APPROVED
REDACTED

AN ARD-CHÚIRT
THE HIGH COURT

[2024] IEHC 718

Record No. 2023/1131JR

BETWEEN/

RG

APPLICANT

-AND-

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL, THE CHIEF INTERNATIONAL PROTECTION OFFICER, THE MINISTER FOR JUSTICE, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

(No. 2)

RULING on costs of Mr. Justice Conleth Bradley, delivered on the 30th day of October 2024

INTRODUCTION

1. This is the costs application arising from the judgment delivered in *RG v International Protection Appeals Tribunal & Ors (No.2)* [2024] IEHC 579.

2. In that judgment, I refused the applicant the following reliefs claimed by way of judicial review (which were set out in the Amended Statement of Claim dated 8th March 2024): (i) *certiorari* of the decisions to transfer him to France and refusal of discretionary relief under Regulation (EU) No. 604/2013 (the "Dublin III Regulation"); declaratory relief in respect of the alleged failure of the Minister for Justice to obtain and convey a health certificate prior to transfer; injunctive relief (which had been refused by Hyland J. prior to the hearing of the substantive judicial review application before me); or an Order directing the Minister to accept the Applicant back in accordance with Article 29(3) of the Dublin III Regulation.

3. In summary, Mr. Dornan BL, for the applicant, submits that each party should bear its own costs having regard, *inter alia*, to the nature and public interest circumstances of the case in dealing with novel points; Mr. Dunne SC submits that as the State Respondents have been entirely successful, they are entitled to their costs.

PRINCIPLES

4. The parties agree on the applicable principles.

5. The position on costs is addressed in section 169(1) of the Legal Services Regulation Act 2015[1] and (a recasted) O. 99, rr. 2 & 3 of the Rules of the Superior Courts 1986 (as amended and substituted).[2] The default position is that *costs follow the event* where a party has been entirely successful unless the court orders otherwise, having regard to the particular nature and circumstances of the case and the conduct of the proceedings by the parties (including the matters set out at sections 169(1)(a) to (g) of the LSR Act 2015). [3]

6. These provisions were considered by the Court of Appeal (Murray J.) in *Chubb European Group SE v Health Insurance Authority* [2020] IECA 183 at paragraphs 9-10.[4]

---

[1] Hereafter referred to as "the LSR Act 2015". Section 168 of the LSR Act 2015 provides the power to award legal costs.

[2] S.I. 584 of 2019. The operative provisions of the LSR Act 2015 came into force on 7 October 2019 and the new provisions of O. 99 RSC 1986 took effect from 3 December 2019.

[3] Section 169(1) of the LSR Act 2015 *inter alia* provides that a party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties, including (a) conduct before and during the proceedings, (b) whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings, (c) the manner in which the parties conducted all or any part of their cases, (d) whether a successful party exaggerated his or her claim, (e) whether a party made a payment into court and the date of that payment, (f) whether a party made an offer to settle the matter the subject of the proceedings, and if so, the date, terms and circumstances of that offer, and (g) where the parties were invited by the court to settle the claim (whether by mediation or otherwise) and the court considers that one or more than one of the parties was or were unreasonable in refusing to engage in the settlement discussions or in mediation.

[4] See *Veolia Water UK plc v Fingal County Council (No.2)* [2006] IEHC 240 at paragraphs 2.5 and 2.8; [2007] 2 I.R. 81 and *MD v ND* [2015] IESC 66 at paragraph 9; [2016] 2 I.R. 438.

7. Murray J. set out the following general principles in relation to costs arising from sections 168 and 169 of the LSR Act 2015 and O. 99, r. 2(1) RSC 1986:

   (a) "*The general discretion of the Court in connection with the ordering of costs is preserved (s.168(1)a) and O.99, r.2.(1)).*

   (b) In considering the awarding of costs of any action, the Court should 'have regard to' the provisions of s.169(1) [(O.99, r.3(1))].

   (c) In a case where the party seeking costs has been 'entirely successful in those proceedings', the party so succeeding 'is entitled' to an award of costs against the unsuccessful party unless the court orders otherwise (s.169(1)).

   (d) In determining whether to 'order otherwise' the court should have regard to the 'nature and circumstances of the case' and 'the conduct of the proceedings by the parties' (s.169(1)).

   (e) Further, the matters to which the court shall have regard in deciding whether to so order otherwise include the conduct of the parties before and during the proceedings, and whether it was reasonable for a party to raise, pursue or contest one or more issues (s. 169(1)(a) and (b)).

   (f) The Court, in the exercise of its discretion may also make an order that where a party is 'partially successful' in the proceedings, it should recover costs relation to the successful element or elements of the proceedings (s.168(2)(d)).

(g) Even where a party has not been 'entirely successful' the court should still have regard to the matters referred to in s.169(1)(a)-(g) when deciding whether to award costs O.99, r.3(1)).

(h) In the exercise of its discretion, the Court may order the payment of a portion of a party's costs, or costs from or until a specified date (s.168(2)(a))."

SUMMARY OF THE APPLICANT'S POSITION

8. Mr. Dornan BL, for the Applicant, accepts that State Respondents have been "*entirely successful*" for purposes of s. 169(1) of the LSR Act 2015 and O. 99, r. 2(1) RSC 1986.

9. In summary, however, he submits – having regard to the decisions of the Court of Appeal (Murray J.) in *Chubb European Group SE v The Health Insurance Authority*, *Lee v Revenue Commissioners* [2021] IECA 114, and the High Court (Simons J.) in *Corcoran and Anor v Commissioner of An Garda Siochana and Anor* [2021] IEHC 11 – that I should '*order otherwise*' having regard to the nature and circumstances of the case, the applicant's conduct before and during the proceedings, the reasonableness of raising, pursuing or contesting issues, and that these proceedings represent meritorious litigation which serves a public interest (and from which applicants should not be deterred). Further, he describes the following three matters as novel issues of first impression in relation to the interpretation of the Dublin III Regulation: (a) the proper procedure for exchange of health data under Articles 31 and 32; (b) the *vires* of what he submits was the IPO, further to the *Carltona* principle, to make a

determination under Article 17, having regard to the comments of Charleton J. in *NVU v Refugee Appeals Tribunal* [2020] IESC 46; and (c) the circumstances under which a transferred applicant may be returned under Article 29(3) of the Dublin III Regulation.

SUMMARY OF THE STATE RESPONDENTS' POSITION

10. In brief, Mr. Dunne SC (for the State Respondents) submits that the legal issues in this application for judicial review were not of such special and general importance as to warrant a departure from the general rule that costs follow the event.

ASSESSMENT & DECISION

11. As indicated in *RG v International Protection Appeals Tribunal & Ors (No.2)* [2024] IEHC 579, a central feature of the applicant's challenge in this judicial review application centred on what was contended to be a change of circumstances after the decision of this court (Hyland J.) on 19th December 2023 in *RG v The IPAT & Ors (No.1)* [2023] IEHC 742 which arose from a second medical report dated 30th January 2024, which included, *inter alia*, details in relation to the applicant's regression from *not currently* displaying severe suicidal ideation in the first medical report dated 16th April 2023 to *having developed* suicidal ideation at the thought of being returned to France as per the second medical report dated 30th January 2024. The applicant had argued that the alleged failure by the Minister for Justice to consider these matters vitiated the applicant's transfer from Ireland to France on 13th February 2024 because of the alleged failure by the Irish authorities to meet the requirements to exchange

with their French counterparts: (a) relevant information before a transfer was carried out (Article 31 of the Dublin III Regulation); and (b) health data before a transfer was carried out (Article 32 of the Dublin III Regulation).

12. The applicant's case, therefore, was that the Minister for Justice allegedly failed to properly consider these matters and what is referred to as the *Carltona* argument is a reference to the contention that the Article 17 decision to transfer the applicant to France was made by an official (rather than the Minister in person) without, it is said, lawful authority.

13. In relation to the first and third issues, *i.e.*, the procedure for the exchange of health data under Articles 31 and 32 of the Dublin III Regulation and the circumstances under which a transferred applicant may be returned under Article 29(3), whilst it was accepted by the State respondents that the applicant had suffered trauma and had mental health issues, it was ultimately determined that he did not meet the threshold or standard of exceptional circumstances that would be required for a departure from the presumption that the treatment of the applicant as an asylum seeker, and the decision-making process which resulted in his transfer to France pursuant to the Dublin III Regulation, complied with the EU Charter, the Geneva Convention and the ECHR and was fair and lawful, *i.e.*, the applicant's health condition did not reach the standard of a real and proven risk that his transfer to France would expose him to inhuman and degrading treatment linked to risk of serious impairment to the deterioration of his health.

14. Accordingly, I do not consider that this case meets the threshold of amounting to one of special and general public importance serving a public interest or provides a basis for "*ordering otherwise*" than that costs be awarded to the State respondents having regard to the nature and circumstances of the case, the applicant's conduct before and during the proceedings, the reasonableness of raising, pursuing or contesting issues, the novelty of matters raised and having regard to the provisions of section 168 and section 169(1) of the 2015 Act and O. 99, r. 2(1) RSC 1986.

15. In relation to what is suggested as the second novel point – the *Carltona* argument – whilst reference to the '*International Protection Office'* could arguably lead to some confusion, and in this case it grounded an 'argument' which sought to invoke *NVU v Refugee Appeals Tribunal* [2020] IESC 46, ultimately the ministerial decision here was made by a departmental official, Mr. Dineen, on behalf of the Minister for Justice and it was not a decision made by the IPO. Mr. Dineen's involvement was on behalf of the Minister, *i.e.*, as an officer of the Minister.

16. Accordingly, there is, in my view, no basis, having regard to the particular nature and circumstances of the case and the conduct of the parties, for ordering otherwise than (or departing from) the application of the default position, which is that *costs follow the event* where a party – here the State Respondents – have been entirely successful.

CONCLUSION & PROPOSED ORDER

17. In the circumstances, therefore, I shall make an order granting the State Respondents their costs (including reserved costs, if any) as against the applicant, such costs to be

adjudicated upon in default of agreement by the Office of the Legal Costs Adjudicator.

CONLETH BRADLEY

Wednesday 30th October 2024