

LIBERADZKI and MACDONALD v. the STATE of POLAND,

and

LIBERADZKI v. BLBC Ltd

Ms Sophia Liberadzki, of dual Canadian/Polish nationality, and Ms Mary Macdonald, of Canadian nationality, first met during an organised walking tour in La Malbaie, Quebec, in 2008. They lived together in Ontario since early 2009, and celebrated a civil union in the presence of family and friends in Quebec in the summer of that year. In 2011 they adopted a little boy from the United States, Martin Luther, who upon his adoption also became a Canadian citizen.

They lived together in Ontario until early 2015, when Ms Liberadzki, who is an experienced biochemist, accepted an attractive position at the North East England office of BLBC (BrightLifeBioChem) Ltd, an international research institute based in London with offices in several other countries. The job brought with it entitlement to social security benefits including for her partner and child. Mary and Martin Luther stayed in Ontario, but they maintained regular Skype contact and spent holidays with Sophia, usually hiking in the Scottish Highlands, more recently also in the Polish Tatra mountains.

Following an initial period in England, Sophia traveled frequently for her work. Many of the experiments were done in Poland, and some in Hungary and Turkey, and she divided her time between England and these other places. After some time, the office in Poland became quite reliant on her, as they were understaffed and she spent considerable time there.

In the early summer of 2017, during one of her work stays in Poland, the London board of BLBC Ltd suddenly decided to move Sophia to their Turkish office. Taken by surprise by this decision and not wishing to live in Turkey due to the potential lack of future opportunities for her family and the language, Sophia protested, arguing, among other things, that if she were to be transferred at all, it obviously would be both in her and her employer's interest to move her to the Polish office rather than to Turkey. However, her protests were ignored, whereupon she saw no other possibility but to resign.

In the face of Brexit, and weary of some xenophobic incidents (in particular towards Polish nationals), she decided to apply for a job elsewhere in the EU, and given her links with Poland, a move to that country seemed to be the best option. She successfully applied for a position at a university research institute in Warsaw, and following the summer holidays of 2017, moved to Poland. She bought an apartment in Warsaw, which she wanted to register in both her and Mary's names, on the basis of the contract, including a choice of law designating the law of Quebec, concluded that summer before a notary in Brussels, and embodied in a notarial deed.

Mary and Martin Luther joined her on a temporary residence permit, but were refused the right to stay permanently in Poland, a decision against which Sophie and Mary, also on behalf of Martin Luther, appealed before the administrative courts. These proceedings are still going on at the present time.

Since registration of their civil union and of Martin Luther as their child was refused as well, they also brought an action before the civil courts in Warsaw. Moreover, they joined the Warsaw deeds office to this action, as the office refused to register both Sophia and Mary as owners of the apartment: only Sophia's name was entered in the register.

While the civil court of first instance rejected their claims, referring, inter alia, to Art. 18 of the Polish Constitution, the Court of Appeal (which included a professor of European Union law) considered that the appeal raised questions of EU law that might need to be submitted to the Court of Justice of the European Union for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union. However, before taking any decision to do so effectively, the Court decided to arrange a special hearing on the possible EU law aspects of the case.

You are the lawyer of Ms Liberadzki and Ms MacDonald/You are the lawyer of the Polish government.

Each of you is invited to present before the Court of Appeal (1) your view on whether the case involves an issue/issues of EU law which require(s) a ruling by the CJEU, (2) assuming that there is such a need, your view on which question or questions should be submitted to the CJEU, and (3) your view on how the CJEU should respond to these questions.

Moreover, Sophia also turned to the civil courts in Warsaw requesting damages from her former employer in England, arguing that BLBC's actions amounted to constructive dismissal and were contrary to Polish law. BLBC argues that the Polish courts lack jurisdiction. The court of first instance found indeed that it lacked jurisdiction. Sophia appeals this decision including, in particular, on the basis of EU law.

Ms Liberadzki has asked you to represent her also in this case/ BLBC Ltd, knowing that you represent the Polish government in the case above, has asked you to also act on its behalf.

Each of you is invited to present your views on the EU law aspects of the case to the Court of Appeal.