

## Ireland, The High Court, *Smith v Minister for Justice, Equality and Law Reform*, Judgement of 5 March 2012

Deciding bodies and decisions

High Court of Ireland, Judgement of 3 March 2012, [2012] IEHC 113

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Area of law

EU asylum law

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Subject matter

Application for leave to apply for judicial review – revocation of a deportation order – application of right to family life found in Article 8 ECHR and Article 7 EU Charter – powers of deportation as falling outside scope of Union law

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### Summary Facts Of The Case

Mr Smith and his wife fled Nigeria in 2002 with one of their children. A child was born to the couple in Ireland in January 2002 and was as a consequence an Irish (and EU) citizen. They applied for and were refused asylum. Mr Smith fled to the United Kingdom and was there arrested for drug related offences. He served a custodial sentence and was deported to Nigeria. In 2005 his wife obtained leave to remain as a parent of an Irish born citizen following the introduction of a scheme by the Department of Justice (the Irish Born Child 05 scheme IBC 05). Mr Smith returned to Ireland illegally with another child. A deportation order was issued against him. He fled to the United Kingdom illegally but later returned to Ireland and in October 2011 sought a revocation of the deportation order following the Court of Justice decision in *Zambrano*. He was refused and was supplied with a memorandum outlining the reasons for the decision and in particular why his child would not be denied the genuine enjoyment of the substance of his rights as a Union citizen given the continued presence of his mother and the absence of a relationship of dependence between Mr Smith and his Union citizen child. He made a further application to have the deportation order revoked in November 2011 and was again refused. He sought leave to review the second application to revoke the deportation order.

Mr Smith failed to present a statable legal case and hence his application for leave to apply for judicial review was denied without a full hearing taking place. A secondary argument based on fundamental rights found in the ECHR and the EU Charter was considered and rejected by the High Court.

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### Relation to the scope of the Charter

Article 7 EU Charter was invoked by the applicant in order to resist deportation and effect the

revocation of a deportation order. It was however not considered applicable in the present case. The power to deport was a sovereign power of the executive that was not governed by Union law. While the applicant would be obliged to leave the territory of the Union, that in and of itself was not sufficient to bring the matter within the scope of Union law in the absence of a *Zambrano* type situation, which was applicable in the present case.

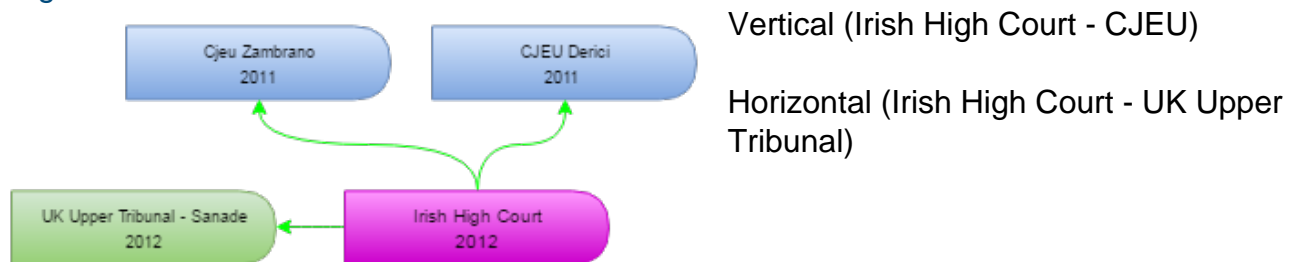
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### Relation between the Charter and ECHR

The High Court duly analysed the correspondence of Article 7 of the EU Charter and Article 8 ECHR, analysing the claim of limitation of the right to family life under the two instruments. The Court however dismissed the claim, noting that the right to family life had been considered and treated at length in the initial decision to issue a deportation order.

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### Diagram



### Impact on Jurisprudence

An appeal followed to the Supreme Court (*Smith v Minister for Justice and Equality* [2013] IESC 4). The appeal was refused and the judgment of the High Court confirmed. In its judgment the Supreme Court did not engage with any CFR or Union law related matters.

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### Sources - EU and national law

- Article 7 - Respect for private and family life
  - Article 21 - Non-discrimination
  - Article 33 - Family and professional life
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### Sources - ECHR

- Article 8 - Right to Respect for Private and Family Life
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### Sources - CJEU Case Law

- CJEU, Case C-34/09, *Ruiz-Zambrano*, ECLI:EU:C:2011:124
  - CJEU, Case C-256/11, *Derici*, ECLI:EU:C:2011:734
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#### Sources - Internal or external national courts case law

- UK Immigration Appeals Tribunal, judgment of the 7th July, 2011, *Sanade and others v Secretary of State for the Home Department* [2012] UKUT 48 (IAC)
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#### Comments

The judgment provides confirmation that deportation as a matter falls outside the scope of Union law.

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