



THE SUPREME COURT

[Record no. 2021/64]

[2022] IESC 48

MK

Appellant

v.

THE MINISTER FOR JUSTICE AND EQUALITY

Respondent

Judgment of Ms. Justice Iseult O'Malley delivered the 24th November 2022

1. I do not propose to add anything substantive to the debate in this appeal. However, as the Court is divided on both the issues and the outcome, it may be helpful if I indicate my position.
2. I agree with all the other members of the Court that the sequencing of the decision made by the respondent in the appellant's case was flawed, insofar as it was based on the judgment of the Court of Appeal in *C.I. & Ors. v. The Minister for Justice, Equality & Law Reform* [2015] IECA 192, [2015] 3 I.R. 385 and the decision of the House of Lords in *R (Razgar) v. Secretary of State for the Home Department* [2004] UK HL 27, [2004] 2 AC 368.

3. I agree with the Chief Justice and with Hogan J. that the flaw, which is most fully explained in the judgment of MacMenamin J., does not have the effect in this particular case of invalidating the decision of the respondent. I would therefore not agree that an order of *certiorari* is necessary or appropriate.
4. An issue has been raised as to the potential role of Articles 40.1, 40.3 and 40.6 of the Constitution in the context of proposed deportations. Having regard to the particular circumstances in this appeal, I do not see that such considerations could add to the well-established principles relating to Article 8 of the European Convention on Human Rights in a way that would have any discernible impact on the appellant's case. I do not, therefore, consider it to be necessary to determine the inter-relationship between these provisions and prefer to reserve my position for a more appropriate case.
5. Accordingly, I would dismiss the appeal.