THE COURT OF APPEAL

McGovern J.
Baker J.
Costello J.

Neutral Citation Number: [2019] IECA 116

Appeal No.: 2018/141

BETWEEN/

M. A. M. (SOMALIA)

APPLICANT/

APPELLANT

-AND-

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

BETWEEN/

Appeal No.: 2018/138

K. N. (UZBEKISTAN), E. M., F. M. (A MINOR SUING BY HER GRANDMOTHER AND NEXT FRIEND K. N.) AND Y. M. (A MINOR SUING BY HER GRANDMOTHER AND NEXT FRIEND K. N.)

APPLICANTS/

APPELLANTS

-AND-

THE MINISTER FOR JUSTICE

RESPONDENT

-AND-

THE IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

AMICUS CURIAE

JUDGMENT of Ms. Justice Baker delivered on the 29th day of March 2019

1. Both appeals concern the same question, whether persons who came to Ireland as refugees and obtained a declaration of refugee status and who subsequently became naturalised Irish citizens are entitled to the benefit of statutory family reunification rights contained in s. 18 of the Refugee Act 1996, as amended ("the 1996 Act").

2. The answer is of importance because a person who has the benefit of the reunification rights contained in s. 18 of the 1996 Act does not have to meet the requirements concerning family reunification under the Immigration Act 2004 or the Non-EEA National Family Reunification Policy.

3. The Minister for Justice and Equality ("the Minister") originally took the view that generally, an Irish citizen was not entitled to make an application under the provisions for family reunification in s. 18 of the 1996 Act. However, in August 2010, on foot of legal advice that the Minister is now saying was incorrect, the Minister began processing applications for family reunification from citizen applicants. That approach lasted up until October 2017, when the Minister reverted back to the initial interpretation.

4. It is that change of approach that has led to the refusal of the Minister to permit the appellants to seek family reunification under s. 18 of the 1996 Act.

5. The first appellants in each case are naturalised Irish citizens whose refugee status had been declared under the 1996 Act. They both made unsuccessful applications for family reunification to the relevant statutory bodies. Humphreys J. upheld the refusal in judicial review proceedings, *M. A. M. (Somalia) v. The Minister for Justice and Equality* (No. 1) [2018] IEHC 113.

6. The appellants say that their applications for family reunification are to be dealt with under the provisions of the 1996 Act as if

they were refugees holding a declaration of that status, and that their status as refugees continues notwithstanding that they have become naturalised Irish citizens, and because no positive act was taken by the Minister to revoke the declaration of refugee status which they argue is required by the 1996 Act, in particular because of the extensive rights to which a holder of a declaration is entitled.

7. The central question this Court is required to answer in both appeals is whether Humphreys J. was correct that a refugee does not continue to be a refugee once he or she has acquired citizenship of the State, and that a declaration of refugee status automatically, by operation of law, ceases to have effect once a person becomes a naturalised citizen.

8. In accordance with s. 10(2)(e) of the Irish Human Rights and Equality Commission Act 2014, by order of Irvine J. of 28 June 2018, the Irish Human Rights and Equality Commission ("IHREC") was granted liberty to appear in these appeals as *amicus curiae*.

The first appeal

9. The first appeal was selected as "lead case."

10. Ms M. A. M. was born in Somalia in 1980 and came to Ireland as an asylum seeker in 2007. She was granted a declaration of refugee status on 29 August 2008 pursuant to s. 17(1)(a) of the 1996 Act and became an Irish citizen on 21 October 2013. In June 2009, and before the process of naturalisation had concluded, she applied for family reunification with some family members. Her children, her mother, and her wards were granted permission to come to Ireland in January 2012. As she had lost contact with her husband, who was missing and unaccounted for, she did not apply in relation to him at that point in time.

11. Subsequent to becoming an Irish citizen in 2013, having re-established contact with her husband in December 2016, she sought family reunification in respect of him on 7 April 2017, and made an application for family reunification under s. 56 of the International Protection Act 2015 ("the 2015 Act").

12. This application was refused by a decision of the Minister given on 16 May 2017, and after leave was granted to bring an application for judicial review, the Minister withdrew his decision and made a further decision of 20 October 2017 refusing the application on the grounds that, as she had become an Irish citizen in 2013, she was no longer eligible to apply for family reunification.

13. That decision was the subject of the present application for judicial review and was upheld by Humphreys J. in his judgement.

The second appeal

14. Ms K. N., the first appellant in the second appeal, was born in 1972 in Uzbekistan. She came to live in Ireland in February 2008 and was granted a declaration of refugee status on 25 February 2009 pursuant to s. 17(1)(a) of the 1996 Act. She was granted naturalisation and on 13 December 2012, became an Irish citizen. She applied for family reunification under s. 18 of the 1996 Act on 19 July 2016, some years after she had become an Irish citizen, in respect of her eldest daughter, her son-in-law, and her grandchildren, two young girls. The application in respect of her son-in law-was subsequently withdrawn, as Ms N. accepted that he was not eligible for consideration under s. 18(4) of the 1996 Act. The second appellant is the daughter of Ms N., and the third and fourth appellants are her grandchildren, the children of that daughter, and her husband.

15. Ms N. had previously been granted family reunification rights in respect of two of her other children in August 2012, and at that time her daughter, the second appellant, did not wish to leave Uzbekistan as she wished to marry.

16. On 29 November 2017, the application for family reunification was rejected, the sole reason being that, as Ms N. had become an Irish citizen in 2012, she was not entitled to apply for family reunification under s. 18(4) of the 1996 Act.

The decision in the High Court

17. The proceedings were heard before Humphreys J. who had previously made case management orders that the two cases be heard together along with another which is not the subject of this appeal. He reserved judgment and delivered his written judgment on 26 February 2018, by which he rejected the application for judicial review of the Minister's decisions.

18. Humphreys J. answered the central question early in his judgment by reference to the ordinary meaning of "refugee" in the 1996 Act, at para. 24:

> "A refugee is a person who owing to a well-founded fear of being persecuted for a convention reason "*is outside the country of his or her nationality*" and is unable or unwilling to avail of protection of that country, and related provisions were made for stateless persons as well as provision for certain exceptions. On that definition, a person ceases to be a refugee as soon as he or she becomes an Irish citizen".

19. Humphreys J. described the legal question to be answered as "fairly simple" but he accepted it raised complex arguments. He held that a refugee automatically ceases to be a refugee by operation of law on acquisition of citizenship of the State, and that no formal revocation of a declaration of refugee status is required. He considered that s. 18 of the 1996 Act does not apply to refugees after they have become citizens of the State. Humphreys J. concluded that s. 2(1) of the 1996 Act, which defines a refugee as someone outside their "country of nationality", means a person ceases to be a refugee as soon as he or she become an Irish citizen. He considered that a person who becomes a citizen of the State voluntarily trades the advantages of refugee status for those of citizenship and acquires new benefits and a new legal status.

20. Humphreys J., at para. 28 of his judgment, relied upon the *dicta* of Laws L.J. in his judgment for the Court of Appeal for England and Wales in *D. L. (DRC) v. The Entry Clearance Officer, Pretoria* [2008] EWCA Civ 1420, at para. 29:

> "In my judgment it is plain that a recognised refugee who thereafter obtains the citizenship of his host country, whose protection he then enjoys, loses his refugee status".

21. He also quoted the analysis of Hathaway, *The Rights of Refugees Under International Law* (2005, Cambridge University Press), at p. 916, also relied on by Laws L.J. in *D. L. (DRC) v. The Entry Clearance Officer*, at para. 31, in which the author states:

> "If a refugee opts to accept an offer of citizenship there [the asylum country], with entitlement fully to participate in all aspects of that state's public life, his or her need for the surrogate protection of refugee law comes to an end. There is no need for surrogate protection in such a case, as the refugee is able and entitled to benefit from the protection of his or her new country of nationality".

22. In considering the provisions of the 1996 Act which deal with family reunification applications, in the light of the above conclusions, Humphreys J. held, at para. 23 of his judgment, that it was "clear from the words of the section itself" that in order to avail of s. 18 of the 1996 Act for the purposes of the making of an application for family reunification, "one must not only be in possession of a declaration but one must also actually be refugee".

23. He concluded, at para. 59, that s. 18 of the 1996 Act does not apply to refugees after they have become citizens of the State:

> "[E]xpress provision has been made [in the 2015 Act] in respect of applications made following naturalisations on or after 31st December, 2016 but the absence of that provision for naturalisations before that date does not mean that persons so naturalised are refugees. They are not. Nor is an express revocation of refugee status required in such cases".

The grounds of appeal
24. The grounds of appeal can be combined and summarised as follows:

a) the trial judge erred in law holding, as a matter of ordinary interpretation of Irish law, that a person who becomes an Irish citizen automatically ceases to be a refugee by operation of law and without the necessity of any formal revocation (grounds 1, 5, 6, 7, 9, and 10 in the second appeal and grounds 1 and 9 in the first appeal);

b) the trial judge erred in law in interpreting Irish statutory provisions by relying upon the international principles of the Convention and Protocol Relating to the Status of Refugees of 28 July 1951 ("the Geneva Convention") as support for the proposition that acquisition of Irish citizenship automatically operates to revoke refugee status, as they do not form part of Irish law (grounds 2 and 9 in the second appeal and grounds 4 and 12 in the first appeal);

c) the trial judge erred in law in finding that EU law does not require refugee status to be expressly revoked on the acquisition of nationality, in particular having regard to art. 38(4) of Directive 2013/32/EU on Common Procedures for Granting and Withdrawing International Protection ("the Procedures Directive") (ground 12 in the second appeal and ground 3 in the first appeal);

d) the trial judge erred in concluding that the approach for which the Minister contended would not usurp the role of the Office of the Refugee Applications Commissioner ("the Commissioner") and Refugee Appeals Tribunal (ground 4 in the second appeal);

e) the trial judge erred in law and in fact in concluding that there is no injustice, or unjustified discrimination to an applicant who was deprived of the right to apply for family reunification under s. 18 of the 1996 Act if there is an "automatic" cessation of refugee status on acquisition of Irish citizenship (ground 8 in the second appeal and ground 2 and 5 in the first appeal);

f) the trial judge erred in concluding that the Minister did not breach the appellants' constitutional and/or European Convention on Human Rights ("ECHR") rights (ground 15 in the second appeal and ground 10 and 11 in the first appeal).

25. The grounds of legitimate expectation and that the Minister was acting unlawfully, arbitrarily, or in breach of fair procedures were not pursued.

The respondent's submissions
26. The respondent argues that Humphreys J. was correct in his analysis and his interpretation of the 1996 Act, and opposes each appeal in its entirety, and each ground of appeal.

Separate ground in the first appeal
27. The appellant in the first appeal sought a declaration that s. 47(9) of the 2015 Act, which provides for the automatic cessation of a refugee status "where the person to whom it has been given becomes an Irish citizen", and which was the basis of the refusal of the application for family reunification outlined in the decision of 20 October 2017, is not retrospective.

28. Humphreys J. considered that the claim of the appellant in the first appeal was based on a false premise and concluded that "that declaration is unnecessary because the Minister is not contending that that subsection is retrospective", at para. 13 of his judgment.

29. The respondent accepted that, notwithstanding the reference to it in the letter of 13 November 2017, s. 47(9) of the 2015 Act does not apply to persons who acquired citizenship prior to the coming into force of the 2015 Act.

The legal issues arising in this appeal
30. In summary, the legal issues for consideration are as follows:

1) whether a refugee automatically ceases to be a refugee by operation of law on acquisition of citizenship of the State;

2) whether EU law requires an express revocation of the declaration of refugee status;

3) the relevance of the Geneva Convention;

4) the relevance of the Constitution and the ECHR;

5) in relation to the first appeal only, whether the trial judge was correct in refusing the declaration sought that s. 47(9) of the 2015 Act was not to be applied to persons who had acquired citizenship before the coming into operation of the Act.

The Refugees Act 1996
31. Under the scheme provided by the 1996 Act, a person who arrives at the frontier of the State seeking asylum in the State or seeking the protection of the State may apply to the Minister for a declaration and that application sets in train an interview process and a referral to the Commissioner, an independent statutory body whose functions are set out in s. 6 of the 1996 Act, and are now performed by the International Protection Office under the 2015 Act. The legislation envisages a process and an inevitable time lag

between entry into the State, a request for protection and asylum in the State, and by virtue of s. 9 an applicant for asylum is entitled to enter and remain in the State until the application for refugee status is refused. A person awaiting a decision is entitled to a certificate entitling him or her to temporarily reside in the State, which carries certain limited rights. An appeal from the decision of the Commissioner lies to the Refugee Appeals Tribunal under s. 16(d). This process has, as appears from the authorities, taken many years in some cases.

32. The long title of the 1996 Act recites that its purpose is, *inter alia*, to give effect to the Geneva Convention and the New York Protocol thereto, as well as the Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities of 15 June 1990.

33. The status of refugee has been described as "surrogate protection", see for example the judgment of Herbert J. in *D. K. v. Refugee Appeals Tribunal* [2006] IEHC 132, [2006] 3 IR 368, para. 8 whereof was quoted with approval by MacEochaidh J. in *H. T. K. (a Minor) v. Minister for Justice and Equality* [2016] IEHC 43, at para. 9:

> "I agree with La Forest J. [in *Canada (Attorney General) v. Ward* [1993] 2 RCS 689], that subject to such exceptional cases, the fact that the power of the state to provide protection to its nationals is a fundamental feature of sovereignty and, the fact that the protection afforded by refugee status is "a surrogate coming into play where no alternative remains to the claimant", renders it both rational and just for a requested state to presume, unless the contrary is demonstrated by "clear and convincing proof" on the part of the applicant for refugee status, that the state of origin is able and willing to provide protection to the applicant from persecution, even if at a lesser level then the requested state."

34. Flaherty J., in *B. D. R. v. Refugee Appeals Tribunal* [2016] IEHC 274, also used that language where she approved a quotation of Hathaway and Foster, *The Law of Refugee Status* (2nd ed., Cambridge University Press, 2014) from the Canadian case *Thabet v. Canada (Minister of Citizenship and Immigration)* [1996] 1 FC 685:

> "[S]urrogate protection is not owed when the applicant has a country fairly understood to be "her own" that is both able and willing to afford national protection".

35. The affording of refugee status or protection is, therefore, a surrogate or a substitute for what is perceived to be the better option, that a person be and feel safe to reside in the country of his or her nationality. Where that is not possible, and a person is recognised as a refugee, it is desirable that the refugee settles into the country of refuge and, if he or she so wishes, is assimilated and naturalised. This is echoed in art. 34 of the Geneva Convention itself, which encourages the settling of persons with refugee status by their assimilation into their new and chosen place of residence:

> "The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."

36. That guiding principle expresses the primacy and desirability of citizenship, and that a refugee be permitted to assimilate or settle down in a new State and enjoy the benefit of citizenship in that State. But the acquisition of citizenship is a choice of the refugee and not an obligation. The obligation is on the refuge State to permit and facilitate assimilation, *inter alia* by facilitating the acquisition of citizenship. This is a factor that influenced Humphreys. J. where he pointed to the fact that the acquisition of citizenship is a choice, one which may bring benefits, but which may result in the loss of rights which uniquely vest in a refugee.

Definition of "refugee"

37. In s. 2, the interpretation section, the 1996 Act provides for the first time a definition of a "refugee" in Irish law:

> "(1) In this Act " a refugee" means a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is *outside the country of his or her nationality* and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, is unwilling to return to it, but does not include a person who—
>
> a) […],
>
> b) *is recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country"* (emphasis added).

38. Central to the definition is that the person be outside the country of his or her nationality and is unable or unwilling, on account of a well-founded fear, to avail himself or herself of the protection of that country or to return to it.

39. Section 2 of the 1996 Act expressly excludes from the definition any person who is recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations attached to possession of the nationality of that country.

40. An Irish citizen living in Ireland could not, on a plain reading of the section, be characterised as a refugee within the meaning of s. 2, because, in simple terms, the person is not outside Ireland, the country of his or her nationality, and on that reading, once a person becomes an Irish citizen and has the rights and obligations which derive from this status, that person cannot be a refugee by reason of the exclusion contained in the definition.

41. This interpretation is consistent with the Geneva Convention which expressly states, in art. 1C (3), that the Convention "shall cease to apply to any person falling under the terms of section A [person qualified as "refugee"] if […] [h]e has acquired a new nationality, and enjoys the protection of the country of his new nationality".

42. This is the view taken by Humphreys J. where, at para. 25 of his judgment, he considered the principles from the Geneva Convention:

> "There is no injustice to an applicant because becoming a citizen is a volitional act. It confers numerous benefits on an applicant and the new status supersedes the applicant's previous status. This is also perfectly consistent with international law. Article 1C(3) of the Geneva Convention provides that "*This Convention shall cease to apply to any person falling under the terms of section A if: … He has acquired a new nationality, and enjoys the protection of the*

country of his new nationality". Article 1E goes on to say that: "The provisions of this Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country." The UNHCR handbook notes at para. 88 that: *"There are no exceptions to this rule"*."

43. The correct approach to the Geneva Convention has been the subject of some recent decisions to which I now turn.

The Geneva Convention

44. The 1996 Act was enacted to give effect to the Geneva Convention and to later protocols and the text of the Convention is contained as an appendix to the 1996 Act. The parties disagreed, to an extent, regarding the function of the Convention as an interpretive tool.

45. There can be no doubt that the Geneva Convention does not have direct effect in Irish law but, as described by Hogan J. in *AQS v. Office of Refugee Applications Commissioner* [2010] IEHC 421, it is part of our law only to the extent that the Oireachtas has so determined. The case law is unequivocal. In *N. S. v. Judge Anderson* [2004] IEHC 440, [2008] 3 IR 417, O'Higgins J. stated the proposition in clear terms that an international agreement, even one ratified which has not been otherwise incorporated in domestic law, cannot be imported into the legalisation and, at para. 32 of his judgment, applied the authoritative decision in In *re Ó Laighléis* [1960] IR 93. The fact that the State has ratified an international agreement does not affect the provisions of domestic legislation. In *N. S. v. Judge Anderson*, O'Higgins J. held, in particular, that the purpose of including the provisions of the Geneva Convention as a schedule in the 1996 Act was for convenience of reference and did not thereby incorporate the provisions of the Convention into domestic law. As he said at para. 11 of his judgment, where he rejected the argument that the combined effect of the reference to the Geneva Convention in the long title to the 1996 Act and the inclusion of the text of the Convention in the Schedule meant that the Geneva Convention was to be treated as part of Irish law:

> "There is, in my view, a clear distinction between "giving effect" to the provisions of a convention by legislation and incorporating that convention in its entirety. The provisions of the Refugee Act 1996 were the way in which the legislature chose to give effect to the Geneva Convention 1951. There is nothing to suggest an intention to incorporate the Convention in its entirety."

46. That approach to the Geneva Convention has been accepted in subsequent cases, and no argument is made by either party that the Convention is directly effective. The 1996 Act, and not the Geneva Convention, is the governing law, although in *AQS v. Office of Refugee Applications Commissioner*, at para. 11, Hogan J. considered that it would be appropriate that the statutory provisions be construed "liberally in order to give effect to the noble and humanitarian principles which underpin it [the Geneva Convention]".

47. I consider that the appellants are incorrect to characterise the approach of Humphreys J. as amounting to a reliance for the purposes of interpretation on the Geneva Convention. I consider that Humphreys J. adopted a correct approach, to ask whether the result at which he had arrived by analysis of Irish statutory provisions led to a result which might offend international rules and thinking, and presumably, had he considered that the answer based exclusively on Irish law led to an absurdity or to a result which was inconsistent with international thinking, he might then have approached the question from a different angle. He did not do so and did not need to do so, and in my view, his approach was correct.

48. The primary purpose to which Humphreys J. considered the provisions of the Geneva Convention was with regard to the fact that no express provision is contained in the 1996 Act by which the effect of the acquisition of citizenship could be readily understood.

49. The Geneva Convention, while it has not been incorporated into Irish law, is a useful or, perhaps, very useful guide to context in which domestic law is to be viewed, not least because the purpose for which the Geneva Convention was adopted internationally is expressly that which the 1996 Act has sought to promote.

50. That a person who accepts citizenship ceases to have or to need refugee status and international protection is also consistent with the principles explained by Hathaway and the fact that the Irish authorities consider refugee status to be surrogate protection.

51. In my view, Humphreys J. was correct in his determination that a person ceases to be a refugee within the meaning of the 1996 Act on the acquisition of citizenship of the State.

52. He expressly came to that conclusion on a reading of the plain words of s. 2 of the 1996 Act. He, correctly, in my view, observed that his reading was consistent with the Geneva Convention and international instruments, and that approach is consistent with the decisions he mentions at para. 26 of his judgment.

53. Humphreys J. also had regard to the United Nations High Commissioner for Refugees ("UNHCR")'s Note on the Cessation Clauses of 30 May 1997:

> "Such conclusions are also consistent with the "Note on the Cessation Clauses", document EC/47/SC/CRPE.20 by the UNHCR Standing Committee (30th May, 1997), at para. 15: "Clearly, where a refugee has acquired the nationality of the country of asylum through naturalisation refugee status will cease". Paragraph 35 calls for procedures to challenge such cessation where this terminates the residence rights of the refugee, but this clearly has absolutely no relevance where citizenship applies", at para. 27 of his judgment.

54. He also noted Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted ("the Qualification Directive"), art. 7 of which provides for the cessation of refugee status and provides, under art 11(1)(c), that a third country national or stateless person shall cease, *inter alia*, to be a refugee if he or she "has acquired a new nationality, and enjoys the protection of the country of his or her new nationality". That direction, *inter alia*, was adopted for the purposes explained in recital 17:

> "It is necessary to introduce common criteria for recognising applicants for asylum refugees within the meaning of Article 1 of the Geneva Convention."

55. That he tested his interpretation against these international instruments, case law, and commentary is not just permissible but appropriate. I reject, therefore, the grounds of appeal summarised at (b) of para. 24 above that Humphreys J. erred in the manner of making his decision. In my view, a person who has acquired citizenship in the State can no longer be considered to be a refugee within the meaning of s. 2 of the 1996 Act. That interpretation is consistent with international instruments, case law, and

commentary.

The declaration of status
56. A person may be a refugee and meet the test set out in s. 2 of the 1996 Act but not yet be recognised as such. The scheme of the 1996 Act provides a basis in accordance with Ireland's international obligations by which a person fleeing persecution in his or her own country may seek the protection of the State. A person is recognised in law as being a refugee when a declaration to that effect is made under the 1996 Act.

57. Section 17(1) of the 1996 Act provides for the making of a declaration by the Minister that a person is a refugee.

> "Subject to the subsequent provisions of this section, where a report [of the Commissioner] under section 13 is furnished to the Minister or where the Tribunal sets aside a recommendation of the Commissioner under section 16, the Minister—
>
> > (a) shall, in case the report or, as the case may be, the decision of the Tribunal includes a recommendation that the applicant concerned should be declared to be a refugee, give to the applicant a statement in writing (in this Act referred to as "a declaration") declaring that the applicant is a refugee, and
> >
> > (b) may, in any other case, refuse to give the applicant a declaration,

and he or she shall notify the High Commissioner of the giving of or, as the case may be, the refusal to give the applicant a declaration."

58. Section 17 of the 1996 Act provides for the making of a declaration that a person is a refugee and this declaration is made following the giving of a report by the Commissioner or, on appeal, by the Refugee Appeals Tribunal, and requires the Minister to grant a declaration that an applicant is a refugee in the light of its recommendation. The declaration is a statement in writing that the applicant is a refugee. It has an important international context in that the Minister is required, under s. 17(1) of the 1996 Act, to notify the UNHCR of the making of a declaration or a refusal to so do.

59. The 1996 Act also expressly provides that a declaration may not be granted where a person has already had his or her status as refugee recognised under the Geneva Convention by another State and who has been granted asylum in that State. This sub-section is to avoid an element of "forum shopping" by persons seeking protection.

60. Section 17(4) of the 1996 Act reads as follows:

> "The Minister shall not give a declaration to a refugee who has been recognised as a refugee under the Geneva Convention by a state other than the State and who has been granted asylum in that state and whose reason for leaving or not returning to that state and for seeking a declaration in the State does not relate to a fear of persecution in that state."

61. It seems from the plain language of s. 17(4) of the 1996 Act that a declaration that an applicant is a refugee may not be given to a person who already has such a declaration from another State and has been granted asylum in that State where the reason for not returning to that State and seeking instead a declaration in Ireland does not relate to a fear of persecution in the other State.

62. A person may be a refugee and not have the benefit of a declaration, but a person who has the benefit of a declaration is entitled to certain rights as a matter of law. These include the rights set out in s. 3 of the 1996 Act, viz. the right to social welfare payment, the right to work, etc. The declaration must therefore be seen to be an internationally recognised statement of status and as performing a useful function in the administration of certain State obligations and the processing of claims under the social welfare and tax codes and other similar measures.

63. The declaration or statement is declaratory of status. A person may not yet have a declaration but still meet the statutory test or be a refugee in the sense in which the status is understood in international law. As Cook J. said in *H. I. D. (a Minor) v. Refugee Applications Commissioner* [2011] IEHC 33, at para. 58:

> "An asylum seeker is a refugee as and when the circumstances defined in the Geneva Convention arise and apply. The determination of the asylum application is purely declaratory of a pre-existing status."

64. This is clear too from the *dictum* of Hogan J. in *Danqua v. Minister for Justice, Equality and Law Reform* [2015] IECA 118, at para. 38:

> "[T]he right to refugee status under EU law is declaratory of a pre-existing right created by the 1951 Geneva Convention".

65. The Supreme Court of the United Kingdom agreed, in *Z. N. (Afghanistan) v. Entry Clearance Officer* [2010] UKSC 21, [2010] 1 WLR 1275, as Humphreys J. had noted in the present case, that it is not part of the definition of refugee that the subject be formally recognised as such.

66. In my view, Humphreys J. was correct that, as a matter of practice, there will be "a time lag between the person being a refugee and being recognised as such", at para. 22 of his judgment. As he noted, this is acknowledged in the 1979 UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (2011 re-edition), at para. 28, which he quoted:

> "A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee."

Revocation of declaration
67. A declaration of refugee status may be revoked as provided in s. 21 of the 1996 Act which provides as follows:

> "Subject to subsection (2), if the Minister is satisfied that a person to whom a declaration has been given—

(a) has voluntarily re-availed himself or herself of the protection of the country of his or her nationality,

(b) having lost his or her nationality, has voluntarily re-acquired it,

(c) has acquired a new nationality (other than the nationality of the State) and enjoys the protection of the country of his or her new nationality,

(d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution,

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her nationality,

(f) being a person who has no nationality is, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, able to return to the country of his or her former habitual residence,

(g) is a person whose presence in the State poses a threat to national security or public policy ("ordre public"), or

(h) is a person to whom a declaration has been given on the basis of information furnished to the Commissioner or, as the case may be, the Tribunal which was false or misleading in a material particular,

the Minister may, if he or she considers it appropriate to do so, revoke the declaration."

68. The 1996 Act sets out a procedure to be followed before the declaration is revoked and the Minister must first notify the person concerned in writing and consider any representations made, and an appeal lies to the High Court against the decision of the Minister to revoke a declaration. The appellants argue that the Minister has not expressly revoked the declarations granted to the appellants on 29 August 2008 and 25 February 2009 respectively, and that Humphreys J. was not correct in his views that no formal revocation was required, and that a declaration ceased to be in effect by operation of law on the acquisition of citizenship of the State, and that European Union law did not require express revocation or express legislation providing for cessation.

69. Section 47 of the 2015 Act expressly makes provision for the revocation by operation of law of a declaration of refugee status in the event that the person to whom it has been given becomes an Irish citizen. The 2015 Act came into force on 31 December 2016. It is not relevant to the present appeals, save with regard to one aspect of the first appeal.

70. Section 47(9) of the 2015 Act provides as follows:

> "A refugee declaration or a subsidiary protection declaration given, or deemed to have been given, under this Act shall cease to be in force where the person to whom it has been given becomes an Irish citizen."

71. No similar provision for automatic revocation exits in the 1996 Act.

Express revocation required?
72. The appellants, in different ways, argue that, on a correct interpretation of this section, s. 21(1) of the 1996 Act is to be read as containing an exhaustive list of the circumstances in which a declaration may be revoked.

73. I turn now to examine that argument and whether the fact that no express provision exists by which the Minister may revoke a declaration granted to a person who thereafter becomes a citizen of the State, means that no such power exists.

74. The appellants argue that the 1996 Act is to be interpreted such that, for the purposes of a family reunification application, a declaration must be formally revoked before s. 18 of the 1996 Act becomes inapplicable, but the respondent argues the declarations have ceased to have effect or be "in force" by operation of law.

75. A declaration may be revoked pursuant to the statutory powers in s. 21, and s. 21(1) of the 1996 Act sets out the circumstances in which this may be done. That sub-section was the subject of much argument in the High Court and on appeal and Humphreys J. considered that the declaration of refugee status ceases to have effect by operation of law, and the fact that s. 21(1) of the 1996 Act does not expressly identify these circumstances as giving rise to the power in the Minister to revoke the declaration is not conclusive.

76. A number of observations are to be made regarding s. 21 of the 1996 Act.

77. One of the statutory criteria is that the person to whom the declaration had been given has acquired a new nationality *other than the nationality of the State* (the phrase in italics is contained in parenthesis in the 1996 Act) and enjoys the protection of the country of his or her new nationality. There is, therefore, no express provision by which the Minister has the power to revoke a declaration when a person has acquired the nationality of the State.

78. The respondent argued that the reason for the exclusion contained in parenthesis is that the Minister does not need the power to cancel or revoke a declaration of refugee status when a person becomes an Irish citizen because the effect of becoming an Irish citizen is that the declaration automatically ceased to have effect, and that no other reading of s. 21(1)(c) of the 1996 Act is consistent with common sense and with the definition of refugee contained in s. 2 of the 1996 Act.

79. Humphreys J. agreed with that proposition and, at para. 24 of his judgment, considered that the exclusion contained in parenthesis "only makes sense if a person who acquires nationality of the State is no longer a refugee". He also considered that, once one becomes a citizen, "it has the necessary effect that the declaration of refugee status ceases to have effect by operation of law without the necessity for formal revocation under s. 21. That explains the exclusion for persons who are Irish citizens." I agree with his analysis.

80. Section 21(1)(c) of the 1996 Act excludes from the cases in which the Minister may make a revocation of the refugee declaration a case where the person has Irish citizenship, and there is no requirement for a formal revocation as the very fact of naturalisation

means an applicant actually enjoys the protection of Ireland as a citizen. Thus, the Minister does not need a statutory power to revoke in these circumstances. The declaration ceases to have meaning and effect by operation of law once a refugee becomes a citizen of Ireland, and therefore, the 1996 Act must, in its plain terms, be read to exclude the right to revoke in those circumstances. There is no legal or logical reason why the Minister requires a power to expressly revoke or why express revocation is necessary. This is because, as matter of logic and on an analysis of its statutory purpose and effect, the declaration is not operative once the essence of the declaration has ceased to subsist.

81. The acquisition of citizenship operates to revoke the declaration as a matter of law and, thus, it is not necessary to have a separate express declaration to that effect. A citizen is not entitled to apply for a declaration, and a refugee cannot continue to hold it once he or she becomes a citizen. The two concepts are incompatible because of the statutory purpose and qualifying conditions for the status to subsist. The status of refugee and that of citizen are mutually exclusive because of the definition of "refugee" contained in s. 2 of the 1996 Act.

82. Further, the power to revoke is discretionary, and the Minister is not obliged, even if he or she is satisfied that one of the alternative eight circumstances provided in s. 21(1) of the 1996 Act exists, to revoke a declaration, and may revoke the declaration if he or she considers it appropriate to do so. This is expressly stated in s. 21(2) of the 1996 Act, which provides that the Minister shall not revoke a declaration if he or she is satisfied that the person concerned has compelling reasons to refuse the protection of his or her nationality or for refusing to return to his or her place of habitual residence. This suggests that the citizenship or nationality of a person is a central consideration and a person may persuade the Minister not to revoke a declaration if the State from whence he or she has fled can offer protection which it is nonetheless reasonable to refuse. The Minister will, in those circumstances, be examining the protection offered or available in a State other than Ireland and the discretionary power in s. 21(2) of the 1996 Act cannot rationally be read otherwise.

83. The provisions of s. 21 of the 1996 Act lack the clarity now present in the 2015 Act. Section 21 of the 1996 Act, whilst it makes provision for the revocation of a declaration of refugee status in a number of identified circumstances, does not expressly provide for the automatic revocation of a declaration by operation of law.

84. I accept the argument made by the appellants that the 1996 Act does contain some ambiguity and that the precise purpose for which the exclusion contained in parenthesis is found in the legislation ought to have been expressed.

85. I reject the argument, however, that the fact that express provision is made in the 2015 Act by which the acquisition of citizenship creates an automatic cessation of refugee status means that that effect was not intended by the 1996 Act. In *Cronin (Inspector of Taxes) v. Cork and County Properties* [1986] 1 IR 559, at 572, Griffin J. identified the inherent difficulty in using legislature amendments as an interpretative tool:

> "[T]he Court cannot in my view construe a statute in the light of any amendments that may thereafter have been made to it. An amendment to a statute can, at best, only be neutral – it may have been made for any one of a variety of reasons. It is however for the courts to say what the true construction of a statute is, and that construction cannot be influenced by what the Oireachtas may subsequently have believed it to be".

Does EU law require an express revocation of the declaration of refugee status?

86. The appellants argue that EU law requires an express revocation of a declaration and I turn now to examine this proposition.

87. Although not raised in the statement of grounds, Humphreys J. dealt with the requirements for revocation of refugee status under EU law and, in particular, the question of whether there has to be either an affirmative withdrawal of refugee status under art. 14 of the Qualification Directive or pursuant to express provision for automatic removal of that status under art. 38(4) of the Procedures Directive.

88. Humphreys J. noted that a distinction exists in EU law between being a refugee and refugee status, a distinction which, in his view, is also present under Irish and international law, and which derives from the declaratory nature of the refugee status, at para. 34 of his judgment:

> "[…] the question of whether one actually is or has ceased to be a refugee exists independently of whether or not one is recognised or when the recognition of that position or its cessation is made".

89. Article 11 (1)(c) of the Qualification Directive provides that a third country national or a stateless person shall cease to be a refugee if he or she has "acquired a new nationality, and enjoys the protection of the country of his or her new nationality". The article does not require that an express revocation be made. It, in its express terms, applies to a person who is outside the country of his or her nationality, and does not have any application to a person who has acquired the nationality of a Member State.

90. Article 2C of the Qualification Directive defines a refugee as "third country national who is […] outside the country of nationality […] or a stateless person".

91. Article 14 of the Qualification Directive provides that a Member State may revoke, end, or refuse to renew the refugee status granted to a "third country national or stateless person" in specified circumstances including where that person has ceased to be a refugee in accordance with article 11 thereof. A person who has become a naturalised Irish citizen cannot be called a third country national or stateless person and accordingly, in my view, the provisions of arts. 11 and 14 of the Qualification Directive do not apply, and do not assist in the interpretation of the 1996 Act.

92. This is consistent with the general approach of international law examined above that the declaration of refugee status is declaratory in nature, and that a person can meet all of the legal requirements for status and not yet have the benefit of a declaration. As I said at para. 62 above, the declaration performs an important practical function and enables international and national recognition of status. The grant of a declaration of status does not constitute the person a refugee. That status exists objectively and independently as matter of fact and law.

93. I consider that Humphreys J. was correct that EU law does not require an express revocation of refugee status.

The purpose and effect of s. 18 of the 1996 Act

94. The appellants and IHREC argue that the rights contained in s. 18 of the 1996 Act are not to be readily ignored and must inform the correct answer to the question under appeal.

95. Section 18 of the 1996 Act allows for applications to the Minister by a refugee in relation to whom a declaration is in force to apply for what has become known as "family reunification". Different sections govern the right of the spouse and minor children, or if the applicant is a minor, the parents of such minor whose application is determined under s. 18(3) of the 1996 Act.

96. Section 18 of the 1996 Act provides for rights of family reunification *inter alia*, as follows:

> "Subject to section 17(2) [national security or public policy], a refugee in relation to whom a declaration is in force may apply to the Minister for permission to be granted to a member of his or her family to enter and to reside in the State and the Minister shall cause such an application to be referred to the Commissioner and a notification thereof to be given to the High Commissioner".

97. In *A. M. S. (Somalia, Family Reunification) v. Minister for Justice and Equality* [2014] IESC 65, [2015] 1 ILRM 170, at para. 6.3, the Supreme Court considered the purpose of s. 18 of the 1996 Act as "to facilitate the position of refugees by enabling them to be unified". At para. 6.4, Clarke J. said that the section conferred a benefit on a refugee, of an "enhanced possibility" to obtain permission for family members to enter and reside in the State. The Act made "elaborate provisions for family reunification" with the intention that those to whom the provisions applied "would be in a far better position than those to whom it did not". The section was also described in para. 6.5 as conferring "a special entry status on dependent members of the extended family of a refugee" as it confers on such persons if they are admitted into the State the same social welfare and health benefit entitlements as applied to citizens of the State.

98. The "enhanced rights" are consistent with the general approach of international law that a refugee be facilitated in the maintenance of a full family life within the country in which he or she has taken refuge, and the facilitation of the resumption of the family and social life is one consistent with the first principles of the international protection of refugees.

99. The entitlement to make application under s. 18 of the 1996 Act is one of considerable benefit to a refugee, and permits a generous approach to an application for family reunification to immediate family members and those of the extended family.

100. Family reunification is not an absolute right. Applications are to be investigated by the Commissioner, now the International Protection Office, and by virtue of s. 18(5) of the 1996 Act, now essentially transposed in s. 56(7) of the 2015 Act, family reunification may be refused by the Minister for national security reasons.

101. However, I am not persuaded that the fact that enhanced rights are available to a refugee who has the benefit of a declaration is of assistance in the interpretation of s. 18 of the 1996 Act. The *consequence* of meeting the statutory preconditions for family reunification cannot inform the *interpretation* of those conditions. I turn now to examine the express terms of s. 18 of the 1996 Act.

The qualifying requirements under s. 18 of the 1996 Act

102. The application for family reunification pursuant to the provisions of s. 18 of the 1996 Act may be brought by "a refugee in relation to whom a declaration is in force". Humphreys J. considers that the section had to be read as requiring that an applicant meet two tests, that he or she be a refugee and have an extant and subsisting declaration of status. His conclusion was that a person who had become an Irish citizen could not meet the statutory conditions provided in s. 18 of the 1996 Act, as that person could not be said to be a refugee as well as a citizen of the State. That is the central question in the appeals.

103. The first consideration is the language of s. 18 of the 1996 Act in the context of the Act as a whole. On the plain words of s. 18, an applicant must be a refugee and that term is defined within the 1996 Act. The definition of a refugee is not cumbersome or vague, and encompasses a person who is away from his or her own country due to fear of persecution. The essential elements of the definition are that a person be fearful of persecution in his or her own country and has fled that country owing to such fear and continues to be away from that country by reason of fear. The definition requires that the person is currently a refugee as the definition is stated in the present tense.

104. The plain language of s. 18 of the 1996 Act suggests that there are two requirements to be met by an applicant under the section: that a declaration of refugee status be "in force" and that the applicant be, in fact, a refugee. The words in the section cannot readily be ignored as superfluous or redundant, as "refugee" is already defined in s. 2 of the 1996 Act without any mention of the declaration, and because the status of being a refugee may exist independently of a declaration.

105. The appellants do not fall within the definition of "refugee" under s. 2 of the 1996 Act as they are persons who are recognised by the competent authorities of the country in which they have taken residence, Ireland, as having the rights and obligations which are attached to the possession of the nationality of that country because they had become Irish citizens.

106. The Court of Appeal for England and Wales considered a broadly similar question, albeit in a different statutory landscape, in *D. L. (DRC) v. The Entry Clearance Officer*. It was of the view that, absent procedures to be adopted for the determination or cessation of refugee status, cessation of that status will take place automatically on the happening of the acquisition of nationality in the host country. Refugee status, therefore, was considered to have been lost by operation of law upon the acquisition of citizenship.

107. The Supreme Court of the United Kingdom reversed the findings of the Court of Appeal in sub nom *Z. N. (Afghanistan) v. Entry Clearance Officer*. The rules considered by the Supreme Court required that a person be one who "has been granted asylum" and the Supreme Court refused to read the expression as if it contained the additional requirement that the person who had been granted asylum remained a refugee at the time of the application for family reunification. The Court regarded the construction as naturally referring to a particular historic event and not to an existing condition. No additional requirement was to be implied into the rules in the absence of express language to that effect, and were not implicit in the language used.

108. The Court saw coherent policy arguments for the view that the need for protection for the members of the family unit is likely to be the same whether the sponsor obtains British citizenship or not, and the risk of persecution may be such that the need for protection for family members is particularly stark.

109. The decision of the Supreme Court of the United Kingdom was made on the basis of an interpretation of the statutory provisions in the United Kingdom which are materially different from those in the 1996 Act. Section 18 of the 1996 Act is stated in the present tense and to satisfy the qualifying condition an applicant must have the existing and current status of refugee and a declaration that is in force. The policy argument referred to by Clarke L.J., while it may accurately reflect the humanitarian and human rights context, cannot displace the plain language of the section.

110. I adopt the approach of Hoffmann L.J. in *Odelola v. Secretary of State for the Home Department* [2009] UKHL 25, [2009] 1 WLR

1230, at para. 4 of his judgment, that the correct interpretation of immigration rules:

> "depends upon the language of the rule, construed against the relevant background. That involves a consideration of the immigration rules as a whole and the function which they serve in the administration of immigration policy".

The relevance of the ECHR and the argument from the Constitution

111. IHREC argues that the personal rights for which provision is made in the Constitution should lead to an interpretation that the applications for family reunification made by both appellants in this case show the need to respect the rights of each family to the mutual society and protection of the other as guaranteed by Art. 40.3 and Art. 41 of the Constitution. It is accepted that the judgment in *Gorry v. Minister for Justice and Equality* [2017] IECA 282 is authority for the proposition that the Constitution provides greater protection to marital families than that afforded by art. 8 of the ECHR. It is argued that, in the present appeals, because a refugee, by reason of having fled his or her country by reason of fear of persecution bears no responsibility for the separation from family members, a constitutional interpretation would support the argument of the appellants.

112. Counsel on behalf of IHREC makes an argument from a human rights perspective for consideration by this Court. It is suggested that an interpretation of the 1996 Act must have regard to the obligation in s. 2 of the European Convention on Human Rights Act 2003 ("the ECHR Act") that requires domestic legislation to be interpreted and applied, insofar as possible, in a manner compatible with the State's obligations under the ECHR. He also makes arguments regarding the Constitution and the interpretative implications of identified constitutional provisions.

113. The particular focus is with regard to s. 8 of the ECHR which provides for a right to respect for private and family life, and in regard to which it is argued that the family life rights of each of the appellants are engaged. The appellant in the first appeal seeks family reunification for her husband, and the first appellant in the second appeal seeks reunification with her adult daughter and her two grandchildren. I accept the general argument made by counsel that family rights are in issue.

114. The role of the ECHR in the analysis of domestic and international law on refugee applications has been the subject of a number of judgments, but the most useful is the recent judgment of the Court of Appeal in *Gorry v. Minister for Justice*. There, the Court of Appeal considered an appeal from a decision of Humphreys J. where one of the applicants, an Irish citizen, was married to a foreign national, and where the question for the Court concerned the decision by the Minister to refuse permission for the non-national spouse to enter or remain in the State. Separate judgments of Finlay Geoghegan and of Hogan JJ. considered the provisions of art. 8 of the ECHR and the constitutional protection of family rights. Finlay Geoghegan J. considered that the Minister should first deal with the application in the context of the constitutional rights of the applicants as members of a family, and, should it prove necessary to do so, consider the application in a manner consistent with this State's obligations pursuant to s. 3 of the ECHR Act.

115. With regard to the constitutional right of an Irish citizen to live in Ireland, at para. 62, Finlay Geoghegan J. accepted this right to be "inherent in citizenship", although not absolute in that an Irish citizen may, by reason of Ireland's international obligations, be the subject of extradition and surrender to another State. The recognition of the family as a fundamental unit group and moral institution, while well-established, was, she considered, "not absolute", and while she accepted that the decision of the family was that it would live in Ireland, the implementation of that decision was one in respect of which the inherent sovereign power of the State could control and restrict, at para. 67. She considered that the couple had no inherent or *prima facie* constitutional right to reside in Ireland.

116. However, she did consider that the State guarantee to protect the spousal authority could, in many circumstances, "[…] and may, in practice, impose an obligation on the State (acting through the Minister) to permit a non-national reside with his or her citizen spouse in the State, in the sense that a reasonable and proportionate decision taken by the Minister, having regard to the rights and obligations set out above, could only lead to one decision" at para. 82 of her judgment. She referred to the decision of Fennelly J. in *Cirpaci v. The Minister for Justice, Equality and Law Reform* [2005] IESC 42, [2005] 4 IR 109.

117. In the light of the provisions of art. 8 of the ECHR, Finlay Geoghegan J. held that "[t]he obligation imposed on the State pursuant to Article 8 ECHR in relation to family life is a restraint on interference with an individual's right to respect for his family life", at para. 92, and she took the view that the ECHR and the judgments of the European Court of Human Rights ("ECtHR") did not impose any general obligation on the contracting State "to respect the choice of residence of married couples", at para. 93.

118. Hogan J. gave a concurring judgment where he stressed a matter well established in the authorities that the ECHR has not in itself been made part of the domestic law of the State for the purposes of Art. 29.6 of the Constitution. He also considered that the State was obliged to protect family autonomy, but that the State's obligation was subject to "social order and ensuring the welfare of the Nation and the State", at para. 25. He regarded it as incorrect to say that the couple was entitled to insist, as a matter of constitutional entitlement, to have their choice of residence in Ireland accepted by the State, but he did not consider that the couple's choice need not be respected unless it was shown that there were any "insurmountable obstacles" to the Irish citizen moving to the country of the third country national, "the test applied by the ECtHR in a line of art. 8 ECHR cases ranging from *Boultif v. Switzerland* [2001] ECHR 497, (2001) 33 EHRR 50 to *Jeunnesse v. Netherlands* [2014] ECHR 1036, (2015) 60 EHRR 17", at para 29 of his judgment. He sums up his decision at para. 31:

> "[T]he Minister fell into error by assuming (i) that Article 8 ECHR was directly effective and that it was the primary source of fundamental rights protection; (ii) that Article 41 of the Constitution and Article 8 ECHR are co-extensive for this purpose and (iii) that Article 41 goes no further than Article 8 ECHR in saying that the State is not obliged to respect a married couple's choice of residence unless the "insurmountable obstacles" test is satisfied."

119. The argument made by the IHREC is that the applications for family reunification made in the present case must be seen in the context of both ECHR and constitutional first principles and rights.

120. Reliance is placed on a number of judgments of the ECtHR, including *Tanda-Muzinga v. France* (App No. 2260/10) where the Court noted that the interests of and respect for family life imposed a positive obligation to give effect to that right, and as family life had been discontinued purely as a result of the decision of Mr Tanda-Muzinga to flee his country of origin out of a genuine fear of persecution, the Court had to have regard to the fact that the arrival of his wife and children in France was the only means by which family life could resume. The Court held that the "family unity is an essential right of refugees", at para. 75 of the judgment.

121. In *Senigo Longue v. France* (App No. 19113/09) a broadly similar approach was taken.

122. It is argued that the ECHR mandates that special account be taken of the unique circumstances of refugees and their families

and of the fact that the separation of families is usually involuntary. Counsel argues that the involuntary nature of the separation of the family, particularly in the case of the appellant in the first appeal, must be seen as having arisen from the armed conflict in Somalia in 2007 and the fact that not only was the family separation involuntary, but the appellant had been unable to locate her husband for many years.

123. IHREC submits that the enhanced rights available to a person who has attained a declaration of refugee status ought to be applied to a refugee who has opted to become a citizen of the State and that to conclude otherwise would fail to recognise the singular fact that the refugee family is usually separated by war and not by choice. It is argued that the conclusion to which Humphreys J. came to has the effect of discriminating between citizens and those refugees who are not citizens. Humphreys J. considered the discrimination question from a different perspective and noted that the interpretation for which the appellants contend might mean, in practice, that a refugee who had become a citizen might find himself or herself in a more favourable position in regard to family reunification rights than other Irish citizens. IHREC submits that that analysis is not correct, but rather, that the appropriate comparator is not a natural born citizen but a refugee because the experiences and needs of refugees are by their nature, the result of war and conflict and the separation of members of the family is not voluntary.

124. IHREC argues that art. 8 of the ECHR guarantees a right to family reunification to refugees, including those refugees who have since become Irish citizens, and that the State must take account of the special circumstances if it is to comply with its obligations under art. 8 of the ECHR.

125. While not wishing to disagree with the analysis of counsel for IHREC, I do not consider this argument to advance the task of interpreting the 1996 Act. In the light of the judgment of the Court of Appeal in *Gorry v. Minister for Justice*, and of the reasoning of the Supreme Court in *A. M. S. (Somalia, Family Reunification) v. Minister for Justice* the Minister must be seen as having an obligation to constitutionally and proportionately consider family rights, including the right of the family to live together in the State, as part of an application by a citizen that his or her spouse or other family members be permitted to enter and remain in the State. The analysis of Finlay Geoghegan and Hogan JJ. in *Gorry v. Minister for Justice* would suggest that in many cases, the answer to such an application would have to be that the spouse and, at least, other dependant family members be permitted entry and the right to remain if the Minister were to consider the matter in the light of the constitutional imperative and the requirements of proportionality and respect for family life contained in the ECHR.

126. In a practical and real sense, the Minister is obliged to consider precisely those rights for which counsel for IHREC contends, not merely in an application for family reunification under s. 18 of the 1996 Act, but in an application on behalf of family members under the Immigration Act 2004.

127. The argument for IHREC cannot be seen in isolation from the evolved case law regarding family rights of citizens and non-citizens, and it is not the case that the only means by which ECHR rights and those under the Constitution may be respected is by means of an application under s. 18 of the 1996 Act.

128. Counsel for IHREC also argues that this Court is faced with two competing interpretations of s. 18 of the 1996 Act and that, in those circumstances, it should strive to find a constitutional interpretation. That argument is not persuasive, as there is no ambiguity in s. 2 or in s. 18 of the 1996 Act that might call for this interpretative analysis.

129. Counsel for IHREC argues that the right to protection against discrimination enshrined within art. 14 of the ECHR also must be considered.

130. I am not convinced that the argument from art. 14 of the ECHR can support an interpretation contrary to that to which I have arrived or one contrary to the plain language of the 1996 Act, but I also consider that the fact a refugee upon acquiring citizenship benefits from other rights must be the starting point for any argument of discrimination. The rights deriving from citizenship are different to and not always readily comparable to those available to a refugee. A person will acquire citizenship as a result of a volitional action and in so doing makes a commitment to and seeks therefrom the protection of a State other than that from which he or she has fled.

131. I am not satisfied that the argument from art. 14 of the ECHR can further the interpretative analysis in the manner contented.

Administrative unworkability

132. The appellants also argue that the interpretation for which the Minister contends and which was upheld by Humphreys J. creates an administrative problem and could lead the Minister to usurp the statutory functions of the Commissioner and the Refugee Appeals Tribunal to assess whether a person meets the qualifying criteria to be considered a refugee.

133. It is argued that if the Minister is hearing an application under s. 18 of the 1996 Act, the whole question of the status of the applicant would require to be re-opened by the Minister and that this would not just be cumbersome, but would be onerous, duplicative, and contrary to the scheme of the section itself which envisages that the investigation of the Commissioner, or its successors under the 2015 Act, and then, on appeal, by the Refugee Appeals Tribunal, or its successors under the 2015 Act, would determine the question of an entitlement to refugee status.

134. I cannot agree with this proposition, primarily because the question of whether a person is a citizen may be readily answered, as a person becomes a citizen by an identified process and, at an identified point, comes to have all of the rights of citizenship and may properly and readily be identified as an Irish citizen and have a right to, *e.g.*, carry an Irish passport, live in the State, *etc*. There is, therefore, no temporal lag, and once it can be said that a person has citizenship, that person is not a refugee. Up to that point, and subject to any decision to revoke, the declaration must be seen to be operative and effective for all purposes.

135. I see no procedural difficulty in the interpretation for which the respondent contends, and which was found by Humphreys J. to be correct. In order to avail of s. 18 of the 1996 Act, a person must meet a pre-condition, *i.e.* be a person who has a declaration of refugee status, but the Minister may refuse an application under s.18 not on account of the fact that the person is not a refugee, as that is a matter to be determined following the procedures set out in the 1996 Act, but because the person is an Irish citizen, and therefore, a person not entitled to be called a refugee and therefore not a person to whom the provisions of the 1996 Act may apply.

136. It would seem also that the Minister would ordinarily be entitled to deal with an application under s. 18 of the 1996 Act by a non-citizen who holds a declaration of refugee status on the basis that the declaration is prima facie valid.

Accidental loss of rights?

137. I also disagree with the argument made by counsel for IHREC that the conclusion of Humphreys J. that the acquisition of Irish

citizenship has the effect of automatically revoking the status of refugee would lead to the loss of the right of family reunification by accident, and that a person could find themselves having sought and obtained Irish citizenship unwittingly to have lost the benefit of the enhanced right to which the Supreme Court judgment in *A. M. S. (Somalia, Family Reunification) v. Minister for Justice* referred.

138. Having regard to the fact that legislative effect of the acquisition of citizenship is now clear, and that the person who requires citizenship after the coming into operation of the 2015 Act must be deemed to know that the acquisition of citizenship is incompatible with the continued status of that person as a refugee, the difficulty that arose in the period between 2010 and the end of 2017 was of the Minister's making as the Minister took two entirely contrary views of the rights of naturalised persons to be treated as refugees. I accept that this did give rise to specific concrete problems for the appellants but it should not arise in the future, and the fact that the Minister erroneously interpreted the legislation does not make that erroneous interpretation the correct one for the purposes of a ECHR or constitutionally compliant interpretation.

139. No evidence has been adduced that would suggest that persons who have been granted family reunification under s. 18 of the 1996 Act between 2010 and 2017 might now have their rights disrupted or reviewed, and while I accept that the practice of the Minister between 2010 and 2017 is problematic, those practical problems could not lead to an interpretation of the section that is not warranted on a true construction of its express terms.

The International Protection Act 2015

140. Counsel for IHREC has made submissions on the current rules for family reunification under the 2015 Act, although it is accepted that these are not directly relevant to the determination of these appeals. IHREC submits that the right to family reunification of refugees must include special protection, even for naturalised refugees, having regard to the historic and personal context in which family reunification arises for persons who have fled their country of nationality due to prosecution. Again, for the reasons outlined above, it seems to me that a naturalised Irish citizen who was once a refugee may, in a suitable case, make an argument that the separation of the family was not voluntary and was never intended to be permanent, and that that is a particular factor to which the Minister must have regard in considering an application that a family member be permitted to enter and remain in the State. Whilst not wanting to in any sense decide a matter that is not before the Court, it seems to me that the case law regarding such applications, of which *Gorry v. Minister for Justice* is a recent and authoritative example, would suggest that the Minister must have regard to all relevant circumstances which fall to be considered in the context of the individual family and the circumstances in which family unity and cohabitation rights are asserted.

141. It is not necessary to further consider the provisions of the 2015 Act, save with regard to the one point of appeal that concerns the first appeal only, to which I now turn.

The retrospectivity issue

142. Express provision exists in the 2015 Act by which it can be definitively stated that the effect of the acquisition of citizenship is to automatically revoke a declaration of refugee status. While the Minister, in her decision on the first appellant's application for family reunification, relied on s. 47(9) of the 2015 Act and this reliance formed part of the grounds on which judicial review was sought, in the High Court it was accepted that s. 47(9) of the 2015 Act did not have retrospective effect in that it did not apply to a person who had the benefit of a declaration given before the 2015 Act came into force.

143. The appellant in the first appeal sought a declaration that s. 47(9) of the 2015 Act on which the Minister said she relied is not retrospective. Humphreys J. considered that the application must fail, as "it is clear now" that the subsection was not applied to the appellant in the first appeal, although there had been "some vacillation" on the part of the Minister as to how her application should be treated.

144. Having considered the correspondence, it seems to me that the lack of clarity in the correspondence from the Minister was such that the appellant in the first appeal made a rational choice to include the ground of retrospectivity in her application for judicial review, and she was entitled to succeed on those grounds. The order of the High Court must be set aside to that extent (ground 13 of the first appeal).

Conclusion

145. From the plain language of the 1996 Act, it is apparent that two requirements are needed for an applicant to succeed in his or her application for family reunification under s. 18 of the 1996 Act, namely be a refugee within the meaning of s. 2 of the 1996 Act, and have a declaration of refugee status.

146. Neither of the appellants can be considered to be a refugee within the meaning of the 1996 Act, and cannot be said to have a refugee declaration still in force. The declarations they previously held have been revoked by operation of law once they acquired Irish citizenship.

147. Save with regard to ground 13 of the first appeal, the appeals are to be dismissed.