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## Ireland - Ivan Seredych v The Minister for Justice and Equality [2019], Supreme Court, S:AP:IE:2019:000228

**Country of Decision:**

Ireland

**Country of Applicant:**

Ukraine

**Date of Decision:**

13-10-2020

**Citation:**

Seredych v The Minister of Justice and Equality [2019] S:AP:IE:2019:000228

**Court Name:**

The Supreme Court of Ireland

**Keywords:**

Effective access to procedures

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Subsequent application

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**Relevant Legislative Provisions:**

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

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [1] > [Recital 6](#) [2]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [1] > Recital 7

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 2](#) [4] > [Art 2 \(c\)](#) [4]

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**Headnote:**

The Supreme Court of Ireland handed down a judgment concerning the question whether the Minister for Justice and Equality is obliged to revoke a deportation order or otherwise facilitate a person to enter the State, when that person has been granted consent to make a subsequent application for international protection under section 22 of the International Protection Act 2015,

which requires the person's presence in the State to make the application. It was held that there is no express right to enter the State for the purposes of making an application, save where the person is at its frontiers.

### **Facts:**

The case concerns a Ukrainian national, Ivan Seredych, who made an unsuccessful application for refugee status in Ireland. He received permission to remain, which was renewed until 2016. In February 2018, a deportation order was issued. A challenge to the deportation order was rejected by the High Court in March 2018 and Seredych subsequently left Ireland in April 2018, complying with the deportation order.

Before leaving the State, his legal representatives sought to have Seredych readmitted to the International Protection process. After an initial recommendation to refuse readmittance issued by the International Protection Office to the Minister, the International Protection Appeals Tribunal (IPAT) set aside this recommendation and the Minister was required, as a matter of statute, to provide his consent for the making of a subsequent application for international protection.

The High Court quashed the Minister's decision to refuse the revocation of the deportation. The Minister subsequently appealed to the Supreme Court.

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### **Decision & Reasoning:**

It was argued that the Minister cannot lawfully act in a manner that has the practical effect of obstructing the exercise of the right to make the subsequent application, the making of which has been sanctioned by the Minister himself. Therefore, the court was occupied with establishing the questions of law concerning the interpretation of the powers contained in s.3(11) of the 1999 Immigration Act.

At first, the court stated that it is fundamental that a person may seek international protection only when he or she is at the frontier of, or in, the State, subject to s.15 of the 2015 Act. The respondent is not within the territory of the State nor has he presented at its frontiers seeking protection, and he is accordingly not a refugee in the sense in which that term is used in international treaties or in domestic law, and therefore, he is not entitled to seek international protection unless steps are taken to either revoke the deportation order or otherwise permit him to enter.

When tackling the issue of making a subsequent application, it is clearly stated that a person who has been refused international protection may not make a further application without the consent of the Minister. Section 22 contains a general prohibition against the making of the subsequent application but modifies that by permitting the making of a subsequent application with the consent of the Minister.

*PNS v The Minister for Justice & Equality* [2020] IESC 11 was relied on as support for treating the application for leave to re-enter the protection process as a separate step.

The judge said that the trial judge had wrongly regarded the process as a unitary and not sequential process. He had treated the Minister as interrupting a process in a way that was inconsistent with the Minister's own statutory role in that process. The court was unable to read s.22 in that way.

The Supreme Court adopted the analysis of the Court of Appeal for England and Wales in *R on the Application of AB v the Secretary of State for the Home Department* [2018] EWCA Civ 383 [5], which indicated that there is nothing in the Procedures Directive (Directive 2013/32/EU [6]) which obliges Member States to readmit, to its territory, an applicant who has previously chosen to leave while his or her application is still pending.

While observing the protections in the Procedures Directive on the making of a second or subsequent application by a person who has been refused protection or whose application was withdrawn, the judge said that if a person cannot, by reason, for example, of not being present in the State, be regarded for the purpose of the Directive as a refugee or applicant for protection those guarantees do not operate.?

The court emphasised that there is no express right to enter the State for the purposes of making an application, unless where the person is at its frontiers. It was also noted that the PNS case made clear that the right to remain is limited and does not extend to a right to remain pending an appeal to IPAT.

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**Outcome:**

Application granted.

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**Observations/Comments:**

This summary was written by Andra Oprea, LLM Student at Queen Mary University London.

**Attachment(s):**

[2020\\_IESC\\_62 \(Unapproved\).pdf](#)[7]

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**Other sources cited:****Domestic Case Law Cited**

*Y. Y. v. Minister for Justice and Equality* [2017] IESC 61, [2018] 1 ILRM 109, *The People (DPP) v. Seredych* [2016] IECA 415, *East Donegal Co-Operative v. Attorney General* [1970] IR 317, *PNS v The Minister for Justice & Equality* [2020] IESC, *on the Application of AB the Secretary of State for the Home Department* 2018 AC Civ 383 [2018] Imm AR 1015, *Vince v. Prime Minister* [2019] CSOH 77, *Vince, Maugham and Cherry v. Johnson and the Lord Keen of Elie* [2019] CSOH 77

**Other State's Case Law Cited**

*R (European Roma Rights) v. Prague Immigration Officer* 2004 UKHL 55, 2005 2 AC 1,  
*R. (AB) v. Secretary of State for the Home Department* [2018] EWCA Civ 383

**National / Other Legislative Provisions:**

[International Protection Act 2015](#) [8]

[Criminal Law \(Rape\) \(Amendment Act 1990\)](#) [9]

[The European Union \(Withdrawal\) \(No. 2\) Act 2019](#) [10]

[Immigration Act 1999](#) [11]

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**Links:**

- [1] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>
- [2] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Rec%205>
- [3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%202%20QD>
- [5] <https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fecre.us1.list-manage.com%2Ftrack%2Fclick%3Fu%3D8e3ebd297b1510becc6d6d690%26id%3D3bd973f0b2%26e%3>
- [6] <https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fecre.us1.list-manage.com%2Ftrack%2Fclick%3Fu%3D8e3ebd297b1510becc6d6d690%26id%3D49891cf539%26e%3>
- [7] [https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/2020\\_IESC\\_62%20%28Unapproved%29.pdf](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/2020_IESC_62%20%28Unapproved%29.pdf)
- [8] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/international-protection-act-2015>
- [9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/criminal-law-rape-amendment-act-1990>
- [10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/european-union-withdrawal-no-2-act-2019>
- [11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/immigration-act-1999>