



**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
BEFORE
THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
MR JUSTICE HOLGATE**

CO/745/2022

DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

-v-

ELLIOTT CUCIUREAN

Respondent

PRONOUNCEMENT

Upon considering the written representations lodged by the respondent in respect of an application under section 1(2) of the Administration of Justice Act 1960 for a certificate that there were points of law of general public importance involved in the decision of this Honourable Court given on 30 March 2022 ([2022] EWHC 736 (Admin)) (and leave to appeal to the Supreme Court) together with the appellant's objections:

IT IS ORDERED THAT

1. The Respondent's application to certify is granted;
2. The points of law certified are:
 - (1) Does the Human Rights Act 1998 require a court when determining a charge of aggravated trespass contrary to section 68 of the Criminal and Public Order Act 1994 to undertake a proportionality assessment when the actions under scrutiny occurred during a protest?
 - (2) What are the circumstances in which a court is required to carry out a proportionality assessment when determining a criminal charge when the actions alleged to constitute the actus reus of the offence occurred in the course of protest?
 - (3) What principles should a court apply both at first instance and on appeal when a proportionality assessment is required?
3. The Respondent's application for leave to appeal to the Supreme Court is granted.

REASONS

The questions we have certified should enable the Supreme Court to consider issues of relatively narrow scope arising in the context of a prosecution for aggravated trespass; but also to clarify an area of law (prosecution in the context of protest) which appears to be causing difficulty. The appellant in the Supreme Court will need to review the proposed grounds of appeal to deal with ground 3 of the prosecution's appeal before the Divisional Court (see judgment at [82] to [88]).

We would respectfully invite the Registrar of the Supreme Court to take steps to expedite this matter in the Supreme Court.

BY THE COURT

12 May 2022