

THE HIGH COURT

[Record No. 168/2019 JR]

IN THE MATTER OF THE CONSTITUTION OF IRELAND

AND

**IN THE MATTER OF THE EUROPEAN CONVENTION ON
HUMAN RIGHTS ACT 2003**

BETWEEN

**IOAN RAZNEAS, ANISOARA ANGHIEL, MARIAN RAZNEAS (A MINOR SUING BY HIS
MOTHER AND NEXT FRIEND ANISOARA ANGHIEL), AND ANTONIA RAZNEAS (A MINOR
SUING BY HER MOTHER AND NEXT FRIEND ANISOARA ANGHIEL)**

APPLICANTS

AND

**THE CHIEF APPEALS OFFICER, THE MINISTER FOR EMPLOYMENT AFFAIRS AND
SOCIAL PROTECTION,
IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

AND

THE IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

NOTICE PARTY

JUDGMENT of Ms. Justice O'Regan delivered on the 1st day of February, 2021

1. This judgment is for the purposes of determining the appropriate Costs Order to be made in respect of the within proceedings following the delivery of judgment by me on 2 October 2020, [2020] IEHC 654, when I found against the applicants on all four grounds identified on behalf of the applicants as engaged in the proceedings.
2. Briefly the issues which arose in the proceedings were:
 - (1) Whether or not the Job Seekers Allowance was a benefit of a financial nature intended to facilitate access to employment. In this regard the applicant argued that it was, however, the issue was determined against the applicant on the basis of existing jurisprudence comprising two recent determinations of the High Court and one of the Court of Appeal as identified in para. 7 of the principal judgment. In addition, it is the case that under EU jurisprudence the determination of the nature of a payment such as Job Seekers Allowance is for national courts to determine (see para. 13 of the judgment).
 - (2) The second named applicant claimed to be a worker for a one-month period from in or about 4 March 2018 and thereby qualified as a person entitled to Job Seekers Allowance. In this regard the Appeals Officer had made a decision of 1 March 2019 that the applicant was not a worker, which was the decision sought to be impugned in the within judicial review proceedings. In the principal judgment I found that the decision of the Appeals Officer in so finding was not irrational based upon the circumstances of the case and the evidence before the Appeals Officer.
 - (3) The applicants argued that s.256(5) of the Social Welfare (Consolidation) Act 2005 was unconstitutional in or about the requirement that a successful qualifying applicant would need to establish a right of residence in the State in order to receive the relevant payment. Again, this argument was rejected by me based on

jurisprudence as to the limited circumstances in which a court might interfere with the policy decision of the legislature as to when social welfare payments might be made and also on the basis of existing jurisprudence of recent vintage from the Court of Appeal and the Supreme Court on the acceptability of a requirement to have a right of residence in the State.

- (4) The applicants argued that the impugned provision of the 2005 Act aforesaid was incompatible with the European Convention on Human Rights Act 2003. However, this argument was unsuccessful as it is specifically provided that such Act does not apply to the Oireachtas.
3. Both parties have filed written submissions relative to the issue of costs, the respondents claiming an order of costs in their favour and the applicants seeking to have no order for costs.
4. Both parties accept that the starting point in respect of an award of costs is now comprised within part 2 of the Legal Services Regulation Act 2015 which commenced in October 2019. Under s.169(1) thereof it is provided 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."
5. The court's prior discretion as to the award of costs in certain circumstances has been retained by the provisions aforesaid and indeed the applicant argues that the Court's discretion should be exercised in their favour in the instant circumstances. This discretion arises on a case by case basis and there must be a reasoned basis for departing from the normal rule that costs follow the event.
6. The applicants argue that the benefits of Job Seekers Allowance if the second named applicant was so entitled would be applied for the upkeep and welfare of the other applicants hereto and that in these events the outcome of the within matter has ramifications for other EU citizen children in a similar situation.
7. The applicants further argue that the within is a test case as defined by Binchy J. in *P.C. v. Minister for Social Protection* [2016] IEHC 343 at paras. 13-14 thereof to the effect that:

". . . the concept of a test case may include those cases where a challenge to the constitutionality of a statutory provision, if successful, would inevitably result in a large number of claims being made against the State or an emanation of the State, provided that the challenge itself is substantive in nature and not frivolous or vexatious."
8. Clarke J. in *Cork City Council v. Shackleton* [2007] IEHC 334 found at para. 4.2 that the concept of a test case might rise "Where there is doubt about the proper interpretation of

the common law, the Constitution or statute law...and where the circumstances giving rise to those doubts apply in very many cases”.

9. No evidence was furnished at the hearing of the within matter to suggest that in the particular circumstances of the instant case same might be considered a test case as identified by the courts aforesaid.
10. The applicant called in aid of its position the divisional High Court decision in *Collins v. Minister for Finance (No. 2)* [2014] IEHC 79 and in particular the first, third, fifth and sixth principles identified by that court arising from case law at the date of the decision.
11. The Court identified as the first principle that cases where constitutional issues raised were fundamental and touched on sensitive aspects of the human condition this might result in costs being awarded against the State notwithstanding that the claim of the relevant applicants might have been refused. Given the examples relied upon by the divisional High Court in *Collins v. Minister for Finance (No. 2)* I am not satisfied that this principle is applicable in the instant circumstances.
12. The third principle involved cases where the issue raised was of far reaching importance in an area of law with general application. Given that the principal judgment applied existing jurisprudence I am satisfied that this third principle was not engaged.
13. The fifth principle relates to claims which are not brought for personal advantage and the issues therein raised are of special and general public importance. I am not satisfied that the applicants’ claim can come within the ambit of this rubicon by reason of the settled jurisprudence relied upon in refusing the claim concerning the nature of Job Seekers Allowance and the constitutional challenge to the relevant section of the 2005 legislation. Furthermore, the second issue arising in the principal judgment was based upon the peculiar factual circumstances of the applicants, and therefore, was litigation brought for personal advantage.
14. The sixth principle identified is not an alternate heading under which the applicants might secure a departure from the general rule but rather identified that if such a departure is to be engaged the losing applicant will not necessarily recover full costs.
15. Finally, the applicants rely on the body of case law on which a departure from the normal rule is applied for example in the matter of *C.A. & T.A. v. Minister for Justice and Equality* [2015] IEHC 432, a decision of Mac Eochaidh J. when the Court determined that to award the respondent the costs of the issues which it won would have a chilling effect on litigation of the sort then engaged by denying vulnerable and marginalised people their constitutional right of access to the courts. In that matter the court was satisfied that the issues arising in the judicial review applications were complex and the direct provision system as a whole was challenged on multiple grounds.
16. Similarly, in the decision of Simons J. in *Zalewski v. The Workplace Relations Commission* [2020] IEHC 226 the Court was satisfied that the applicant in that matter had raised

fundamental issues of constitutional law which had to be resolved by the courts. In that matter the Court reviewed a variety of case law and identified three matters of potential relevance in or about a determination of a departure from the normal rule as to costs namely:

- (1) whether issues raised are novel;
- (2) whether the applicant has a personal interest in the outcome of the proceedings;
and
- (3) whether the proceedings are in the nature of a test case.

It is clear from the judgment as a whole that Simons J. considered that the unsuccessful claim before the Court did serve a public interest on the basis that, the fundamental issues of a constitutional nature raised, required to be resolved by the courts.

Conclusion

17. I am satisfied in the circumstances that no novel issue was raised in the within proceedings and same were dismissed on the basis of existing jurisprudence. The claim made was fact specific to the applicants and it cannot be said that the issues in respect of constitutional law were of general importance and transcended the facts of the case.
18. In the circumstances it appears to me that it is not appropriate to depart from the general rule that costs follow the event in the instant circumstances.