

**APPROVED  
REDACTED**



**AN ARD-CHÚIRT  
THE HIGH COURT**

**[2024] IEHC 750**

**Record No. 2023/410JR**

**BETWEEN/**

**K**

**APPLICANT**

**-AND-**

**THE MINISTER FOR JUSTICE**

**RESPONDENT**

**(No. 2)**

**JUDGMENT of Mr. Justice Conleth Bradley delivered on the 1<sup>st</sup> day of November 2024**

## INTRODUCTION

1. This is the applicant's application for leave to appeal from the judgment delivered on 29<sup>th</sup> May 2024 in *K v The Minister for Justice* [2024] IEHC 332.
2. In that judgment, I refused the Applicant's challenge to a reviewed decision made by the Minister for Justice on 23<sup>rd</sup> March 2023 in accordance with Regulation 25 of the European Communities (Free Movement of Persons) Regulations 2015 ("the 2015 Regulations") and the Citizens Rights Directive (Directive 2004/38/EC), which affirmed the previous decisions on 27<sup>th</sup> January 2023 to make removal and exclusion orders in accordance with the provisions of, respectively, Regulations 20 and 23 of the 2015 Regulations.
3. Insofar as this application for a certificate to appeal is concerned, section 5(6)(a) and (b) of the Illegal Immigrants (Trafficking) Act 2000 requires a party to establish (in the case of each point of law so identified) that the point is of exceptional public importance and that it is desirable in the public interest that an appeal should be taken in respect of it:

*“(a) The determination of the High Court of an application for leave to apply for judicial review to which this section applies, or of an application for such judicial review, shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case except with the leave of the High Court which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it*

*is desirable in the public interest that an appeal should be taken to the Supreme Court.*

*(b) This subsection shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.”*

4. Arising from section 75 of the Court of Appeal Act 2014, the reference to the Supreme Court in the above provision is deemed to be a reference to the Court of Appeal.

#### **PRINCIPLES APPLICABLE TO AN APPLICATION FOR A CERTIFICATE**

5. In *MAU v The Minister for Justice Equality and Law Reform* (No. 3) [2011] IEHC 59, the High Court (Hogan J.) set out the relevant principles at paragraph 6 of the court’s judgment where an application for a certificate for leave to appeal was being sought. Hogan J. observed that the following principles were cumulative in nature:

*“First, the decision must involve a point of law, so that the point of law in question arises directly from the judgment sought to be appealed. Second, the point of law must be one of exceptional public importance and this is a “significant additional requirement”: see *Glancre Teo. v An Bord Pleanála* [2006] IEHC 205, per MacMenamin J. Third, it must be desirable in the public interest that the appeal be taken to the Supreme Court. The Oireachtas has clearly signalled via the 2000 Act that finality of litigation in the asylum area is in the public interest and, as MacMenamin J. put it in *Glancre Teo.*,*

*the power to certify should be exercised “sparingly.” This suggests that the power to certify should be confined to those cases where it is desirable that, for example, some uncertainty in the law should be clarified for once and for all by the Supreme Court. Fourth, while the statutory requirements overlap to some degree, they are cumulative and these statutory requirements each call for individual consideration”.*

6. Given its significance in applications seeking a certificate for leave to appeal to the Court of Appeal, the following are the relevant applicable principles identified in the judgment of the High Court (MacMenamin J.) in *Glancre Teo v An Bord Pleanála* [2006] IEHC 205:

*“I am satisfied that a consideration of these authorities demonstrates that the following principles are applicable in the consideration of the issues herein.*

- (i) The requirement goes substantially further than that a point of law emerges in or from the case. It must be one of exceptional importance being a clear and significant additional requirement.*
- (ii) The jurisdiction to certify such a case must be exercised sparingly.*
- (ii) The law in question stands in a state of uncertainty. It is for the common good that such law be clarified so as to enable the courts to administer that law not only in the instant, but in future such cases.*

- (iv) *Where leave is refused in an application for judicial review i.e. in circumstances where substantial grounds have not been established a question may arise as to whether, logically, the same material can constitute a point of law of exceptional public importance such as to justify certification for an appeal to the Supreme Court (Kenny).*
- (v) *The point of law must arise out of the decision of the High Court and not from discussion or consideration of a point of law during the hearing.*
- (vi) *The requirements regarding ‘exceptional public importance’ and ‘desirable in the public interest’ are cumulative requirements which although they may overlap, to some extent require separate consideration by the court (Raiu).*
- (vii) *The appropriate test is not simply whether the point of law transcends the individual facts of the case since such an interpretation would not take into account the use of the word ‘exceptional’.*
- (viii) *Normal statutory rules of construction apply which mean inter alia that “exceptional” must be given its normal meaning.*
- (ix) *‘Uncertainty’ cannot be ‘imputed’ to the law by an applicant simply by raising a question as to the point of law. Rather the authorities appear to indicate that the uncertainty must arise over and above this, for example in the daily operation of the law in question.*

- (x) *Some affirmative public benefit from an appeal must be identified. This would suggest a requirement that a point to be certified be such that it is likely to resolve other cases.”*

### **CERTIFIED POINTS OF LAW**

7. I am of the view that the following variations of two of the three questions posed by the Applicant satisfy the requirements to certify an appeal set out in the applicable jurisprudence and involve points of law arising directly from my judgment delivered on 29<sup>th</sup> May 2024:

*“Question 1: In assessing the lawfulness of a Removal and/or Exclusion Order, is it permissible to have regard to any notification (including a notification given under Regulation 21(4)(b) and/or Regulation 23(6)(b) of the 2015 Regulations) and/or any related correspondence and/or other written communication(s) supplied by the Minister to the addressee of that order, regarding the requirements for his removal and/or exclusion from the State?”*

*Question 2: When making a Removal and/or Exclusion Order, is it permissible for the Minister to identify a period within which the addressee must make arrangements to leave the jurisdiction, rather than providing a single date upon which the addressee’s removal from the State must take place, or from*

*which date the addressee's exclusion from the State must commence?"*

8. Whilst similar questions have arisen in the area of *deportation*, and have been addressed by the Supreme Court in *that* context in the judgments of *MAK v The Minister for Justice and Equality* [2018] IESC 18; [2019] 1 I.R. 217 and *F.P. Minister for Justice* [2002] 1 I.R. 164, where the Supreme Court *inter alia* held that the deportation process could be communicated in a letter or notification and documentation which accompanied the actual deportation order, and in further observing that the regulatory framework at issue in this case has also been the subject of *obiter* observations of the High Court in *Mirga v GNIB and Minister for Justice & Equality* [2016] IEHC 545, the issues raised by these two questions will, in my view, have systemic importance in the context of *removal* and *exclusion* orders as they may apply to EU citizens in Ireland (in contrast to those person who have been processed through the asylum process).

### **CONCLUSION & ORDER**

9. Accordingly, I shall certify the following two questions as meeting the requirements pursuant to section 5(6)(a) of the Illegal Immigrants (Trafficking) Act 2000 (as amended), as involving points of law of exceptional public importance and in relation to which it is desirable in the public interest then an appeal should be taken to the Court of Appeal:

Question 1: In assessing the lawfulness of a Removal and/or Exclusion Order, is it permissible to have regard to any notification

(including a notification given under Regulation 21(4)(b) and/or Regulation 23(6)(b) of the 2015 Regulations) and/or any related correspondence and/or other written communication(s) supplied by the Minister to the addressee of that order, regarding the requirements for his removal and/or exclusion from the State?

Question 2: When making a Removal and/or Exclusion Order, is it permissible for the Minister to identify a period within which the addressee must make arrangements to leave the jurisdiction, rather than providing a single date upon which the addressee's removal from the State must take place, or from which date the addressee's exclusion from the State must commence?

CONLETH BRADLEY

Friday 1<sup>st</sup> November 2024