

FRIDAY 18TH DECEMBER 2020

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/3632/2019

BEFORE LORD JUSTICE McCOMBE
AND LORD JUSTICE MOYLAN
AND LORD JUSTICE DINGEMANS

B E T W E E N

1. GEANINA FRATILA
2. RAZVAN TANASE

APPELLANTS /
CLAIMANTS

- and -

SECRETARY OF STATE FOR WORK AND PENSIONS

RESPONDENT /
DEFENDANT

- and -

THE ADVICE ON INDIVIDUAL RIGHTS IN EUROPE (AIRE) CENTRE

INTERVENER

UPON hearing counsel for the Appellants, the Respondent and the Intervener at a remote hearing on 27-28 October 2020

AND UPON judgment being handed down electronically under the COVID-19 Protocol on 18 December 2020

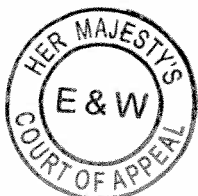
THE COURT ORDERS:

1. The appeal is allowed.
2. The legislative provisions identified in the Schedule to this Order, all inserted into existing regulations by the Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019 ("the 2019 Regulations"), are QUASHED.
3. The Respondent's decisions refusing the Appellants' claims for Universal Credit, dated 13 June 2019 (Tanase) and 17 June 2019 (Fratila), are



REMOTE
Appeal No.

C1/2020/0678



QUASHED.

4. Regarding costs:

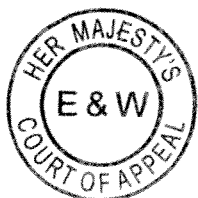
- a. The Respondent shall pay the Appellants' costs of the appeal proceedings and of the High Court proceedings, to be the subject of a detailed assessment on the standard basis if not agreed.
 - b. The Respondent shall (subject to paragraphs 4(c) and 4(d) below) by 29 January 2021 make a payment on account, in a sum to be agreed.
 - c. In the event that the Appellants and the Respondent are unable to agree the sum referred to in paragraph 4(b) above, there shall be liberty to apply to the Court in writing to determine such sum, any written submissions to be lodged by 4pm on 13 January 2021, and not to exceed 3 pages (together with any appended Costs Schedule).
 - d. In the event that the amount of the payment on account is determined by the Court pursuant to paragraph 4(c) above, the Respondent shall make the payment on account within 14 days of the date of the Court's determination of the amount to be paid.
 - e. There is to be a detailed assessment of the Appellants' publicly funded costs.
5. The Respondent's application for permission to appeal to the Supreme Court is refused.
6. There shall be a stay of execution in respect of paragraphs 2 to 4 above until 4 p.m. on Friday, 26 February 2021.

REASONS

The Supreme Court might find it helpful to have our short reasons for the orders made above.

:Permission to Appeal

1. We consider that this is pre-eminently a case in which the Supreme Court should be left to decide itself whether (and if so, to what extent) permission to appeal should be granted.
2. We see that the case raises certain points of law, but whether (and, if so, which) are genuinely points of law which ought to be considered by the

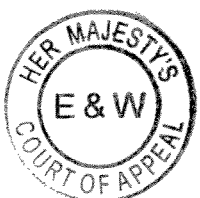


Supreme Court *at this time* seems to us much more questionable. The legal landscape changes on 1 January 2021 and the Supreme Court may wish to consider, in that context, its own approach to the type of issues raised in this case.

3. Ground 1 is a point that has been rejected by all four judges who have considered the case. The prospective grounds of appeal do nothing to persuade us that the ground has any real prospect of success. Ground 4 (locus standi of Ms Fratila) seems unarguable. For these reasons, the Supreme Court might wish to limit any permission to appeal that may be granted. (Limited permission to appeal granted in this court would serve no practical purpose.)
4. The disagreement on ground 2, in this court, raises two relatively short points: a) whether the *Patmalniece* case is of any relevance here, given the line of CJEU cases leading to *Trojani* and *Krefeld*, and b) whether *Patmalniece* was considering a discrimination of the present type at all. Whether the Supreme Court considers that this is a ground on which permission should be granted may perhaps be relatively easily decided.

Stay

1. There is some force in the submission for the claimants that the SSWP has produced little evidence of the real extent of the prejudice alleged, either before the judge, before this court or on the present application. Further, as argued in the same submissions, there are reasons to think that the prejudice may not be as significant as suggested because of s. 25 of the Social Security Act 1998.
2. Further, there seem to be good grounds for thinking that a number of vulnerable benefit applicants will be seriously prejudiced by even a short further delay in receipt of payments to which they may be entitled. Moreover, there is the separate question of whether there should be a general stay of the order for an interim costs payment made in para. 4 b, which may affect the claimants' ability to resist any further appeal for which permission may be granted.
3. We agree that any further appeal to the Supreme Court should not be rendered nugatory or seriously frustrated by refusal of a stay. Nonetheless, it would be unfortunate if the question of whether there should be a stay or not should have to await determination of a permission application in the ordinary course. Therefore, we have limited the stay



granted by us to the date in paragraph. 6 of our order.

SCHEDULE OF PROVISIONS WHICH ARE QUASHED

- **Regulation 21AA(3A)(a) of the Income Support (General) Regulations 1987**

[inserted by Regulation 2(2)(d) of the 2019 Regulations]

- **Regulation 85A(3A)(a) of the Jobseeker's Allowance Regulations 1996**

[inserted by Regulation 3(2)(d) of the 2019 Regulations]

- **Regulation 2(3A)(a) of the State Pension Credit Regulations 2002**

[inserted by Regulation 4(2)(d) of the 2019 Regulations]

- **Regulation 10(3AA)(a) of the Housing Benefit Regulations 2006**

[inserted by Regulation 5(2)(d) of the 2019 Regulations]

- **Regulation 10(4ZA)(a) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006**

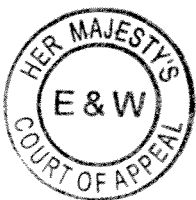
[inserted by Regulation 6(2)(d) of the 2019 Regulations]

- **Regulation 70(3A)(a) of the Employment and Support Allowance Regulations 2008**

[inserted by Regulation 7(2)(d) of the 2019 Regulations]

- **Regulation 9(3)(c)(i) of the Universal Credit Regulations 2013**

[inserted by Regulation 8(3)(d) of the 2019 Regulations]



By the Court

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ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION ADMINISTRATIVE COURT

ORDER

Copies to:

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* This order was drawn by Ms A Marie Smith (Associate) to whom all enquiries regarding this order should be made. When communicating with the Court please address correspondence to Ms A Marie Smith, Civil Appeals Office, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44450 Strand) and quote the Court of Appeal reference number. The Associate's telephone number is