



THE HIGH COURT

[2026] IEHC 489

Record No. 2025/1032 JR

BETWEEN

A.I.

APPLICANT

AND

THE MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION

RESPONDENT



THE HIGH COURT

Record No. 2025/1044 JR

BETWEEN

A.D.

APPLICANT

AND

The MINISTER FOR JUSTICE, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

Judgment of Mr. Justice Barr delivered ex tempore on 17 July 2026.

Introduction.

1. These two matters come before the court for a ruling on costs. Although the dates in each case are slightly different, the position of each of the applicants is identical.
2. Each applicant was served with a Return Order informing them that they would be removed from the State to a third country. Each applicant instituted judicial review proceedings and obtained leave to challenge the decision directing their removal from the State. During the currency of the judicial review proceedings, the time-period provided for under s.51C (2) of the International Protection Act 2015, as amended, expired. This meant that the proceedings became moot.
3. Upon the expiry of the relevant period for the operation of the Return Order, the Chief State Solicitor wrote to the solicitor acting for the applicants suggesting that as the proceedings had become moot, the proceedings should be struck out with no order being made as to costs.
4. The applicants did not accede to that suggestion. They make the case that as the issue in the proceedings became moot due to the unilateral act of the Minister in failing to execute the Return Order during the period of its operational validity, being a period of six months, with the result that the proceedings became moot upon the expiry of that period, they are entitled to an order for payment of their costs incurred from the date of inception of the proceedings up to the date on which they became moot.
5. The respondents reject that submission. They state that as the proceedings became moot due to operation of law, being the expiry of the statutory period for the validity of

a Return Order, this was not a unilateral act taken by the Minister and therefore the appropriate order would be that there be no order for costs in the proceedings.

Relevant Dates.

6. In the proceedings bearing title A.I. v Minister for Justice, Home Affairs and Migration, the Return Order was dated 30 April 2025. The applicant obtained leave to challenge the order by order of the High Court dated 2 September 2025. The proceedings were made returnable to 22 October 2025. The respondent was notified of the proceedings on 12 September 2025.
7. The proceedings became moot on 8 November 2025 by virtue of the expiry of the six-month time limit for the giving of effect to the Return Order pursuant to s. 51C (2) of the 2015 Act.
8. In the proceedings bearing title A.D. v Minister for Justice, Ireland and the Attorney General, the Return Order was dated 28 May 2025. The applicant obtained leave to proceed by way of judicial review by order of the High Court dated 15 September 2025.
9. The proceedings became moot on 5 December 2025 by expiry of the six-month time limit provided for under the 2015 Act.
10. On 13 January 2026, the solicitor acting for the respondents wrote to the applicant's solicitor suggesting that the proceeding should be struck out with no order as to costs.

Discussion.

11. The general principles applicable to the issue of costs where proceedings have become moot were discussed by the Supreme Court in *Cunningham v The President of the Circuit Court* [2012] 3 IR 222, at paras 25 – 28. Of particular relevance are the dicta of Clarke J. (as he then was) at paras 26 and 27:

“In that context it is, of course, important to note that statutory officers and bodies have an obligation to exercise their powers in a proper manner. If circumstances change then it is, of course, not only reasonable but necessary for such officers and bodies to reflect the new circumstances by adopting a position (even if different) which takes into account the circumstances as they have come to be. The mere fact, therefore, that a statutory officer or body adopts a changed position which renders judicial review proceedings moot does not, of itself, necessarily mean that it is appropriate to characterise the proceedings as having become moot by reason of a unilateral act of one party.

If there were no change in underlying circumstances and if the statutory officer or body had simply changed his or its mind or adopted a new and different view, then such a characterisation might be appropriate. Where, however, there is an underlying change of circumstance, it is necessary to consider the extent to which it can properly be said that the proceedings have become moot by reason of the unilateral act of one party, on the one hand or, in reality have become moot by reason of a change in underlying circumstances outside the control of either party, on the other hand. The result of any such analysis should play an important role in the court's consideration of the justice of where the costs of proceedings rendered moot should lie.”

12. The relevant principles were considered in the context of international protection proceedings that had become moot in *MKIA v IPAT* [2018] IEHC 134, where the principles were set down as follows at paragraph 6:

“So it seems then the law applicable in relation to costs of a moot action can be summarised as follows:

(i). The first inquiry that a court is required to make is to decide whether or not there existed an 'event' to which the general rule that costs follow the event can be applied (see Godsil).

(ii). An act that could only be regarded as an explicit acknowledgment and admission of the legal validity of the plaintiff's challenge is such an event, as in Godsil.

(iii). Thus the event must normally in some way be caused by the applicant's proceedings; per MacMenamin J. in Matta.

(iv). If the proceedings are moot due to a factor outside the control of either party, the view should be taken that there is no event in the Godsil sense and therefore the default order is no order as to costs, as discussed in Cunningham.

(v). If the proceedings are moot due to a factor which is within the control of one party but that has no causal nexus with the proceedings or which relates, as it is put in Cunningham, to an underlying change in circumstances, then again there seems to be no event in the Godsil sense, so the court should lean in favour of no order (see per MacMenamin J. in Matta at para. 20).

(vi). Finally, if the proceedings are moot due to a factor within the control of one party that does have a causal nexus with the proceedings then there is an event in the Godsil sense and the default order should be costs in favour of the other party (see Cunningham and Godsil in particular).”

13. The relevant principles which are applicable where judicial review proceedings have become moot were set down by Murray J. delivering the judgment of the Court of Appeal in *Hughes v Revenue Commissioners* [2021] IECA 5, where it was stated that if the mootness of the proceedings arises as a result of an event that was entirely independent of the actions of the parties to the proceedings, the usual order should be that there would be no order as to costs. If it transpires that the mootness arose because of the actions of one of the parties to the proceedings and where those actions can be said to follow from the fact of the proceedings, so that but for the proceedings they would not have been undertaken or are properly characterised as “*unilateral*” or perhaps are such that they could reasonably have been taken before the proceedings or before all of the costs ultimately incurred in the proceedings were suffered; the cost should often be borne by the party whose actions have resulted in the case becoming moot.
14. The third general proposition addressed the position of statutory bodies. It was held that agencies with obligations in public law cannot be expected to suspend the discharge of their statutory functions simply because there are extant proceedings relating to the prior exercise of their powers. They must be free to continue to exercise those powers in accordance with their legal obligations. At the same time, it would be wrong if under the guise of exercising their powers in the normal way, the statutory authority both effectively conceded an extant claim and avoided the legal costs that would otherwise attend such a concession. Murray J. went on to explain this aspect of the decision as follows:

“The cases strike a balance between these two considerations by suggesting that where the mootness arises because a statutory body makes a new decision in the exercise of its legal powers, the court should look at the circumstances giving rise to that decision in order to decide whether it constitutes a "unilateral act" for these purposes. If the new decision was caused by a change in the relevant circumstances occurring between the time of the first decision and of the second, the court might not treat the new decision as a "unilateral act" and may accordingly make no order as to costs. If however, there has been no such change in circumstances so that the body has simply changed its mind, costs may be awarded against it. If the respondent wishes to contend that there has been a change in circumstances it is a matter for it to place before the court sufficient evidence to allow the court to assess whether and if so to what extent it can fairly be said that this is so. This requires the respondent to establish that there was a change in the underlying circumstances sufficient to justify, in whole or in part, it being appropriate to characterise the proceedings as having become moot by reason of a change in external circumstances. In conducting this analysis, the court should not embark upon a determination of the merits of the underlying case.”

Murray J. emphasised that the framework outlined by him in that judgment constituted a general approach rather than a fixed set of rigid rules.

15. The principles set down in the *Hughes* case were adopted by O'Higgins J. in *AA v Minister for Justice* (Unreported, High Court, O'Higgins J., 30 January 2025). The learned judge went on to state that there were a number of additional factors that have to be taken into account in considering applications such as the present one in judicial

review proceedings. These factors included: that by issuing the proceedings and obtaining an injunction against the implementation of the impugned decision or measure the applicants had secured an important benefit which may have impacted their lives in a significant way; at a level of principle the cases appeared to meet the definition for “*public interest proceedings*” as set down in *Little The Chief Appeals Officer & ORS* [2024] IESC 53 ; while the applicants were seeking to advance their own personal interests, that did not mean that the litigation could not be seen as public interest litigation; the legal point at issue in that case was more than stateable and had been adjudged sufficiently strong to warrant both the granting of leave and the granting of an injunction; the issues at stake for the applicants were important and life impacting for them; the applicants had no obvious alternative but to institute the proceedings; no criticism could be made of the applicants in relation to their conduct of the proceedings; it was in the public interest that lawyers would not be deterred from taking important cases for vulnerable or potentially vulnerable clients and as a result of an overly rigid application of costs principles, it was noted that the issue of costs would be likely to have a significant deterrent effect on the category of persons affected by the legal issue; and in the case before him, the decision of the CJEU on the lead case had provided clarification on an obscure or unexplored area of the law; the clarification that had occurred was of a significant benefit to the State. O'Higgins J. also noted that people who are the subject of transfer decisions are often vulnerable people.

16. The principles in the *AA* case were adopted and applied by Phelan J in *AH v Minister for Justice* (Unreported, High Court, Phelan J., 11 April 2025).
17. It is fair to say that in the *AA* and *AH* cases the obtaining of an injunction weighed heavily in favour of the court holding that the applicant had won an “*event*” as required by the Legal Services Regulation Act 2015 which warranted obtaining at least part of

their costs. In each of those cases the applicants were awarded 50% of their costs in relation to the proceedings that had become moot.

18. In the present case, the respondent has argued forcefully that because there was no injunction obtained by the applicants in either set of proceedings, they could not be said to have succeeded in an “*event*” which would warrant their being awarded all or even part of their costs.
19. It was further submitted that in the present case there was no change in the decision that had been made by the Minister. He simply did not execute the Return Order, meaning that it lapsed by operation of law on the expiry of the six-month period provided for in the 2015 Act.
20. In *A.B.D.I v Minister for Justice and Others* (ex tempore judgment of Mulcahy J., 1 December 2025), the High Court had to consider the issue of costs in respect of proceedings that had become moot, where no injunction had been obtained by the applicant. This court has been provided with a transcript of the ex-tempore judgment in that case. In the course of his judgment, Mulcahy J. stated as follows:

“This is, I think, a finely balanced conclusion that in light of what Murray J says in Hughes v The Revenue Commissioners, that where proceedings become moot in that case through a unilateral act, or it seems to me in this case, the unilateral inaction of the respondent, the respondent can explain how the mootness was not attributable to the proceedings. That was an opportunity which was open to the Minister here, and which has not been availed of. That is not meant as any criticism of him, but it just does seem to me that on balance, the appropriate inference to draw is that the existence of the proceedings may have had some chilling effect on the Minister, giving effect to the transfer order... But it does seem to me that in the particular circumstances of this case, as in AA, it may be

said that the existence of the proceedings has contributed to, indirectly, the applicant obtaining the benefit.”

21. In that case, Mulcahy J. went on to allow the applicant 50% of his costs of the proceedings that had become moot. However, he noted that there had been a costs order made in favour of the respondent in respect of the unsuccessful injunction application that had been brought by the applicant. Accordingly, he set off the two orders for costs; resulting in no order for costs being made in respect of the proceedings.
22. The respondents relied on the averments contained in the affidavits sworn by Mr. Bryan Gallagher, Assistant Principal Officer in the Immigration Service Delivery section of the Department of Justice, Home Affairs and Migration. In the A.I. case, Mr. Gallagher stated that the respondents had only been made aware of the existence of the judicial review proceedings on 12 September 2025. By that time, approximately four months of the six-month period for giving effect to the Return Order had elapsed. In his affidavit, Mr. Gallagher outlined the reasons why giving effect to a Return Order can be a matter of some complexity.
23. He stated at paragraph 13 of his affidavit that giving effect to A Return Order is an operational matter conducted by the Minister in conjunction with the Garda National Immigration Bureau (GNIB). The process for giving effect to a Return Order would involve arrangements being made which would involve contacts between the Minister's Department, the GNIB, the relevant EU member state authorities and any airlines on which an applicant may embark on travel.
24. Mr. Gallagher went on to state that this would involve a number of administrative and logistical matters being attended to prior to the Return Order being executed. For example, there was a requirement to transmit all necessary information in good time; a returnee may be accompanied by one or more escorts from GNIB and arrangements

would have to be made to ensure that schedules had been organised to allow sufficient time for travel; that flights were booked for the applicant and any escorts, including medical staff if required, as well as any accommodation needs arising in light of the time necessary to ensure that the applicant was handed over with all necessary support as required both by the returnee and the receiving member state. Finally, specific arrangements may have to be made with the airlines concerned including possibly connecting flights involving one or more airlines.

25. It was submitted that in these circumstances and in particular in light of the fact that the Minister was only aware of the existence of the judicial review proceedings some four months into the expiry of the necessary limitation period, it could not be said that the fact that the Minister had not executed the Return Order was based on the existence of the judicial review proceedings brought by the applicants.

Conclusions.

26. The facts of these two cases are relatively straightforward. Each applicant was served with a Return Order directing that they would be removed from the State to a third country. During the currency of the Return Orders, each applicant instructed solicitor and counsel to bring a judicial review application challenging the decision to issue the Return Order in each case. Those applications were made to the High Court, and each applicant was granted leave to proceed by way of judicial review to challenge the underlying decision.
27. It is accepted that neither of the applicants sought an injunction to prevent the execution of the Return Order made against them. After the proceedings had issued, the proceedings became moot due to the fact that the Return Orders had lapsed upon the

expiry of the relevant six-month period of validity. That was solely due to the fact that the Minister, for whatever reason, had not executed the return order during the period of its operative validity.

28. While Mr. Gallagher set out in his affidavits the various factors that would have to be put in place in order to effect the return of a person on foot of a Return Order, he did not indicate that there were any particular difficulties encountered in relation to the two applicants in these cases. Indeed, he fairly conceded that in the A.I. case, the applicant attended at his initial appointment with the GNIB on 3 June 2025. He also complied with subsequent appointments on 9 July 2025 and 7 October 2025. Thus, no reason has been given as to why the Minister did not execute the Return Order in either case. There was no impediment preventing him from doing so. The Court has not been told why the return order in each case was not executed.
29. Therefore, the situation is that each applicant feared that they would be removed from the State on foot of the Return Order that had been made against him. They obtained leave by way of judicial review to challenge the decision leading to the making of the relevant Return Orders. While those proceedings were in being due to the unilateral act of the Minister in failing to execute the Return Order, the proceedings became moot. I am satisfied that in these circumstances the fact that the proceedings became moot was due to the unilateral act, or more properly the unilateral inaction on the part of the Minister. Therefore, I am satisfied that the applicants are entitled to an order for their costs in respect of the proceedings that have become moot.
30. It is not entirely clear to me why the orders for costs that were made in the *AA* and *AH* cases were limited to 50% of the applicants' costs in the proceedings to the date on which they became moot. It was probably to do with the fact that in the pathfinder case the CJEU held that the grant of an injunction in the member state preventing the

execution of a Transfer Order, did not stop the running of the six-month time limit for the enforcement of the order as provided for in the regulation. This meant that where a party obtained an injunction before the courts of a member state, that would in effect, prevent the Transfer Order being executed because the proceedings would not be determined within the six-month window. In *AA* and *AH*, the applicants had obtained injunctions preventing the execution of the relevant transfer orders, meaning that the orders would expire before they could be executed. As the decision of the CJEU could be seen as being somewhat of an extraneous event, it was probably on that account that the applicants were awarded 50% of their costs.

31. In the present case, there is no such extraneous event. Nor is there any suggestion that either of the applicants acted in any way that would disentitle them to an order for their costs, or to suffer a deduction from the amount of costs properly recoverable. Accordingly, I hold that the applicants are entitled to an order for the payment of their costs incurred in the judicial review proceedings that were brought challenging the Return Orders in each case up to the date on which they became moot. In the *A.I.* case the proceedings became moot on 8 November 2025. In the *A.D.* case the proceedings became moot on 5 December 2025. I hold that the respective applicants are entitled to an order for payment of their costs by the respondents up to the relevant date in each case; such costs to be adjudicated upon in default of agreement
32. I will hear the parties as to what order for costs should be made in respect of this contested application.