Approved Judgment

THE COURT OF APPEAL
CIVIL

Record Number: 2023/82
High Court Record Number: 2022/143JR
Neutral Citation Number [2024] IECA 89

Ní Raifeartaigh J.

Meenan J.

O'Moore J.

BETWEEN/

I.T.

APPLICANT/RESPONDENT

-AND-

THE MINISTER FOR JUSTICE

RESPONDENT/APPELLANT

JUDGMENT of the Court delivered on the 22nd day of April, 2024

1. On the 22nd November, 2021, the Respondent to these proceedings ('the Minister') issued a final determination refusing the Applicant retention of his Residence Card, which would have enabled the Applicant to remain indefinitely in Ireland. In these proceedings, the Applicant seeks an order quashing this decision and/or an order declaring that he is entitled to a Residence Card. Importantly, the basis on which the Applicant asserts an

entitlement to remain in Ireland derives from the claimed exercise of EU rights by his former wife, who is a citizen of another EU state.

2. The Applicant succeeded before the High Court. The Minister has appealed to this court. On the appeal, the parties submit (and the court agrees) that there are three essential issues. These are:

> "(1) whether the learned High Court judge was correct in finding that the decision of the Minister unlawfully disregarded or gave insufficient consideration to the decision of the DEASP [Department of Enterprise Affairs and Social Protection];
>
> (2) whether the learned High Court judge was correct to find that the Minister erred in relying on a requirement of one year's employment prior to unemployment in interpreting Art. 7(3)(b) of [the Citizens Rights Directive 2004/38/EC] and therefore Regulation 6(3)(c)(ii);
>
> (3) whether the learned High Court judge correctly assessed the consequences of the alleged failure to disclose documentation in relation to the EU Citizen's Employment Record."

3. Each of these issues raise questions of European law of general application. In particular, they raise questions as to the proper construction of Art. 7(3) (b) of the 2004 Directive, and separately Art. 41 of the Charter read in conjunction with the provisions of the Directive.

4. The court has decided to refer three questions to the Court of Justice of the European Union in accordance with Art. 267 of the Treaty on the Functioning of the European Union. The three questions are set out at paragraph 47 of this judgment, and these must of course

be distinguished from the three central issues listed at paragraph 2. We are satisfied that, having regard to the authorities to which we were referred, the questions to be put to the CJEU have not previously been decided by that court.

5. This judgment will be structured in the following way: -

(1) The facts, as found by the High Court.

(2) The issues of European Law necessary for determination of this appeal.

(3) The position of the parties.

(4) The decision to refer.

(5) The questions referred.

(6) The question of mootness.

6. In her judgment, the High Court judge carried out a careful analysis of the evidence before her and, over seven pages of the judgment, made findings of fact which are not materially disputed by either side in this appeal. We will therefore set out in full the factual findings of the court below with regard to this dispute.

(i) **The facts as found by the High Court.**

7. The Applicant is a non-EEA national and divorced spouse of an EU citizen. He entered the State on foot of a student visa in October, 2002. In July, 2009 the Applicant married the EU Union citizen in the State and applied for a residence permission pursuant to the 2004 Directive and Regulations on the basis of being the spouse of an EU citizen. This application was refused in February, 2010. The Applicant made further application on the 17th of July, 2011 and this was again refused on the 9th of February, 2012. In both instances the reason for refusal was that enquires made with the EU citizen's employer as detailed on the application forms (different in each application) revealed that she was at the time of assessment of the application, which was sometime after the application was made on each

occasion, no longer in employment with the employer identified in the application. The Applicant made a third application for residence permission in March, 2013 and on this occasion was granted permission valid for five years until September, 2018.

8. Subsequent to the grant of residence permission to the Applicant deriving from the exercise of his EU citizen spouse of EU Treaty Rights in the State, the Applicant and his former spouse were divorced. The divorce was effected by a foreign decree issued in the EU citizen spouse's country of origin in July, 2014 on foot of proceedings initiated in June, 2014. The marriage had subsisted for five years by the date of its dissolution. The Applicant's permission to reside was not revoked following his divorce. He continued to work. His former spouse continued to reside in the State (albeit with possible periods of absence during return trips to her country of origin) and information disclosed from the DEASP during the decision-making process confirms that she was receipt of Jobseeker's Allowance and Child Benefit.

9. In August, 2018, the Applicant sought retention of his residence permission in a personal capacity in reliance on Regulation 10(2) of the 2015 Regulations. Regulation 10(2) provides for retention of a derived status in the event of divorce in certain circumstances where a marriage has lasted for three years or more including at least one year in the State. At that time of his application in August 2018 the Applicant had periods of lawful residence which well exceeded five years (when periods of residence as a student and periods of residence pending determination of his application for recognition of his EU derived rights are added together with the five year residence permission which issued on foot of his March, 2013 application as spouse of an EU citizen exercising EU Treaty Rights in the State).

10. The Applicant's application for retention of residence permission was refused in October, 2019. The Applicant was advised in the refusal letter that his derived rights were dependent on his EU spouse continuing to exercise her EU Treaty Rights in the State. He was advised that once his Union citizen spouse ceased to comply with the conditions of Regulation 6(3)(a) of the 2015 Regulations, he ceased to hold any derived right to reside in the State in accordance with Regulation 6(3)(b) unless he could establish that he retained a right of residence under the provisions of Regulation 9 or 10 of the 2015 Regulations at the time his EU citizen wife ceased to exercise her EU Treaty Rights in the host Member State.

It was acknowledged that his application was made in reliance on Regulation 10 but stated that he had not submitted evidence of the European Union citizen's activity in the State at the time when divorce proceedings were initiated. It was stated:

> *"In this regard, information available to the Minister from the Department of Employment Affairs and Social Protection, indicates that the EU citizen was not exercising their rights through employment, self-employment, the pursuit of a course of study, involuntary unemployment or the possession of sufficient resources in accordance with Regulation 6(3) of the Regulations from 13/09/2013 to 23/09/2017."*

11. The Applicant was advised that:

> *"as the Union citizen was not residing in the State in conformity with the Regulations at the time of initiation of divorce, you do not qualify for retention of a residence card under Regulation 10(2) of the Regulations."*

12. The recommendation submission prepared in respect of the first instance refusal records the documents received as evidence of compliance with the Regulations as including:

(1) A decree of divorce from [country of origin of EU spouse], dated 18th of July, 2014; • Evidence of date of initiation of divorce in June, 2014;

(2) Evidence that marriage had subsisted for several years in the State in the form of tenancy agreements in both names dated the 7th of March, 2009, 1st of March, 2010 and the 1st of August, 2012, PRTB letters in both names dated the 6th of August 2013, letter from the ESB in both names dated 23rd of October 2010, Airtricity bill in both names x4 dated 10th of March, 2011, 10th of May, 2011, the 12th of September, 2011 and the 10th of November, 2010, letter from Bord Gais Energy in both names dated the 15th of August 2012 and Bord Gais Energy electricity bill in both names dated the 18th of September 2012, letters from Permanent TSB x 2 in both names dated the 20th of May, 2011 and the 2nd of October, 2012 and Permanent

TSB bank statements dated for the period of June 2011 to January 2014;

(3) Evidence of the activity and residence of the EU citizen at the time of the divorce had been submitted in the form of a letter confirming employment from [named employer] dated the 10th August 2011, 4x payslips from [different named employer] dated the 8th of July, 2011, the 15th of July, 2011 and the 22nd of July, 2011, 4 x Payslips from [a further named employer] dated 26th of April, 2012, 3rd of May, 2012, 6th of December, 2012 and 10th of January, 2013 together with a P60 for the tax year 2010, a P60 for the tax year 2012 and a P21 for the tax year 2012.

13. The submission document records that the check carried out by the DEASP in August, 2018 revealed that the EU spouse was in receipt of Child Benefit from April, 2009 and had been in receipt of Jobseeker's Allowance from the 13th of September, 2013 until the 3rd of September, 2017 and from the 19th of February, 2018 until the 19th of June, 2018.

14. While the EU spouse was said to be in receipt of Child Benefit from April, 2009, her activity in the State, if any, prior to April 2009 was not referred to by the Minister. No reference was made to her being in receipt of any benefits other than child benefit until 2013, notwithstanding that it is apparent that she had been residing in the State at least since April, 2009 at that stage and had periods of employment (unquantified until 2013) between 2009 and 2014. She was recorded as being in receipt of Supplementary Welfare Allowance from June, 2018.

15. In terms of PRSI contributions, 37 A contributions were recorded in 2013 and 2 A contributions in 2014. The details of her contributions in the period between 2009 and 2012 are not set out but documents were listed including her P60 for 2010 and 2012 and payslips in respect of periods of employment in 2011, 2012 and 2013. It is not clear what periods of employment these demonstrated as this information was not set out.

16. Under the heading "*Recommendation*" in the Recommendation submission it was stated as follows:

> *"The applicant has submitted insufficient evidence that they have an entitlement under Regulation 10(2) of the Regulations. The applicant and the EU citizen, [identity obscured], were married on [dated in July, 2009] in [place in Ireland]. A certified translated document shows divorce proceedings were initiated on [date in*

June, 2014] and a decree was granted in [country of birth of EU citizen] on [date in July, 2014]. The applicant has not submitted evidence to show activity of the EU citizen at the time of initiation of divorce. Information available to the Minister from the Department of Social Protection shows that the EU citizen had no record of employment in 2015 and only two weeks of recorded employment in 2014, which is when divorce proceedings were initiated. This would indicate that the EU citizen was not exercising her rights in the Sate at the time of initiation of divorce as is required under the Regulations. Since the EU citizen stopped working sometime around 2014, the derived right of the applicant would have ceased at this time also."

17. In the record of the decision submission, an officer in the EU Treaty Rights Division decided (based on the recommendation and documents received) that the application should be refused as:

"the information available from the DEASP indicates that the EU citizen was not exercising her EUTR in the State through employment at the date of the initiation of divorce proceedings in [date in June, 2014] – she was resident here but was in receipt of Jobseekers Allowance from 13/09/2013 to 23/09/2017."

18. By letter dated the 17th of October, 2019, the Applicant's solicitor sought a review of the decision. In this letter a copy of the information received from the DEASP was requested. It was further stated that the EU citizen former spouse was lawfully resident in Ireland at the material time (date of initiation of divorce proceedings) and that she was in receipt of social welfare. It was stated that the Applicant and his former EU spouse did not enjoy an ongoing relationship but that his solicitors had written to her seeking her assistance in providing details as to her activities in the State during the periods referred to by the Minister and reiterating a belief that she was in receipt of social welfare during at least some of that period. It was indicated that the Applicant had no way of verifying his understanding that his former spouse was in receipt of social welfare during this period without her assistance and co-operation. It was contended that the Applicant had paid some maintenance to his former EU citizen spouse in the period following the divorce and had assisted her by paying her rent.

19. By separate letter dated the 17th of October, 2019, exhibited in the proceedings, the Applicant's then solicitor contacted the Applicant's former spouse seeking information regarding her activities in the State at the time the divorce proceedings were initiated. He followed up by letter dated the 24th of October, 2019, asking her to confirm whether she was

willing to provide assistance. From the correspondence exhibited she does not appear to have offered any response.

20. By letter dated the 12th of February, 2020, the Applicant's solicitor again wrote to the EU Treaty Rights Section advising of the EU citizen's lack of co-operation despite efforts to make contact with her. In this letter reference was again made to the fact that the Applicant understood that she was in receipt of social welfare, a fact which the Minister was already aware of from enquiries directed to the DEASP. It was clear that it was the Applicant's position that his former spouse was exercising EU Treaty rights in Ireland and continued to reside here, albeit not in employment in the State throughout much of the period since the couple's divorce. It was set out clearly, however, that the Applicant was constrained in his ability to furnish information and documentation. Repeated requests were made to the Minister for disclosure of the information referred to as received from the DEASP.

21. The Applicant himself has submitted evidence confirming a full employment history dating back many years and this is not disputed.

22. Ultimately the review application was determined in November, 2021 following repeated correspondence complaining of delay on behalf of the Applicant.

23. The record of the review officer's decision (also the deponent on behalf of the Minister in these proceedings) sets out a summary of the history on the file including the claim that the EU citizen spouse had been employed in different positions between 2009 and 2013 when applications for residency were made. No reference was made, however, to the record of her PRSI contributions during this period or the cumulative duration of these periods of employment. It is recorded that she was in receipt of Jobseeker's Allowance between September, 2013 and September, 2017 (such that it appears she was in receipt of Jobseeker's Allowance when the divorce proceedings were initiated in June, 2014). The terms of Regulation 6(3)(c)(i) and (ii) of the 2015 Regulations were referred to but the decision maker then states:

> *"In this case, there is no information on file in regard to the circumstances of the EU citizen's departure from her previous employment, whether that was voluntary or involuntary. Furthermore, there is nothing on file to suggest that [name of EU citizen] had been in employment for more than one year or had been on a fixed-*

term contract of less than one year prior to her registration with DEASP. Indeed, DEASP information on file indicates that the EU citizen was in employment for just 37 weeks in 2013 and two weeks in 2014, which is less than the one-year period set out in the Regulations. As such, I find that the Union citizen in this case was not exercising her EU Treaty Rights through involuntary unemployment in 2014, the year in which divorce proceedings were initiated and finalised."

24. The record of the decision continues:

"Although it is acknowledged that the EU citizen was in receipt of benefit payments in 2014, the Minister is not bound by any determination of the Department of Social Protection, and the continued payment of social welfare payments to the Union citizen is not determinative of the EU Treaty Rights matter before the Minister."

25. It was concluded with reference to retained rights following divorce as provided for in Regulation 10(2) of the 2015 Regulations as follows:

"As it has been found that the EU citizen in this case was not exercising her Treaty Rights in the State on the date that divorce proceedings were initiated, or on the date upon which they were finalised, this application does not conform with this Regulation."

26. From the record of the decision, it appears that the decision was based on a conclusion that at the time of the initiation of the divorce proceedings the Applicant's EU citizen spouse was not exercising her EU Treaty rights because she had not been working for a period of twelve months when divorce proceedings were initiated calculating that 37 weeks in 2013 and two weeks in 2014 did not amount to a year as considered to be necessary under the Regulations.

27. By letter dated the 22nd of November, 2021, the Applicant was informed of the decision following review. The basis for the decision (as recorded in the letter)was that there was no information on file regarding the circumstances of her departure from her previous employment – whether that was voluntary or involuntary - and nothing on file to suggest that she had been in employment for more than one year or had been on a fixed term contract of less than one year prior to her registration with DEASP (based on her employment of 37 weeks in 2013 and 2 weeks in 2014). It was concluded that she was not exercising her EU Treaty Rights through involuntary unemployment in the year 2014, the year in which divorce

proceedings were initiated and finalised because her period of unemployment was not preceded by twelve months working. The letter stated that although it was acknowledged that the EU citizen was in receipt of benefit payments in 2014, the Minister is not bound by any determination of the DEASP and the continued payment of social welfare payments to the Union citizen is not determinative of the EU Treaty rights matter before the Respondent.

28. No consideration is recorded anywhere in the record of the decision as having been given to the question of whether the EU citizen might have worked for in excess of one year during the period of her residence in the State prior to September, 2013 when she first received Jobseeker's Allowance and no account was taken of these earlier periods of activity in the State in determining whether the EU citizen had been exercising EU Treaty Rights in the State at the date of initiation of the divorce proceedings."

(ii) Issues of European law necessary for determination of this appeal

29. The 2004 Directive was implemented in Ireland by the enactment of the European Communities (Free Movement of Persons) Regulations 2015. Regulation 6(3)(c) of the 2015 Regulations provides for the retention of a right to residence on the part of an EU citizen, exercising free movement rights in the State in certain circumstances, including where he or she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a jobseeker with the DEASP. There is no relevant material difference between the provisions of the 2015 Regulations (in this regard) and the provisions of the 2004 Directive.

30. The two issues which require an authoritative construction of the Directive (and, by extension, the 2015 Regulations) are those set out at issues (1) and (2) of para. 2 of this judgment. A proper decision on these issues ultimately involves the construction of the

proper scope and meaning of the 2004 Directive. The parties informed the court that there has been no decision of the CJEU on either of these issues.

31. The third issue is, to some extent, an adjectival one. However, as outlined to the court, it is this. The Applicant argues that there is an obligation on the part of the Minister to make available to the former the file setting out the work or social welfare history of the European Union citizen from whose rights the Applicant claims derived rights. The Applicant does not base this argument solely on any entitlement under national law. Instead, the applicant (at paras. 38 to 49 inclusive of his submissions to this court, appended to this judgment) contends that three principles of EU law are engaged on this issue.

32. Firstly, the Applicant relies upon the General Principle equivalent to Art. 41 of the CFEU, and in particular relies upon para. 41.37 of the *EU Charter of Fundamental Rights, a Commentary* (Piers et al, 2nd edn. at p. 1136): -

> *"Access to the file may be relevant before the decision is made by the Administration, or after it has been made when an applicant seeks to challenge the decision by judicial review. Access facilitates understanding of the evidentiary basis on which the decision is to be made or has been made, and of the reasoning underlining it, thereby placing the individual in a better position to put counter arguments when exercising the right to be heard or challenging the decision by way of Judicial Review. Access to the file and access to documentation as protected by Article 15(3) TFEU and Article 42 of the Charter can function as alternate routes to the same goal."*

33. The Applicant further refers to cases such as C-277/LF 11 *MM* and C-604/12 *HN*.

34. Secondly, the Applicant relies (by analogy) to C-82/16 *KA v Belgium* at para. 54, where the court states: -

> *"In that regard, while it is indeed for the Member States to determine the rules on how to give effect to the derived right of residence which a third country national must, in the very specific situations referred to in para. 51 of this judgment, be granted under Art. 20 TFEU, the fact remains that those procedural rules cannot, however, undermine the effectiveness of Art. 20(c), to that effect, a judgment of 10 May, 2017, Chavez - Vilchez and Others, (C-133/15, … para. 76)"*

35. Thirdly, while the Applicant argues that production of the file by the Minister is *"a requirement of the duty of disclosure in judicial review"* (para. 42 of the Applicant's submissions to this court) it is also argued by the Applicant that *"judicial review in the High Court is the effective remedy in EU Treaty rights cases."* The Applicant relies upon C-115/81 *Adoui v Belgium*, to C-300/111 *ZZ*, to C-89/17 *Banger* and to Arts. 15(1), 30 and 31 of the 2004 Directive and Art. 47 of the CFEU.

36. Absent any basis in EU law for disclosure of the file, it is by no means sure that domestic rules of disclosure would enable the applicant to obtain this documentation. Paragraph 124 of the judgment of the High Court reads (in part): -

> *"124. The Applicant in this case has specifically requested that the Respondent furnish him with the information received from the DEASP, but this has not been forthcoming. The Applicant has also pursued a Data Access request but has been denied access to the information received from the Department of Social protection as this information is confidential to the EU citizen."*

37. In addition, while the Applicant does contend that there is an obligation on the Minister to disclose the file in the context of these proceedings as a matter of national law, this construction of national law is one advanced by the Applicant in the light of EU rights, as described earlier.

38. In any event, even were this third issue capable of being determined in favour of the Applicant solely by reference to domestic law, the end result would be that the determination of the Minister made in November 2021 would be quashed and the matter sent back to the Minister for fresh consideration. In conducting the matter afresh, the Minister would in all likelihood have to decide issues (1) and (2) without the assistance which this court now seeks from the CJEU.

(iii) The position of the parties

39. The position of the parties has evolved during the currency of the proceedings. The possibility of a reference does not appear to have loomed large in the submissions to the High Court. However, in the written submissions of this court the Minister argued (at para. 35) that: -

> *"Both parties accepted the question of the calculation of the one year period on Article 7(3)(b) has not previously been the subject of a determination by the CJEU. As a consequence and in accordance with the notice of appeal, the correct manner of interpreting how the one year period is to be calculated remains a matter which could be determined by the CJEU as this court is not of the view that the matters act clear in the sense as outlined by the Minister. Further, should this Honourable Court find that the meaning of 'involuntary unemployment' is not acte claire then this could also form part of any question to be referred to the CJEU."*

40. In their written submissions, responding to those of the Minister, counsel for the Applicant replied: -

> *"We note that the Minister now calls for a reference on this point. On further consideration we will not oppose that application for a reference subject to what is set out below."*

41. At the hearing of the appeal, counsel for the Applicant and counsel for the Minister accepted that this issue was of such systemic importance to the immigration system in Ireland that it would be desirable that, if a reference were to be made, it would be done sooner rather than later in these proceedings.

42. While the Minister proposed the reference to the CJEU of issues (1) and (2), the applicant also sought the reference of issue (3). Inevitably, the wording proposed by each side differs somewhat. The court has, in considering the questions which it feels necessary to refer to the CJEU, formulated its own questions and language, albeit with the assistance of the proposals from the parties.

(iv) The decision to refer

43. The court has decided to refer three questions at this time for the following reasons.

44. Firstly, issue (1) involves a construction of the Directive. The Irish law implementing the Directive is materially identical, and therefore no separate issue of national law arises. Issue (1) has wide ranging effects on the operation of the Irish immigration system. It is almost certainly the case that these issues are not confined to Ireland, and a determination of this issue by the CJEU is likely to be of assistance in other jurisdictions.

45. Identical considerations apply to issue (2).

46. With regard to issue (3), this involves (according to the Applicant) the vindication of EU law rights through the disclosure of documentation. The Applicant has failed to obtain this documentation by invoking national law. While the Applicant argues that the failure of the Minister to provide this documentation in fact helps to prove the Applicant's case, such a submission (at least according to the Minister) runs counter to a decision of this court in *Hemida v The Minister for Justice and Equality* [2019] IECA 335, which held that in cases such as this the burden is on the applicant to present the relevant evidence in support of his or her claim. *Hemida* was distinguished by the trial judge in the current case, but it is the view of this court that a proper determination of the claim made by the applicant under this *"fair procedures"* point can only be made when the issues of EU law relied upon by the applicant on this point are authoritatively determined. For these reasons, it is necessary that issue (3) be the subject of a reference to the CJEU. A determination of this issue will be of general assistance in understanding the obligations of parties such as the respondent to these proceedings. It may also be of some application outside Ireland.

47. With regard to the timing of the reference, the decision of this court in these proceedings is final and conclusive, pursuant to the provisions of Art. 34.4.3, unless the Supreme Court is satisfied to receive an appeal from this court on the basis that the decision involves a matter of general public importance or that in the interests of justice it is necessary that there be an appeal to that court: Art. 34.5.3 of the Constitution. In the view of this court, it is necessary for the determination of these proceedings that the three questions we have chosen to refer be answered. It is therefore clearly desirable that these questions be referred at this time, as opposed to later in the judicial process. In addition, and as already noted, the parties were of the view that the sooner some or all of these issues could be conclusively determined by means of a reference the better in terms of the operation of the immigration system in the State.

(v) The questions referred

48. The court refers the following questions to the CJEU: -

(1)(a) Does the expression *"one year"* in Art. 7(3)(b) of Directive 2004/38/EC ("the Directive") contemplate or require that the year in question be a single continuous period?

(1)(b) If the answer to (a) is *"no"*, does the fact that the periods of employment making up the year in question may have been accumulated or added together over a period of four or five years bring the EU citizen outside the scope of Art. 7(3)(b)?

(2) Does the fact that the EU citizen was in receipt of Jobseekers Allowance from the Department of Enterprise, Affairs and Social Protection in Ireland mean that he or she is in *"duly recorded involuntary unemployment"* in the State within the meaning of Art. 7(3)(b) of the Directive?

(3) Does the general principle of EU law which reflects Art. 41 of the Charter, or alternatively, does the Directive interpreted it in the light of that general principle, require the Respondent to provide its file to the Applicant (if necessary, in suitably redacted form) either: -

(a) before making a decision on retention of residence rights/ a Residence Card pursuant to Art. 14 of the Directive in relation to Arts. 13 and/0or 7(3) of the Directive; and/or

(b) when the applicant seeks to challenge such a decision by way of Judicial Review proceedings?

(vi) The question of mootness

49. In considering the admissibility of this reference, the CJEU should be aware of the fact that on the 16th June,, 2023 the Applicant was granted permission to reside in Ireland, accompanied by a right to work in the State, by reason of his parentage of an Irish citizen child. At first blush, therefore, it may appear that the current appeal is moot. However, the parties have satisfied this court that that is not the case. In particular, the entitlements which the Applicant would have, were he to succeed in these proceedings, would be significantly greater than the entitlements which he has on foot of the permission granted in June 2023. For the sake of completeness, the joint submission on mootness agreed between the parties will join the other documents appended to this judgment, which will constitute: -

(a) the pleadings in the case;

(b) the Core Book prepared for the purpose of the appeal, to include all appeal documents;

(c) the joint submission on mootness;

(d) the agreed employment history of the applicant's ex-spouse (the EU citizen).

50. The appeal will be put in for mention only at 9.30 am on the 9th of May 2024 to deal with any matters arising from this judgment, including the question of the costs of the appeal to date.