murphy BL, appeared for the Respondent.

[1] Directive 2004/38/EC.

Order granting leave: 26th June 2023

5. On 26th June 2023, this court (Meenan J.) granted leave to apply for judicial review on the grounds set out at paragraph (e) of the Applicant's Statement of Grounds.

6. A majority of the '*legal grounds*' related to the Applicant's argument that the appropriate period was (a) required and (b) not included, in the notifications and decisions relating to the Removal Order and Exclusion Order and in the body of orders themselves, as follows:

> "*Legal Grounds:*
>
> *(i) The Removal Order fails to comply with the provisions of Regulation 20(2) of the European Communities (Free Movement of Persons) Regulations, 2015 in that it fails to require the Applicant, being the person in respect of whom the Order has been made, to leave the State within such period as is specified in the Order. No such period is expressed in the Order. As such it fails to contain a necessary and indispensable feature and does not amount to a valid Removal Order in law.*
>
> *(ii) By failing to specify such a period in the Removal Order by which the Applicant must leave the State the Respondent acted ultra vires the said Regulations and unlawfully.*
>
> *(iii) The Removal Order contains an error in the form of a material omission on the face of the record and is void for uncertainty.*

(iv) *The Removal Order is not in compliance with the form thereof as specified in Schedule 10 of the said Regulations of 2015.*

(v) *The Removal Order is not valid as it does not specify the period within which the Applicant is to leave the State either on its face or, insofar as same may be permitted, in any accompanying notice. In the premises no period has been specified herein at all as required and the Order is invalid.*

(vi) *The Exclusion Order fails to comply with the provisions of Regulation 23 of the European Communities (Free Movement of Persons) Regulations, 2015 in that it fails to require the Applicant, being the person in respect of whom the Order has been made, not to enter the State for the period specified in the Order. No period is expressed in the Order. As such it fails to contain a necessary and indispensable feature and does not amount to a valid Removal Order in law.*

(vii) *By failing to specify such an exclusion period in the Exclusion Order the Respondent, or his delegated person, acted ultra vires the said Regulations and unlawfully.*

(viii) *The Exclusion Order contains an error in the form of a material omission on the face of the record and is void for uncertainty.*

(ix) *The Exclusion Order is not in compliance with the form thereof as specified in Schedule 12 of the said Regulations of 2015.*

(x) *The Exclusion Order is not valid as it does not specify the period of exclusion either on its face or, insofar as same may be permitted, in any accompanying notice. In the premises no period has been specified herein at all as required and the Order is invalid. In so far as the Exclusion Order does specify a period of time of "up to 3 years" the said period of time is uncertain and is not capable of being accurately construed.*

(xi) *The Respondent erred in excluding the Applicant from the State for a period of 3 years without providing any reasons as to how the said period of exclusion was reckoned or as to why it was necessary. The Minister obliged to provide reasons for the said finding and the failure to so do renders the decision invalid. The proposal sent to the Applicant recorded that the Minister was considering placing an exclusion period on the Applicant of "up to 3 years." It appears therefore that the Applicant was excluded for the maximum period without providing a reasoned analysis of why this was so.*"

7. The additional 'legal grounds' upon which the Applicant was granted leave to apply for judicial review, were as follows:

"*Legal Grounds …*

(xii) *In deciding to remove and exclude the Applicant the Respondent erred in law and in fact, acted ultra vires and acted unreasonably and/or irrationally and breached the principles of fair procedures and natural and constitutional justice in having regard to the following considerations: (a) The Applicant has a: "proclivity to re-offend" and a "propensity to re-offend"; How "the Irish public would be best served." The first consideration is based solely on conjecture. The second consideration is not found in law. Furthermore, neither of these considerations were put to the Applicant for his comment, thus breaching the principle of audi alteram partem.*

(xiii) *In deciding to remove and exclude the Applicant the Respondent erred in law in having regard solely to the Applicant's criminal convictions. Previous criminal convictions alone are insufficient to justify removal (see C-30/77). The Applicant's removal and exclusion is couched in strictly punitive terms and fails to fairly address the question of his propensity to act in the same way in future, or indeed to consider the fact that he has not reoffended in the period since his release from custody, has secured employment and engaged in rehabilitation.*

(xiv) *The Respondent erred in the consideration of the Applicant rights under Article 8 ECHR. The* [Respondent] [sic.]

failed to conclude whether Article 8 rights were engaged and if so whether any such rights were justifiably restricted pursuant to Article 8(2). The Respondent failed to provide adequate reasons in the Article 8 assessment."

8. In his 'factual grounds', the Applicant also contends that he has exhausted his remedies in respect of the Removal and Exclusion Orders, which he seeks to impugn in this application for judicial review, and he states that there is no alternative remedy available.

9. The order of this court (Meenan J.) of 26th June 2023 granting leave to apply for judicial review fixes the scope within which this application for judicial review proceeds. This is made clear by the terms of Order 84 of the Rules of the Superior Courts 1986, as amended ("RSC 1986") and in a number of the decisions of the Superior Courts.

10. Issues in relation to (i) new grounds being argued for at the hearing in the absence of leave (or an amendment) being applied for, or granted, and (ii) insufficient particularisation of grounds, are now the subject of well-settled case-law and are also reflected in Order 84 of the RSC, 1986. For example, O. 84, r. 20(1) RSC 1986 provides that "[n]*o application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule*." O. 84, r. 20(3) RSC 1986 provides that "[i]*t shall not be sufficient for an applicant to give as any of his grounds*

for the purposes of paragraphs (ii) or (iii) of sub-rule (2)(a)[2] *an assertion in general terms of the ground concerned, but the applicant should state precisely each such ground, giving particulars where appropriate, and identify in respect of each ground the facts or matters relied upon as supporting that ground*."

11. In *AP v Director of Public Prosecutions* [2011] IESC 2; [2011] 1 I.R. 729, the Supreme Court (Denham J., as she then was) observed, for example, at paragraph 7 of her judgment, that the order of the High Court granting leave to apply for judicial review determines the parameters of the grounds upon which the application proceeds. The process also requires the applicant to set out precisely the grounds upon which the application is to be advanced. On any such application, the High Court has jurisdiction to allow an amendment of the statement of grounds, if it thinks fit. Once an application for leave to appeal has been granted, the basis for the review by the court is established.

12. The Court of Appeal applied *AP v Director of Public Prosecutions* [2011] IESC 2; [2011] 1 I.R. 729 in its decision in *F.B. v the Minister for Justice & Equality* [2020] IECA 89 at paragraph 52 (per Collins J., with whom Costello J. and Ní Raifeartaigh J. agreed). In his judgment in *Reid v An Bord Pleanála (No.7)* [2024] IEHC 27 at paragraphs 48 to 58, Humphreys J. referred to many of the seminal decisions and leading authorities dealing with this issue before observing (at paragraph 58) "[w]*hile*

[2] O. 84, r. 20(2)(a)(ii) RSC 1986 refers to "*a statement of each relief sought and of the particular grounds upon which each such relief is sought*"; O. 84, r. 20(2)(a)(iii) RSC 1986 refers to "*where any interim relief is sought, a statement of the orders sought by way of interim relief and a statement of the particular grounds upon which each such order is sought*."

exact specification of every jot and tittle of a case is an impossible standard, an applicant can only be permitted to advance at a hearing a point that is acceptably clear from the express terms of the statement of grounds, subject to the grant of any order allowing an amendment."

13. Accordingly, the Applicant is confined to making arguments based on the grounds upon which leave to apply for judicial review was granted in the order of this court. The scrutinization of the decisions, line by line and paragraph by paragraph, can only be carried out (absent an application and granting of an amendment) in the manner provided for in the grounds set out in the Statement of Grounds which are the subject of the order granting leave to apply for judicial review. An applicant for judicial review is not at large to rely on counsel's presentation, notwithstanding the comprehensiveness and skill of the submissions made in this case, unless they are captured by the order granting leave to apply for judicial review. Leaving aside their relevance to the factual context of this judicial review application, what was described as the parsing of the two decisions, highlighting the differences between the first and second decisions, whether or not submissions were received, the difference between 3 years and 6 years insofar as the Exclusion Order is concerned, prison visits, whether the information about prison visits was accurate, and work related matters are, not matters which are set out in the Statement of Grounds upon which leave to apply for judicial review was granted.

Summary of the Applicant's case

14. The gravamen of the Applicant's case, as presented, centres on the Examination of File analysis and the assessment which underpins the 'reviewed decision' dated 23rd

March 2023. It is contended on behalf of the Applicant by Mr. Power SC that this reveals both errors of fact and of law (in terms of both process and substance) including a failure to give reasons, such that the decision of 23rd March 2023 should be quashed.

15. In summary, Mr. Power SC makes two central arguments: the first ground is in relation to *the form* of the Order. It is argued on behalf of the Applicant that the Orders do not specify a period within which the Applicant is to leave the State and that this breaches the Applicant's right to legal certainty in the context of fundamental EU Treaty rights; the second argument is in relation to the *substance* of the decision. It is contended that the Minister failed to carry out a proportionality assessment in accordance with Article 8 ECHR, as the decision was effectively predicated upon the fact that the Applicant had previously committed a crime when this, as a sole factor, is expressly prohibited and that these matters should have been put to the Applicant. These relate to the "*Examination of File*" upon which the Removal and Exclusion Orders are based.

16. Mr. Power SC seeks to distinguish the decision of the Supreme Court in *MAK v The Minister for Justice and Equality* [2018] IESC 18; [2019] 1 I.R. 217 as firstly, dealing with a deportation order, which is a different process, and secondly, in *MAK v The Minister for Justice and Equality,* a date was specified in the letter of notification which accompanied the deportation order. He also makes the point that *MAK v The Minister for Justice and Equality* (and a challenge to the deportation order process) was governed by the earlier decision of the Supreme Court (Hardiman J.) in *F.P. v*

Minister for Justice [2002] 1 I.R. 164 and submits that this is not the case in this application for judicial review and that the matter is *res integra*.

17. It is further submitted that the Minister has failed to give reasons for the computation of the three year exclusion period, notwithstanding that submissions (in relation to *inter alia* the Applicant's family, work and no further criminal behaviour and changed circumstances) were received by the Minister after the initial proposed period of three years was indicated and in the period between July 2021 and March 2023.

18. In making a contrast with the initial assessment, it is submitted that the Minister's 'Article 8' analysis in the 'reviewed decision' was deficient, in that the first instance decision contained an analysis and assessment of both private life and family life issues, whereas *private life* considerations were not analysed in the reviewed decision.

19. It was contended that there was an error of fact and law with regard to conclusions reached in the context of Applicant's *propensity and proclivity* to re-offend, which should have been put to the Applicant.

Summary of the Minister's case

20. Mr. Carolan SC submits that the Applicant's central argument is one that is centred on an alleged *lack of clarity* in the various aspects of the decision-making process, including the period of time, reasons, the duration during which the person is being excluded from the State but that the Applicant does not aver that any of these matters were unclear or ambiguous to him or his advisors.

21. It is submitted that in interpreting the Citizen's Rights Directive and the Regulations, I must look at both the orders in question and notifications and letters which accompanied the Removal and Exclusion Orders, *i.e.*, I must have regard to the context, purpose and intention of the legislative regime.

22. In summary, in their written and oral submissions, Mr. Carolan SC (with Mr. Murphy BL), submit – by reference to the Applicants' Statement of Grounds (set out earlier in this judgment) – that the following four issues arise in this application for judicial review:

    (1) whether the Removal and Exclusion Orders made in respect of the Applicant, affirmed by the Minister following review pursuant to Regulation 25 of the European Communities (Free Movement of Persons) Regulations 2015, S.I. 548/2015 ("the 2015 Regulations") ("the Review Decision") – are invalid by reason of: (a) non-indication on the face of the Removal Order itself of a final date by which removal must occur (Grounds e(i), e(ii), e(iii), e(iv) and e(v) of the Applicant's Statement of Grounds); or (b) non-indication on the face of the Exclusion Order of a date by which exclusion must commence (Grounds e(vi), e(vii), e(viii), e(ix) and e(x) of the Applicant's Statement of Grounds);

    (2) whether the Minister provided adequate reasons for the Removal and Exclusion Orders (Ground e(xi) of the Applicant's Statement of Grounds);

    (3) whether the Removal and/or Exclusion Order is dependent on any material error of fact (Ground e(xii) of the Applicant's Statement of Grounds); and

    (4) whether the Minister applied the correct legal test in making the Removal and Exclusion Orders (Ground e(xiii) Statement of Grounds).

23. On behalf of the Minister, it is submitted that the fact that the Removal Order does not itself specify a date by which the Applicant is required to leave the State does not mean the order is invalid. It is contended in this regard that no consequences are expressly provided for in the 2015 Regulations in respect of a Removal Order which does not specify a date on its face. Further, it is submitted that the Removal Order should be considered together with all of the relevant documentation, including the first and second notifications in accordance with Regulations 21(4)(b) and 23(6)(b) of the 2015 Regulations, at all stages, including before and after the review. Each Notification, for example, gave over a month's notice (in accordance with the 2015 Regulations) and contained a specific date for the Applicant's presentation to GNIB for the purpose of making arrangements for his removal from the State.

24. Insofar as the Exclusion Order is concerned, it is submitted on behalf of the Minister that the reference to "*up to 3 years*" does not create any uncertainty when read in conjunction with the Notifications which, taken together, make clear: (a) that the exclusion period is in fact one of 3 years; (b) provide a date for removal; and (c) confirm that the exclusion period is to run from that date.

TIMELINE, NOTIFICATIONS & DECISION-MAKING

28th July 2021

25. By notification dated 28th July 2021, the Removal Unit of the Repatriation Division of the Department of Justice informed the Applicant (who was at that time in prison) that the Minister was proposing to make removal and exclusion orders in relation to the

Applicant in accordance with Regulation 20(1)(b) and 23(1) of the 2015 Regulations for the following reasons:

"*The reason for the Minister's proposal is that it has been submitted that your presence in the State, through your personal conduct represent a genuine, present and sufficiently serious threat affecting the fundamental interests of society. You have come to the attention of An Garda Síochána and have been convicted of the following offences in the State: On 14/02/2020 you appeared at Castlebar Circuit Court charged with the following offences:*

- *Possession of Sale of Supply of Grigs Value €13,000 or more, Court Outcome-Imprisonment:5 years Suspended: 12 months Bound To Peace: 3 years*
- *Possession of Drugs Court Outcome -Taken into Consideration*
- *Possession of Drugs for the Purpose of Sale or Supply*
- *Court Outcome – Taken into Consideration*
- *Cultivation of Cannabis Plants or Opium Poppy*

  Court Outcome – Taken into Consideration

In addition, in accordance with Regulation 21(1) of the European Communities (Free Movement of Persons) Regulations 2015, the Minister proposes to place an Exclusion period on you preventing you from entering the State for a period of up to three years from the date of your removal".

26. The notification of 28th July 2021 also indicated to the Applicant that he was entitled to make representations to the Minister, within 15 days of its sending, as to the reasons why a Removal Order and Exclusion Order should not be made against him.

27. The Applicant, whilst in custody, made representations in the prescribed form, including setting out that the duration of his residence in the State had been from 10th February 2017 and the fact that he had an adult daughter also living in Ireland. The Applicant was released from custody in December 2021.

28. An assessment and recommendation under the heading '*European Communities (Free Movement of Persons) Regulations 2015 Removal and Exclusion of an EU National from the State*' was carried out by an official in the Removal Unit of the Repatriation Division of the Department of Justice, who recommended on 18th October 2022 that a Removal Order under Regulation 20(1)(b) of the 2015 Regulations and an Exclusion Order under Regulation 23(1) of the 2015 Regulations be made, removing the Applicant from the State and excluding him from the State for a period of 3 years.

First instance decision: 30th January 2023

29. By letter/notice dated 30th January 2023, the Applicant received both the signed Removal Order in accordance with Regulation 20(1)(b) of the 2015 Regulations and the signed Exclusion Order in accordance with Regulation 23(1) of the 2015 Regulations "*preventing* [the Applicant] … *from entering the State for a period of 3 years from the date of* [his] *removal*".

30. The letter/notice added:

"*As a European Citizen, you were previously entitled to live, work and reside in Ireland. This entitlement has now been withdrawn from you. As such and pursuant to Regulation 22(1) of the European Communities (Free Movement of Persons) Regulations 2015 you may be arrested and detained without further notice for the purpose of ensuring your removal from the State in accordance with the Removal Order attached*".

31. The Applicant was further advised that he may seek a review of any decision concerning his entitlement to be allowed to enter or reside in the State in accordance with Regulation 25(1) of the 2015 Regulations, within 15 working days of the signing of the Removal Order and Exclusion Order.

32. The notice further stated:

> "*In accordance with Article 30(3) of Directive 2004/38/EC please be aware the time allowed to you to leave the territory of the State shall not be less than one month from the date of this notification, save in duly substantiated cases of urgency. In order to facilitate your removal from the State pursuant to the provisions of Regulation 21(6) of the European Communities (Free Movement of Persons) Regulations 2015 you are required to:*
>
> *(i) present to the Member in Charge, booth 1, Garda National Immigration Bureau, 13-14 Burgh Quay, Dublin 2, on Wednesday 01/03/2023, at 10.45am to make arrangements for your removal;*

(ii) produce at that appointment any travel documents, passports, travel tickets or other documents in your possession to facilitate your removal;

(iii) reside at the above address pending your removal from the State;

(iv) notify such member of An Garda Síochána of any change of address;

Pursuant to the provisions of Regulation 21(7) of the European Communities (Free Movement of Persons) Regulations 2015 a member of An Garda Síochána or an Immigration Officer may, if he or she considers it necessary for the purpose of ensuring your removal, require you in writing to comply with any one or more of the acts specified in Regulation 21(6) of the above Regulations".

33. The Removal Order *inter alia* stated that pursuant to Regulation 20 of the 2015 Regulations, it required the Applicant "*to leave the State within the period ending on the date specified in the notice served on or given to you under the said Regulation 21(4).*"

34. The Exclusion Order *inter alia* imposed "*an exclusion period on* [the Applicant] *whereby* [he] *shall not re-enter or seek to re-enter the State up to 3 years.*"

35. It is submitted on behalf of the Applicant that the core issue in this case is whether the period within which he was required to leave the State (i) was required to be specified, and if so (ii) whether the period was in fact specified.

Reviewed Decision

36. By e-mail on 5th February 2023, the Applicant requested a review which was acknowledged by e-mail from the Repatriation Division of the Department of Justice on 7th February 2023. On 24th February 2023, the Applicant set out his 'representations' to the Minister for Justice, which *inter alia* included that his closest family members (his (adult) daughter, sister and cousin) lived and worked in Ireland and that he was in a relationship, that he recently started a job and had paid taxes, that he had not committed any criminal behaviour since getting out of prison, which he maintained all illustrated that he was not a threat to the public and that he would be very grateful for the opportunity to stay in the country which had become his real home.

37. On 23rd March 2023, the Removal and Exclusion Orders were *affirmed* on foot of an '*Examination of File*' (March 2023) and approved by the relevant Principal Officer.

38. The reviewed decision was notified to the Applicant under cover of letter dated 23rd March 2023, which *inter alia* referred to the Applicant being required to leave the State not "*less than one month from the date of this notification*" and the Exclusion Order having been "*signed in respect of* [the Applicant] *preventing* [the Applicant] *from entering the State for a period of 3 years from the date of* [the Applicant's] *removal.*" The notification dated 23rd March 2023 required the Applicant to present himself to the GNIB on 27th April 2023 at 12:00 to make arrangements for his removal from the State.

39. This decision was based on an assessment and recommendation dated 20th March 2023 from the Removal Unit and Repatriation Division of the Department of Justice which led to the decision of a Principal Officer of the Repatriation Division of the Department of Justice in March 2023 which stated:

> "*I have read and considered all the papers in this case.*
>
> [The Applicant's] *case was considered under Schedules 4 and 9 of the European Communities (Free Movement of Persons) Regulations 2015 and of the Prohibition of Refoulement, and found not to be an issue. His case has also been considered under Article 7 of the Charter of the Fundamental Rights of the European Union and Article 8 of the European Convention of Human rights and found not to be disproportionate to the legitimate aim being pursued.*
>
> *Therefore, I am affirming the Removal Order and Exclusion Order (excluding him from the State for 3 years) signed on 27/01/2023, authorising the removal and exclusion of* [the Applicant] *from the State*".

ASSESSMENT & DECISION

Extension of time

40. This application for judicial review predates the Rules of the Superior Courts (Order 84) 2024 (S.I. No.163 of 2024) which provides *inter alia* that an application for leave to apply for judicial review shall be 'made' when the documents grounding the application for judicial review are filed in the Central Office, or in urgent cases, before the High Court. Section 5(2) of the Illegal Immigrants (Trafficking) Act

2000 requires an application for leave to apply for judicial review of the matters referred to at section 5(1) to be made within 28 days of the date on which the person was notified of the decision, determination, recommendation, refusal or making of the Order unless the court considers that there is good and sufficient reason for extending the period within which the application shall be made. Applying the practice which operated at that time following the clarification of the process in the judgment of Donnelly J. in *Heaney v An Bord Pleanála* [2022] IECA 123,[3] the 'clock was stopped' by the application to Meenan J. on 28th April 2023 and the case adjourned to 26th June 2023. The notification dated 23rd March 2023 was received by the Applicant on 27th March 2023 and the 28 day period expired on 25th April 2023. This delay of three days (in contrast to the 51 days in *GK v The International Protection Appeals Tribunal* [2022] IEHC 204) is explained because of the occurrence of the Easter vacation and the unavailability of counsel. In the circumstances of the intervention of the Easter vacation and the delay of three days, I am satisfied to extend the time for the bringing of this application for judicial review.

41. For the following reasons, I am of the view that the each of the decisions which are sought to be impugned in this case along the spectrum of ministerial decision-making involved when withdrawing entitlements from a European citizen, such as the Applicant, and when issuing Removal and Exclusion Orders, were made in accordance with the 2015 Regulations, were reasoned and were made fairly and proportionately and are, therefore, lawful.

[3] The Court of Appeal comprised Donnelly, Ní Raifeartaigh and Collins JJ. (with Donnelly J. giving the judgment of the court).

42. The 2015 Regulations give effect to the Citizen's Rights Directive. Article 30 which deals with the 'Notification of decisions' and provides in Article 30(1) that "[t]*he persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.*" Article 30(2) states that "[t]*he persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security.*" The decisions taken in the decision-making process which gives effect to the process under Article 27(1) of the Citizen's Rights Directive must, therefore, be understood and be capable of being understood.

43. While the substance of the Removal and Exclusion Orders are addressed later in this judgment, insofar as a complaint is made that the Removal Order deviated from Schedule 10 of the 2015 Regulations which uses the formulation "*within the period ending on the …* ", the order refers to "*the period ending on the date specified in the notice served on or given to you under the said Regulation 21(4)*", and that notice contained a specific date for the Applicant's presentation to the GNIB for the purpose of making arrangements for his removal from the State. Taken as a whole, it could not be said that there was non-compliance with Article 30 of the Citizen's Rights Directive or that the documentation, taken together, could not be understood. Equally, insofar as the Exclusion Order and Schedule 12 of the 2015 Regulations is concerned there was 'substantial compliance' with Schedule 12 in circumstances where the commencement date of the exclusion period was clear from the entirety of the notices given to the Applicant. Further, I agree with the submission made on behalf of the Minister that the use of the word '*shall*' in Regulation 23(13) of the 2015 Regulations

is directory and where – by reference to the judgment of Henchy J. in *State Elm Developments v An Bord Pleanála* [1981] I.L.R.M. 108 at page 110 – the '*form*' of the Exclusion Order in Schedule 12 is not *an integral and indispensable part of the statutory intendment* and "*of the substance of the aim and scheme of the statute*", in circumstances where the relevant information was given to the Applicant through notification in accordance with Regulation 23(6)(b) of the 2015 Regulations.

44. It is not surprising that the State, when seeking to implement the Citizen's Rights Directive, did so in a manner that was similar to how it regulated the deportation order process. In both *F.P. v Minister for Justice* [2002] 1 I.R. 164 and *MAK v The Minister for Justice and Equality* [2018] IESC 18; [2019] 1 I.R. 217, the Supreme Court held that the deportation process could be communicated in a letter or notification and documentation which accompanied the actual deportation order.

45. In *F.P. v Minister for Justice* [2002] 1 I.R. 164 at page 175, Hardiman J. observed as follows in relation to the 'Form of Order':

> "*A further point taken on behalf of the applicants was that the deportation order itself, as opposed to the notification of the decision, should contain the reasons for the Minister's decision and the date of effect of the deportation. I can see no substance in this point. The statutory obligation on the Minister is to notify the applicant in writing of his decision and of the reasons for it. He is entitled to do so by letter if he wishes and this indeed is the most obvious way to do so. Section 3(7) of the Act of 1999 provides that: "A deportation order shall be in the form prescribed or in a form in the like effect." The*

form actually employed in these cases is the form prescribed by The Immigration Act, 1999 (Deportation) Regulations, 1999. Moreover, the letter in each case refers to the order, a copy of which is enclosed with it. I can see no substance whatever in any submission that there is inadequacy, technical or otherwise, in either the letter or the order or in both of them taken together."

46. In *MAK v The Minister for Justice and Equality* [2018] IESC 18; [2019] 1 I.R. 217 at page 226, O'Donnell J. (as he then was) stated at paragraph 11 as follows:

"*In any event, on this appeal, counsel for the applicant accepted, realistically, that it was part of the ratio decidendi of F.P. v. Minister for Justice [2002] 1 I.R. 164 that the form prescribed by the 1999 Regulations was not defective by failing to prescribe in it the date of effect of the deportation, and accordingly the decision was binding on the High Court. However, he wished to invite this court to overrule it. This necessarily involves a consideration of the circumstances in which this court may depart from and overrule one of its previous decisions*".

47. Further, in *MAK v The Minister for Justice and Equality* [2018] IESC 18; [2019] 1 I.R. 217 at pages 232-233, O'Donnell J., at paragraphs 20-21, stated as follows:

"*[20] It is easy to state the appellant's argument in this regard, although it was put with force and ingenuity by his counsel. It is said, that the requirement of s.3(1) is mandatory and requires in effect that the date by which a person is required to leave the State should be*

contained in the body of the deportation order itself. In this regard counsel relies on the fact that s.3(1) refers to the period being "specified". However, and whatever the merits of this interpretation it cannot be said to be the only interpretation of the section. Rather as the respondent points out the Act does not require that the date be specified in the deportation order: rather it requires that the period is specified. It is argued therefore that a period is indeed specified in the deportation order, namely the period ending on the date set out in the s.3(3)(b)(ii) notice. Furthermore, the respondent argues that it is possible to read the documents together, and therefore even if it is considered that a date need have been specified in the deportation order, the principle of incorporation by reference can apply where the deportation order is brought to the appellant's notice by the service upon him of the s.3(3)(b)(ii) notice enclosing the order and containing the date.

[21] It is certainly the case that if this matter were res integra that it could be recognised that there is some force in the appellant's arguments. However, this question must be approached both through the Barras principle[4] *and the test set out in Mogul of Ireland v. Tipperary (N.R.) C.C. [1976] I.R. 260. First, it is noteworthy that the decision in F.P. v. Minister for Justice [2002] 1 I.R. 164 made specific reference to the fact that the order in question was in precise conformity with the terms contained in the 1999 statutory instrument. Given the central importance of deportation in immigration matters it*

[4] *Barras v Aberdeen Steam Trawling and Fishing Co.* [1933] A.C. 402.

seems reasonable to assume that had any doubt been expressed as to the conformity of that form with the requirements of the Act, it would have been changed long ago. Given the notorious fact that deportation orders and notices under s.3(3)(b)(ii) are regularly and continually the subject of legal challenge, it would, to put it at a minimum, be unsurprising that a form which had received approval in the decision of the Supreme Court would continue to be employed. Here in the language of Mogul of Ireland v. Tipperary (N.R.) C.C., there are no new factors, no shift in the underlying considerations, and no suggestion that the decision has produced untoward results, not within the range of the court's foresight when F.P. v. Minister for Justice was decided. Furthermore the decision has to that extent become inveterate and acted on, on that basis to such an extent that greater harm would result from overruling it than from allowing it to stand. It is sufficient to decide this case to conclude that there are competing interpretations of the section, one of which has been adopted by this Court. The best that can be said of the interpretation for which the appellant contends is that it may have force, but it is not unanswerable. But it is not for this Court to choose between interpretations as if the matter came before the Court for the first time. The approach of the courts to a provision which has been the subject of consideration by both the judicial and legislative branches is well established and provides clear guidance in this case. Adopting the language of Henchy J. in Mogul of Ireland v. Tipperary (N.R.) C.C. it has not been shown that the decision in F.P. v. Minister for

Justice [2002] 1 I.R. 164 was clearly wrong, nor that justice requires that it should be overruled. Accordingly, I would dismiss the appeal and uphold the decision of the High Court refusing leave to seek judicial review."

48. In addition, whilst it is contended on behalf of the Applicant that the observations of Humphreys J. in *Mirga v GNIB and Minister for Justice & Equality* [2016] IEHC 545 were *obiter*, at paragraph 4 of his judgment, Humphreys J. refers to the background circumstances of the case involving the Minister having issued a notice of a removal order to the applicant stating that "*the time allowed to you to leave the territory of the State shall not be less than one month from the date of this notification*". In *Mirga*, the Minister had required the applicant to leave the State "*within the period ending on the date specified in the notice served on or given to you under the said Regulation 20(3)(b)(ii)*" of the European Communities (Free Movement of Persons) (No. 2) Regulations, 2006 (S.I. 656/2006). Notwithstanding his findings that the proceedings were out of time, having regard to section 5 of the Illegal Immigrants (Trafficking) Act 2000 and Order 84 of the Rules of the Superior Courts 1986, Humphreys J. at paragraphs 18 and 19 of his judgment considered the merits of the application, stating *inter alia* at paragraph 18 that "[t]*he provision for a removal order under the 2006 Regulations envisages that the time specified in a removal order (unless certified as urgent) shall be "not less than" one month by virtue of r. 20(1)(b). This language reflects art. 30.3 of directive 2004/38/EC where, save in duly substantiated cases of urgency the time for removal shall be "not less than one month" from the date of notification of a removal order.*"

49. At paragraph 19 of his judgment, Humphreys J. emphatically rejected the main argument made on behalf of the Applicant, in that case, holding that the "*complaint that the notice does not include a specific date and does not contain an outer limit, but merely says that the time allowed shall "not be less than one month" from the date of the notice, lacks substance. The language of "not less than one month" derives from both the directive and the regulations and amply gives the applicant notice to allow him both to put his affairs in order and to challenge the decision, which he conspicuously failed to do. A purposive interpretation of the directive and the 2006 regulations does not preclude a form of words such as that adopted in this case. The challenge is devoid of merit.*"

50. In *Mirga* Humphreys J., therefore, rejected the argument that a Removal Order must contain a 'back-stop' date and the consequential argument that not doing so somehow vitiated the removal order notification or that the accompanying notification was in some sense deficient.

51. In the case before me, there is no basis, factually, for the Applicant to contend in this application for judicial review that he did not understand the Removal or Exclusion Orders or that there is a lack of clarity. The documentation as a whole has to be considered and the Applicant here, in my view, received sufficient information to enable him to understand what is required from the perspective of his removal and exclusion and he does not complain in any affidavit before the court that he did not understand otherwise.

Removal Order

52. Regulation 20 of the 2015 Regulations deals with removal orders in general. Regulation 20(2) of the 2015 Regulations provides that a removal order shall require the person in respect of whom it is made to leave the State within the period specified in the order with Regulation 20(3), stating that this period shall not be less than one month (unless there is a ministerial certification of urgency).

53. Regulation 21 of the 2015 Regulations addresses the procedural requirements of Removal Orders.

54. Regulation 21(4)(*a*) of the 2015 Regulations provides that where the Minister decides not to make a removal order, he or she shall notify the person of that fact. Regulation 21(4)(*b*) provides that where the Minister decides to make a removal order, he or she shall, in writing and in a language that the person may reasonably be expected to understand, notify the person concerned of that fact and the notification shall, unless the Minister certifies that it would endanger the security of the State to make them known, contain the reasons for the making of the order.

55. Regulation 21(5) of the 2015 Regulations provides that a notification under paragraph (4)(*b*) shall be accompanied by the removal order and the person shall comply with the order and the notification.

56. Regulation 21(6) of the 2015 Regulations provides that a notification under paragraph (4)(*b*) may require the person the subject of the removal order, to do any one or more of the following for the purpose of ensuring his or her removal from the State: (a)

present himself or herself to such member of the Garda Síochána or immigration officer at such date, time and place as may be specified in the notice; (b) produce any travel document, passport, travel ticket or other document in his or her possession required for the purpose of such removal to such member of the Garda Síochána or immigration officer at such date, time and place as may be specified in the notice; (c) co-operate in any way necessary to enable a member of the Garda Síochána or immigration officer to obtain a travel document, passport, travel ticket or other document required for the purpose of such removal; (d) reside or remain in a particular district or place in the State pending removal from the State; (e) report to a specified Garda Síochána station or immigration officer at specified intervals pending removal from the State; and/or (f) notify such member of the Garda Síochána or immigration officer as may be specified in the notice as soon as possible of any change of address.

57. The 2015 Regulations afford the Minister a *discretion* as to the manner in which a removal order is given effect to and a number of alternatives are available. This discretion, and as a corollary, the range of options open to the Minister was recognsied, albeit in the context of deportation orders, by the Supreme Court in *MAK v The Minister for Justice and Equality* [2019] 1 I.R. 217 at page 232 where at paragraph 20 of his judgment, O'Donnell J. observed in response to counsel's argument that the reference in section 3(1) of the Immigration Act 1999 to the period being specified was mandatory and required *the date* by which a person was required to leave the State to be stated in the body of the deportation order itself, was only one of a number of possibilities and was *not* the *only* interpretation of that section.

58. Accordingly, while the provision of date in a Removal Order is an option, it is *not* the *only* option. Thus whilst the power of arrest and detention for purposes of removal from the State in Regulation 22(2)(a) of the 2015 Regulations – where the person who is the subject of a Removal Order has failed to leave the State within the time specified in the order – envisages a date being given in the Removal Order, equally the power of arrest and detention for purposes of removal from the State in Regulation 22(2)(b) of the 2015 Regulations – where the person who is the subject of a removal order has failed to comply with a requirement in a notification under Regulation 21(4)(*b*) or a requirement under Regulation 21(7) – contemplates non-compliance with the letter of notification.[5]

59. In this case, for example, Regulation 21(4)(b) of the 2015 Regulations provides that where the Minister decides to make a Removal Order, he or she shall, in writing and in a language that the person may reasonably be expected to understand, notify the person concerned of that fact and the notification shall, unless the Minister certifies that it would endanger the security of the State to make them known, contain the reasons for the making of the order. Regulation 21(6) of the 2015 Regulations expressly provides that a notification under Regulation 21(4)(b) may require the person the subject of the Removal Order to do any one or more of the following for the purpose of ensuring his or her removal from the State, including presenting

[5] The third alternative scenario in which the powers of arrest and detention for the purposes of removal from the State can be exercised is set out in Regulation 22(2)(c) of the 2015 Regulations when an immigration officer or member of An Garda Síochána suspects that the person may seek to avoid removal from the State in accordance with the removal order.

themselves to such member of the Garda Síochána or immigration officer at such date, time and place as may be specified in the notice, which is what occurred in this instance.

60. In the letter of notification dated 23rd March 2023, the Applicant was *inter alia* informed that in accordance with Article 30(3) of the Citizen's Rights Directive, the time allowed for him to leave the territory of the State shall not be less than one month from the date of the notification (except in a case of urgency). As the date of the notification is dated 23rd March 2023, the Applicant was aware that he had at least 4 weeks from then to prepare for his removal.

61. The Applicant was then informed that in order to facilitate his removal from the State pursuant to Regulation 21(6) of the 2015 Regulations he was *inter alia* required to present to the Member in Charge, Booth 1, Garda National Immigration Bureau, 13-14 Burgh Quay on *27th April 2023 at 12.00 hours* to make arrangements for his removal. The earlier letter of notification dated 30th January 2023, before the review process was set in train, was couched in similar terms where the Applicant was informed at that time that in order to facilitate his removal from the State pursuant to Regulation 21(6) of the 2015 Regulations he was *inter alia* required to present to the Member in Charge, Booth 1, Garda National Immigration Bureau, 13-14 Burgh Quay on *Wednesday 1st March 2023 at 10.45* to make arrangements for his removal.

Exclusion Order

62. Exclusion Orders are addressed in Regulation 23 of the 2015 Regulations.

63. Regulation 23(1) of the 2015 Regulations provides that under and subject to this Regulation, the Minister may make an order ("exclusion order") in respect of a person where in the opinion of the Minister, the person represents a danger for public policy or public security by reason of the fact that his or her personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

64. Regulation 23(2) of the 2015 Regulations provides that an exclusion order shall require the person in respect of whom it is made, for the period specified in the order ("exclusion period"), not to enter the State.

65. Regulation 23(6)(*b*) of the 2015 Regulations provides that where the Minister decides to make an exclusion order, he or she shall, in writing and in a language that the person may reasonably be expected to understand, notify the person concerned of that fact and the notification shall, unless the Minister certifies that it would endanger the security of the State to make them known, contain the reasons for the making of the order, with Regulation 23(7) of the 2015 Regulations providing that the notification referred to in Regulation 23(6)(b) shall be accompanied by the exclusion order and the person shall comply with the order.

66. As referred to earlier, Regulation 23(13) of the 2015 Regulations provides that an exclusion order shall be in the form set out in Schedule 12 and shall be accompanied by such information as is necessary to inform the person concerned of the administrative and judicial authorities with whom he or she may lodge an application for a review.

67. In the letter of notification dated 23rd March 2023, the first paragraph refers to "*an Exclusion Order for a period of 3 years in accordance with the provisions of Regulation 23 of the Regulations, in respect of you and your subsequent request for a review of said decision*". The second paragraph of this letter refers to the "*decision to make a Removal Order and an Exclusion order for a period of 3 years has been reviewed in accordance with Regulation 25 of the Regulations and the provisions of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (the "Directive.")*." The sixth paragraph stated "[i]*n addition, I wish to inform you that the Exclusion Order signed in respect of you preventing you from entering the State for a period of 3 years from the date of your removal in accordance with Regulation 23(1) of the European Communities (Free Movement of Persons) Regulations 2015 has now been affirmed*." The period of three years is to run from the date of the Applicant's removal in accordance with Regulation 23 of the 2015 Regulations.

68. The Examination of File document dated March 2023 under the sub-heading 'Procedure' *inter alia* states that "*on 27/01/2023, and in accordance with the provisions of Regulation 23 of the Regulations, it was determined that an Exclusion Order preventing the applicant from entering the State for a period of 3 years should be made*".

69. Later in that document, under the general sub-heading "[c]*onsideration under Article 7 of the Charter of the Fundamental Rights of the European Union (2000/C 364/01) and Article 8 of the European Convention of Human Rights (ECHR)" and the further*

sub-heading "Private and Family Life"" it is stated as follows: "[a]s *such, on the basis of the information known to the Minister, and as duly considered above, it is considered that the making of a Removal Order and the applicant's exclusion from the State for a period of 3 years would not unduly interfere with the applicant's family life under Article 7 of the Charter of the Fundamental Rights of the European Union and Article 8 of the ECHR*".

70. In the next sub-heading in that document, "*Conclusion*", the following is stated: "[i]*t is therefore submitted that the affirming of the Removal Order and the Exclusion Order for a period of 3 years is proportionate and reasonable to the legitimate aim being pursued and is required on serious grounds of public policy and public security*", and "[t]*aking into account the above information, there exists substantial reasons associated with the common good which require the removal and exclusion of the applicant from the State. Therefore, on the basis of the foregoing, I recommend that the Removal Order and Exclusion Order made on 27/01/2023 be affirmed on the grounds that the applicant's presence in the State represents a serious threat to public policy and to public security, and on this basis his removal from the State for a 3-year period is justified at this time*". Under the sub-heading "*Decision*", following the "*Recommendation*" dated 20th March 2023, the following is stated: "*I have read and considered all the papers in this case.* [The Applicant's] *case was considered under Schedules 4 and 9 of the European Communities (Free Movement of Persons) Regulations 2015 and of the Prohibition of Refoulement, and found not to be an issue. His case has also been considered under Article 7 of the Charter of the Fundamental Rights of the European Union and Article 8 of the European Convention of Human Rights and found not to be disproportionate to the legitimate aim being pursued.*

Therefore, I am affirming the Removal Order and Exclusion Order (excluding him from the State for 3 years) signed on 27/1/2023, authorising the removal and exclusion of [the Applicant] *from the State*."

71. In the earlier part of this judgment, I made reference to Article 30(1) which makes provision for notification and in particular that "[t]*he persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them*" and also Article 30(2) which states that "[t]*he persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the deicison taken in their case is based, unless this is contrary to the interests of State security.*" Having regard to the factual background in this case (as set out above), there is, in my view, no basis for asserting that there was a lack of clarity in relation to the Exclusion Order, or that the process – with which the Applicant was engaged – leading up to it was unclear or unfair. Accordingly, there is no basis for contending that the Exclusion Order should be quashed.

Reasons

72. At no stage did the Applicant aver that he did not understand what the purposes of the Removal and Exclusion Orders were insofar as he was concerned.

73. There is no requirement, in the circumstances of this case and having regard to my findings in relation to the Removal and Exclusion Orders, to indicate why a particular time period is chosen relative to another or different time period. In *PR & Ors v The Minister for Justice & Equality (No. 3)* [2019] IEHC 596, Keane J. had, in an earlier

judgment,[6] refused the applicant's challenge to a reviewed decision (under the predecessor regulatory framework) excluding a Polish national from the State for a period of seven years. The court had left over for further argument the issue as to whether the Minister's decision failed to give reasons for fixing an exclusion period of seven years and, if so, whether that failure rendered the decision invalid and required it to be quashed and asked the parties to address the issue in the context of the decision handed down (after the hearing had occurred before Keane J.) by the Court of Appeal in *Balc & Ors v Minister for Justice* [2018] IECA 76.[7] At paragraphs 44 to 46 of his judgment, Keane J. held as follows:

> "*(44) Thus, in my judgment, the crucial point of distinction between the circumstances of this case and those of Balc, is the conclusion of the Court of Appeal in the latter that proportionality had not been properly assessed because Mr Balc's prospects for rehabilitation had not been properly considered. I read the comments of Peart J. at paragraph 124 of the Court of Appeal judgment concerning the Minister's failure to provide reasons for an exclusion period of five years, rather than for some lesser period, as flowing specifically and exclusively from that conclusion.*
>
> *(45) There is no mathematical formula that can be applied to the calibration of an exclusion period whereby it can be said that one of, say, seven years is correct and one of six years or eight years incorrect.*

[6] *PR & Ors v Minister for Justice and Equality & Ors (No. 2)* [2018] IEHC 269.

[7] Judgment was delivered by Peart J., with Ryan P. and Hedigan J. concurring.

(46) It is useful to consider sentencing law and practice as a form of loose analogy. While the purposes of punishment consequent upon criminal conviction may be different from those of measures restricting the free movement of Union citizens on grounds of public policy, it is well established that the principle of proportionality is central to both. In respect of the former, O'Malley, Sentencing Law and Practice, 2nd ed. (2006) states (at 5.01): 'The most fundamental principle of sentencing so far developed by the Irish courts is that a sentence must be proportionate to the gravity of the offence and the personal circumstances of the offender."

74. In this case, the letter of notification dated 23rd March 2023 is predicated on the recommendation and decision in the "*Examination of File*" (March 2023) which discusses under the sub-heading "*Consideration under Article 7 of the Charter of the Fundamental Rights of the European Union (2000/C 364/01) and Article 8 of the European Convention of Human Rights (ECHR)*" and the further sub-heading *"Private and Family Life*" including issues such as the Applicant's adult daughter, his sister and his cousin residing in the State, the Applicant's reference to being in a serious relationship, the information in prison logs, information in relation to employment and *inter alia* stated as follows:

"*It must be remembered that it is* [the Applicant] *alone who is being considered for removal from the State. It would be open for the applicant and his partner, and indeed the relatives listed above, to return to Lithuania, or whatever country the applicant chooses to reside in. Further, the applicant could choose to reside in another EU*

Member State closer to Ireland which would permit him and his family and/or his girlfriend to maintain their relationship during his period of exclusion from the State through communications and visits. This is ultimately a decision for them to make.

As such, on the basis of the information known to the Minister, and as duly considered above, it is considered that the making of a Removal Order and the applicant's exclusion from the State for a period of 3 years would not unduly interfere with the applicant's family life under Article 7 of the Charter of the Fundamental Rights of the European Union and Article 8 of the ECHR".

75. The Applicant contends that the Minister erred in the consideration of his rights under Article 8 ECHR and failed to conclude whether his Article 8 rights were engaged and, if so, whether any such rights were justifiably restricted pursuant to Article 8(2) and failed to provide adequate reasons in the Article 8 assessment.

76. As just set out, the Applicant's Article 8 rights were also addressed and considered in the Examination of a File under these sub-headings and Applicant's criticism that these matters were addressed under the single sub-heading of "*Private and Family Life*" does not detract from the fact that the substance of these matters *were* considered.

77. The Applicant argues that the Minister's assessment that the Applicant had a proclivity or propensity to re-offend was based on the fact of his conviction.

78. However, the Minister's reasoning and decision does not say that solely because of *the fact* of the Applicant's conviction, he should be removed and excluded. They are rather based on *the manner* in which the offences were committed. In *J.B. v The Minsiter for Justice and Equality & Ors* [2022] IECA 89, at paragraph 46, the Court of Appeal[8] applied the judgment of the CJEU in *P.I. v Oberbürgermeisterin der Stadt Remscheid* (Case C-348/09) EU:C:2012:300, where at paragraph 28 of its judgment the CJEU *inter alia* held that it was "*open to the Member States to regard criminal offences such as those referred to in the second paragraph of Article 83(1) TFEU as constituting a particularly serious threat to one of the fundamental interests of society, which might pose a direct threat to the calm and physical security of the population and thus be covered by the concept of "imperative grounds of public security", capable of justifying an expulsion measure under Article 28(3) of Directive 2004/38, as long as the manner in which such offences were committed discloses particularly serious characteristics, which is a matter for the referring court to determine on the basis of an individual examination of the specific case before it*".

79. In the Applicant's case, the Minister found that the manner in which the offences were committed were premeditated and planned, illustrated that the Applicant had access to and knowledge of persons involved in the illegal drugs trade on a continuous basis and illustrated a disregard for the legal system and legal rules. For example, in the "Examination of File" (March 2023) under the sub-heading "*Considerations in respect of Regulation 20(1) of the European Communities (Free Movement of Persons (Regulations), 2015*", the following is stated:

[8] Ní Raifeartaigh J. and Power J. agreed with the judgment of O'Connor J.

"*it is not unreasonable for the Minister to conclude that shortly after the applicant's arrival in the State, he engaged in criminal activity without consideration for his behaviour and its impact upon his victims and society as a wider whole. One does not just set up an operation for growing and cultivating cannabis with a value of €93,500.14 overnight. This indicates that the applicant was an active player in a drugs growing operation which required a large amount of premeditation and planning. The illegal drug trade in Ireland is the cause of many social problems and associated criminality in the State and the applicant's role in cultivation of drugs underlines the view that he is a threat to public's safety and to the social fabric within the State …*

That the applicant was an active player in a drugs growing operation which required a large amount of premeditation and planning along with contacts and as association with others involved in the drugs trade in the State, it is considered that the applicant's disregard for the Irish legal system shows him to be a danger to the public and, it is contended, indicates a proclivity to re-offend. As previously stated, the State has a duty to protect its citizens in the interests of the common good …

As previously stated, such an activity requires a large amount of premeditation and planning and it is contended that the applicant's association with contacts within the drug trade in the State

demonstrates a propensity to re-offend. It underlines the view that the applicant's presence in the State, at the very least, is contrary to public policy and public safety and is a disturbance to social order in the State. It is therefore considered that these factors necessitate the signing of a Removal Order and an Exclusion Order on the basis that the applicant's presence in State is a serious threat to public safety and public policy in the State".

80. I, therefore, refuse the Applicant's arguments that there a was failure to give reasons as contended for.

81. I am not satisfied that the Applicant in this case has established any basis for successfully impugning the reviewed ministerial decision dated 23rd March which affirmed the previous decisions to make Removal and Exclusion Orders, and in the circumstances, I refuse the Applicant's application for the reliefs sought by way of judicial review.

PROPOSED ORDER

82. I shall make an order refusing the Applicant the reliefs claimed by way of application for judicial review.

83. I shall put the matter in before me on Wednesday 5th June 2024 at 10:30 to address the question of costs and any ancillary or consequential matters.