

Court of Appeal hands down significant judgment considering the impact of Diplomatic Immunity on the safeguarding of children.

18th November 2022

The Court of Appeal has today handed down judgment in Re AG (A Child) [2022] EWCA Civ 1505 concerning the extent to which diplomatic immunity prevents local authorities and the police from taking effective steps to protect children of diplomats subjected to ill treatment by their parents. The Appellant, AG, and her family had come to the attention of public authorities in the course of her father's diplomat posting to the UK.

Through her appeal AG sought, with the support of the local authority respondent, to overturn the refusal of the Divisional Court to make a declaration of incompatibility in relation to the Diplomatic Privileges Act 1964 ('DPA') which incorporates provisions of the Vienna Convention on Diplomatic Relations 1961 ('VCDR') into domestic law, a decision reported as London Borough of Barnet v AG & Ors [2021] EWHC 1253 (Fam).

AG's case before the Court of Appeal focused on the compatibility of the DPA with the systems duty arising under Article 3 of the ECHR, and the Court of Appeal's judgment gives consideration to the content and nature of that duty. The case had arisen from the fact that *"AG [...] and her 5 siblings were subjected to severe ill-treatment, and both physical and psychological abuse by both of their parents"* which went *"well beyond the point of cruelty"*. In the course of public law proceedings Mostyn J had held (A Local Authority v AG [2020] EWFC 18) that the operation of the DPA precluded the making of protective orders. Whilst AG, along with her 3 older siblings, had left the family home and claimed asylum the parents had returned to the sending state with the 2 youngest children.

In dismissing AG's appeal the Court accepted, contrary to the conclusion of the Divisional Court, that the impact of diplomatic immunity rendered the protective measures *"less effective than would have been the case if the coercive powers of the court under the Children Act 1989 had been available against the diplomat and his wife"* and acknowledged that, absent the specific impact of the VCDR in this instance, *"it is hard to say that a system that is deprived of any legal compulsion is a framework of laws, precautions, procedures and means of enforcement which can protect children from such conduct [constituting a breach of Article 3] to the greatest extent reasonably practicable"*.

The Court of Appeal noted that this was a *"blank slate"* case which had not previously been considered by the ECtHR, and that the court could not *"hold that the systems obligation in article 3 mandates that the UK should breach or seek to amend the VCDR [...] in the absence of an ECtHR decision pointing clearly in that direction"*.

AG's solicitor, Tony Murphy of Bhatt Murphy Solicitors said:

"The Court of Appeal has recognised that diplomatic immunity can severely constrain the ability of public

authorities in the UK to respond to serious cases of child abuse where they relate to the children of diplomats. This has the effect of exposing children to the risk of serious harm in a manner that would not be countenanced in any other context.

While the Court of Appeal felt unable to make the declaration of incompatibility sought in absence of clear authority from the European Court of Human Rights, its judgment underlines the tension between the immunity afforded to diplomatic personnel and the obligations on the state to protect children from ill-treatment contrary to Article 3 of the European Convention on Human Rights.”

Caoilfhionn Gallagher KC and Tatyana Eatwell of Doughty Street Chambers and Chris Barnes of 4PB act on behalf of AG, instructed by Tony Murphy, Molly Cox and Caleb Simpson of Bhatt Murphy Solicitors.

Please note: a reporting restriction order is in place which prohibits the publication or broadcast of the names, dates of birth, nationality and addresses of the children and/or the parents and/or any other person caring for the children and/or the identity of the sending state is such publication would be likely to lead to the identification of any of the children as being subject to proceedings under the Children Act 1989.