



**In the Upper Tribunal
(Immigration and Asylum Chamber)
Judicial Review**

JR/1231/2020

In the matter of an application for Judicial Review

The Queen on the application of

**X and Y
(ANONYMITY ORDER MADE)**

Applicant

and

**THE SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Respondent

ORDER

BEFORE Upper Tribunal Judge O'Callaghan

HAVING considered all documents lodged concerned with an application for permission to appeal to the Court of Appeal

AND UPON the Tribunal having ordered on 10 January 2022:

- (1) The application for judicial review is dismissed.
- (2) The Applicants to pay the Respondent's reasonable costs subject to the costs protection pursuant to section 26(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and Reg. 12 of the Civil Legal Aid (Costs) Regulations 2013.
- (3) The Applicants' legal aided costs be subject to a detailed assessment.

IT IS FURTHER ORDERED THAT:

- (1) Permission to appeal is refused. For the reasons detailed in the decision of 19 January 2022, there would be no merit in an appeal.

**Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan**

Dated: 19 January 2022

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): **19 January 2022**

Solicitors:

Ref No.

Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).



Case No: JR/1231/2020

**In the Upper Tribunal
(Immigration and Asylum Chamber)**

Field House
Breams Buildings
London, EC4A 1WR

19 January 2022

**Before
UPPER TRIBUNAL JUDGE O'CALLAGHAN**

Between

REGINA

On the application of

**X and Y
(ANONYMITY ORDER MADE)**

Applicant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**DECISION AND REASONS
ON APPLICATION FOR PERMISSION TO APPEAL**

Judge O’Callaghan:

By its judgment of 10 January 2022, the Tribunal confirmed an anonymity order sent to the parties on 13 July 2020 in the following terms:

Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the applicants. This order applies to, amongst others, the applicants and the respondent. Any failure to comply with this order could give rise to contempt of court proceedings.

- 1.** The handing down of this decision on an application for permission to appeal at a hearing held at Field House on 19 January 2022 constitutes the final hearing of the disposal of immigration judicial review proceedings for the purpose of rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Tribunal having acceded to the respondent’s request to file a response to the applicant’s submissions on permission to appeal.
- 2.** By means of this claim filed with the Tribunal on 17 April 2020 the applicants challenged on public law grounds a take charge request (‘TCR’) decision made under the Dublin III Regulation, dated 21 October 2019, and the respondent’s subsequent rejection of the first and second re-examination requests by decisions dated 17 January 2020 and 19 February 2020. By amended grounds of claim dated 28 May 2020 the applicants challenged a third rejection of a re-examination request dated 5 May 2020.
- 3.** By a judgment of this Tribunal dated 10 January 2022 the applicants’ claim was dismissed. By operation of Article 22(1) of the Regulation the United Kingdom accepted the TCR by default on 20 August 2019, two months after it was made by the Greek authorities. By operation

of Article 29(2) responsibility for the applicants' international protection claims transferred back to Greece on 20 February 2020. The operation of time limits was a complete answer to the applicants' claims.

4. Permission to appeal to the Court of Appeal is refused for the reasons detailed below.

Ground 1

5. In *X and X v. Staatssecretaris van Veiligheid en Justitie* EU:C:2018:212, EU:C:2018:900, [2019] 1 W.L.R. 4924 the CJEU expressly confirmed the mandatory nature of time limits set out in the Regulation.

6. Ground 1 is unarguable. The applicable mandatory time limits were entirely unaffected by the circumstances arising in this matter for the reasons addressed in the judgment.

7. The application of mandatory time limits was determinative of the public law challenge.

Grounds 2 to 5

8. For the reason identified at paragraph 7 above, there are no merits to grounds 2 to 5. There is merit to the respondent's observation that there is an air of unreality to the complaints advanced by grounds 2 to 5, which ultimately fail to engage with the operation of relevant time limits.

9. Having concluded that the United Kingdom's acceptance of the TCR by default on 20 August 2019 and that responsibility for the applicants' international protection claims transferred back to Greece

on 20 February 2020 was a complete answer to the applicants' claim, the Tribunal took the opportunity to address certain matters addressed at the hearing by means of a postscript. The challenges identified at grounds 2 to 5 are directed to these *obiter* remarks.

- 10.** For the reasons detailed in the judgment the respondent's original TCR decision and the decisions made in respect of the first two re-examination requests enjoyed no legal force or effect. There is no requirement for an effective remedy in relation to these decisions issued at a time when the applicants had secured what they wanted, namely the (default) acceptance by the United Kingdom of responsibility for their international protection claims. Further, the failure to respond to the TCR within the two-month period is addressed by the Regulation, which provides a remedy of default acceptance.
- 11.** In respect of article 8 ECHR (article 7 CFR) the grounds of appeal fail to engage with the Tribunal's observations at [106]-[108].
- 12.** Grounds 2 to 5 enjoy no merit.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 19 January 2022