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Ireland - C.I., T.I., T.T.I. and T.T.I. -v- Minister for Justice Equality and Law Reform, Attorney General and Ireland [2015] IECA 193. Judgment by Finlay Geoghegan J.

Country of Decision:

Ireland

Country of Applicant:

Nigeria

Date of Decision:

30-07-2015

Citation:

C.I. & ors -v- Minister for Justice Equality and Law Reform & ors [2015] IECA 192

Court Name:

The Court of Appeal

Keywords:

Child Specific Considerations

Family member

Family unity (right to)

Relevant Legislative Provisions:

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 3](#) [2]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 8](#) [3]

Headnote:

The right to private life under Article 8 ECHR can involve social and community ties in the host State. The right to private life involves an assessment of a person's right to moral and physical integrity. Where such rights are engaged a decision relating to the removal of a person from the State must be assessed against the gravity of the consequences on such ties.

When considering if the right to respect for private life is engaged in relation to an individual

who has never been permitted to reside in the host State (other than pending a decision on an asylum claim), it is permissible to take into account that the private life developed at a time when the right of the individual to remain in the State is precarious.

Facts:

The applicants are citizens of Nigeria. The first named applicant is the mother of the second, third and fourth named applicants.

She first made an application for asylum on the 17th February, 2005, and included in her claim the second and third named applicants who were born in 2002 and 2004.

Her application for asylum was rejected both by the Commissioner and the Tribunal and on the 28th September 2005, the Minister refused them declarations of refugee status. Deportation orders were subsequently made against them on the 4th May, 2006 and notified by letter dated the 19th May, 2006.

The first, second and third named applicants then requested revocation of the deportation orders on a number of occasions between May 2006 and March 2009. Those requests were unsuccessful and the deportation orders were affirmed on the 2nd September, 2009.

In the meantime the fourth named applicant was born in the State on the 25th January, 2006. Application was made unsuccessfully on her behalf for a declaration of refugee status. An application for leave to remain in the State was then made pursuant to s. 3 of the Immigration Act 1999. That was unsuccessful and the Minister made a deportation order in respect of the fourth named applicant on the 2nd September, 2009. Motions seeking leave to issue judicial review proceedings to challenge the two decisions of the 2nd September, 2009, were issued on the 26th September, 2009 and a 'telescoped' application was heard by the High Court.

The High Court's judgment hinged on whether the deportation orders issued against C.I. and her children would have consequences of such gravity as to potentially engage their right to private family life, as specified in Article 8 of the ECHR. The High Court found that the Minister had incorrectly applied the five questions espoused by Bingham in *Regina v. Secretary of State for the Home Department ex parte Razgar* when assessing whether a deportation order interferes with Article 8 rights. The Court advanced that 'a deportation will always engage the right to respect for private life once it is established that private life as understood in Convention terms was experienced in the state,' however the main focus of any order and subsequent effect on Article 8 ECHR rights will squarely fall on an assessment of proportionality.

The Minister later appealed the High Court's ruling and the question before the Court of Appeal centred on whether the High Court had erred in its finding that the Minister had unlawfully decided that Article 8 ECHR rights were not engaged on account of the absence of consequences of sufficient gravity for the applicants.

Decision & Reasoning:

The Court of Appeal firstly noted that domestic authorities must perform their functions in a manner compatible with the Convention and when applying the ECHR take due account of the interpretation given to rights by the European Court of Human Rights. In this manner and citing from *Bensaid v. United Kingdom* the Court of Appeal states that there are two issues to consider; the first whether Article 8 is engaged by a proposed expulsion; and secondly is the proposed

expulsion permitted or prohibited by Article 8(2).

Considering the definition of private life for the purposes of Article 8, the Court of Appeal makes a distinction between settled migrants and those who have never lawfully lived in the host state. The Court highlights that the definition of private life is one which is non-exhaustive (*Balogun v. United Kingdom*), comprising of elements associated with the personal, physical, psychological or moral identity of a person as well as the right to engage in relationships and personal development and even the totality of the actual social ties established between the migrant and community in which they are living. The Court, however, states that whilst the ECtHR have confirmed these elements with regards to settled migrants they have not applied the *Balogun* assessment to unlawful migrants or those seeking asylum. Indeed, the ECtHR has deliberately left this question open in *Nyanzi v. United Kingdom*. The Court confirms, then, that whilst such a deportation may give rise to an infringement of Article 8(1) much will hinge on the 'gravity of adverse impacts on the physical and moral integrity' of the individual. Therefore whilst deportation will no doubt lead to an inevitable severing of social ties what should be assessed is the gravity of the impact of such severance on the deportee. In this regard the Court of Appeal found that the High Court judge had assessed the gravity in relation to the cutting off of existing social and educational ties in Ireland instead of assessing how this affects the physical and moral integrity of the applicant. In support of its argument the court relies on *Bensaid and Costello-Roberts v. the United Kingdom*, relating to mental and physical integrity.

In citing *Costello-Roberts* the Court of Appeal further found that the adverse effects on the mental and physical integrity of the applicant has to be more than a technical or inconsequential interference. In terms of defining sufficiently adverse effects, much will depend on the individual circumstances of the case and upon the circumstances in which the alleged interference occurs. According to the Court this latter point is particularly important with regards to those seeking asylum given that private life consisting of educational and social ties are formed at a time where right to remain in the State is precarious. Therefore, the Court highlights that in accordance with ECtHR case law, and in particular *Nyanzi* and *Bensaid*, it would require wholly exceptional circumstances to engage the operation of Article 8 in relation to a proposal to deport persons who had never had permission to reside in the State. Indeed, the gravity of the consequences for an irregular immigrant or for his physical or moral integrity must be above the normal consequences of the impact on an individual and his physical and moral integrity of enforcement of immigration law, including deportation, as emphasised by the facts of *Bensaid*.

The Court concludes that the Minister's decision was consistent with the current case law of the ECtHR. The applicants existence in Ireland was continuously precarious and there was no evidence brought forward to show that bringing an end to their private life in Ireland would have any significant impact on the right of the applicants to personal development, including to education or their right to establish and develop relationships with other human beings on their return to Nigeria. Moreover, there was no evidence of any grave impact on the physical or moral integrity of the applicants by reason of the cessation of the relevant activities and social relationships in Ireland.

Outcome:

The interference in the right to private life by deportation of all applicants will not have consequences of such gravity as potentially to engage the operation of Article 8.

Appeal granted and orders of certiorari granted by the High Court to be vacated.

Subsequent Proceedings :

The Court of Appeal makes reference to the Dos Santos judgment which was issued on the same day. The Court in C.I notes that the Minister in Dos Santos adopted a similar approach to the interpretation to be given to Article 8 as in this case. However, unlike the High Court judge in C.I, the High Court judge in Dos Santos concluded that "the applicant had failed to establish that the consequences of deportation for the children reached the level of seriousness sufficient to amount to a breach of Article 8." A difference was, therefore, noted with regards to the gravity of consequences of deportation.

An addendum was added to the appeal noting the decision of the Supreme Court in P.O & anor -v- Minister for Justice and Equality & ors [2015] IESC 64. The Supreme Court decision follows the reasoning in Dos Santos and C.I. in that it confirms that although family life arose in this State, it occurred at a time when the first named appellant must have been aware that her immigration status was "precarious."

Observations/Comments:

The court assessed the applicants' rights to private life under Article 8 in a fashion similar to the assessment in the Dos Santos case.

For a concise summary of this case please see;

Brophy Solicitors, [Recent Cases on Deportation Orders & Article 8 Rights](#), [4] October 2015

Attachment(s):



[C.I. & ors -v- Minister for Justice Equality and Law Reform & ors.docx](#)[5]

National / Other Legislative Provisions:

[Ireland - European Convention on Human Rights Act 2003 - S.3\(1\)](#) [6]

[Ireland - European Convention on Human Rights Act 2003- s. 4](#) [7]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[2] https://www.asylumlawdatabase.eu/node/195#toc_12

[3] https://www.asylumlawdatabase.eu/node/195#toc_46

[4] <http://brophysolicitors.ie/c-i-v-the-minister-for-justice-equality-and-law-reform-a-g-and-ireland/>

[5] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/C.I.%20%26%20ors%20-v-%20Minister%20for%20Justice%20Equality%20and%20Law%20Reform%20%26%20ors.docx>

[6] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/ireland-european-convention-human-rights-act-2003-s31>

[7] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/ireland-european-convention-human-rights-act-2003-s-4>