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Ireland - High Court, 31 January 2012, P.M. (Botswana) v Minister for Justice and Law Reform, Attorney General and Ireland, [2012] IEHC 34

Country of Decision:

Ireland

Country of Applicant:

Botswana

Date of Decision:

31-01-2012

Citation:

[2012] IEHC 34

Additional Citation:

2011 No. 147 JR

Court Name:

High Court (Hogan J)

Keywords:

Effective remedy (right to)

Relevant Legislative Provisions:

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [1] > [Art 39](#) [2] > [Art 39.1](#) [3]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [1] > [Art 39](#) [2]

Headnote:

This case was an application for a certificate to appeal to the Supreme Court. The applicant unsuccessfully argued that she was denied an effective remedy within the meaning of Art 39 of the Procedures Directive in respect of her claim for asylum.

Facts:

The applicant unsuccessfully sought asylum in the Irish state and a deportation order for her removal to Botswana was made. She applied for leave for judicial review and was refused, she then applied to appeal to the Supreme Court ? this case is the hearing of that application for permission to appeal.

The applicant argued that she was denied an effective remedy (within the meaning of Art 39 of the Procedures Directive) by reason of (i) the lack of institutional guarantees in respect of the independence and impartiality of the Refugee Appeals Tribunal, and (ii) the inadequacy of judicial review as a means of challenging decision in relation to international protection.

Decision & Reasoning:

In so far as the applicant argued that the Refugee Appeals Tribunal did not have the necessary guarantees of independence, there is a pending reference to the CJEU pending on this point (in the case of D and A [2011] IEHC 33) and this aspect of the applicant's case is adjourned pending the resolution of that matter.

In respect of the argument that judicial review itself is ineffective, the Court considered that the CJEU case of *Diouf* gave very clear guidance on this. The Irish Constitution provides strong guarantees of fair procedures, which apply to protection applicants. The Court concluded in strong terms that the argument that judicial review is an ineffective remedy is 'unfounded and artificial', following previous cases of the High Court to similar effect.

Although the case involves a point of law of exceptional public importance, the Court did not feel it was in the public interest for an appeal to reach the Supreme Court, as it considered that the question at issue was clear-cut, beyond any real argument.

Outcome:

The applicant was denied permission to appeal to the Supreme Court.

Attachment(s):



[P M v MJELR \(No 2\).pdf](#)[4]

Other sources cited:

Irish Constitution 34.1, 40.3.2, 40.3.1

National / Other Legislative Provisions:

[TFEU](#) [5]

[TFEU - Art 267](#) [6]

[Ireland - Illegal Immigrants \(Trafficking\) Act 2000 - Section 5\(3\)\(a\)](#) [7]

[Ireland - Refugee Act 1996](#) [8]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

[2] [http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art 39](http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2039)

[3] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2039>

[4]

[8] <https://www.asylumlawdatabase.eu/en/taxonomy/term/989>