Marcus Pilgerstorfer KC



Silk: 2020 Call: 2002

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Marcus is an enormously experienced specialist in the fields of employment and discrimination law; product liability and consumer law; and public, human rights and data privacy law. He has appeared in a number of the leading cases.

He is recognised by the directories as “a superb barrister” who is “just brilliant in court” and “handles clients extremely well and surpasses their expectations”. He has “a brain the size of a planet” and is “clearly much admired by the senior judiciary”.

Marcus is a Civil and Criminal Recorder (part-time judge), is an Advocacy Trainer at Gray’s Inn and was a member of the Attorney General’s A Panel of Counsel to the Crown.

> ***Very clever.***
>
> **CHAMBERS & PARTNERS**

Expertise

Public and Human Rights

Marcus has acted in numerous public law and human rights cases including judicial reviews, applications for declarations of incompatibility under the Human Rights Act 1998, challenges to council bye-laws, and claims before the European Court of Human Rights. He has been involved in some very high profile challenges such as **Keyu v Secretary of State (Batang Kali Judicial Review)** [2016] AC 1355 (SC) and has significant experience of cases concerning the Article 8 ECHR implications of deporting foreign prisoners such as **KO (Nigeria) & Others v Secretary of State for the Home Department** [2018] 1 WLR 5273. For examples, please see under 'recent cases'.

Lowe v Secretary of State for the Home Department

[2021] EWCA CIV 62, [2021] IMM AR 792 (CA)

Integration and permissibility of UT's own assessment of the facts.

R (Mahmood) v UT; ME (Malaysia); and RK (Iran) v Secretary of State for the Home Department

[2020] 3 WLR 723

Meaning of "serious harm" within statutory deportation regime.

HA (Iraq); RA (Iraq); AA (Nigeria) v Secretary of State for the Home Department

[2022] UKSC 22; [2022] 1 WLR 3784 (AND PREVIOUSLY [2020] HRLR 21, CA)

How to apply the "unduly harsh" test in relation to qualifying children when assessing whether the effect of deportation on a foreign criminal would breach the convention right to private and family life. Relevance of rehabilitation and seriousness of the offending.

MA (Pakistan) v Secretary of State for the Home Department

[2019] EWCA CIV 1252 (CA)

Whether a change in the law provided a basis for a decision to deport; whether deportation contrary to legitimate expectations; whether very compelling circumstances made out.

JG (Jamaica) v Secretary of State for the Home Department

[2019] EWCA CIV 982 (CA)

Whether judge correct to find very compelling circumstances for deportation; whether a separate assessment of article 8 was legitimate outside of the statutory regime.

Binbuga v Secretary of State for the Home Department

[2019] EWCA CIV 55, [2019] IMM AR 1026; [2019] INLR 403, CA

Test for "persistent offender"; whether 'social and cultural integration' meant lawful integration or whether it could be established by membership of a criminal gang; relevance of appellant being a "home grown criminal".

MS (Philippines) and RA (Iraq) v Secretary of State for the Home Department

[2019] UKUT 122 (IAC), [2019] IMM AR 767; [2019] INLR 607, UT (IAC)

Approach to aspects of deportation post KO (Nigeria).

KO (Nigeria) & others v Secretary of State for the Home Department

[2018] UKSC 53, [2018] 1 WLR 5273, [2019] 1 ALL ER 675 (SC) [2016] EWCA CIV 617, [2016] IMM AR 954, [2017] INLR 15 (CA)

Whether, when assessing if the effect of deportation of a foreign criminal on a qualifying child is unduly harsh, the determination must be based solely on child-centric considerations or should take into account criminality and immigration history.

SC (Zimbabwe) v Secretary of State for the Home Department

[2018] EWCA CIV 929 (CA)

Meaning of 'persistent offender' under statutory scheme; whether that status, once acquired, can be lost.

GD (Ghana) v SSHD

[2017] EWCA CIV 1126, [2018] IMM AR 63, [2017] INLR 882 (CA)

Impact of Family Court orders on Secretary of State's power to deport; effect of s11(5) Children Act 1989 on a residence order upon resumption of parents living together.

KG (Trinidad) v SSHD

[2017] EWCA CIV 789 (CA)

Correct test to apply under s117C of the Nationality, Immigration and Asylum Act 2002.

IT (Jamaica) v SSHD

[2017] EWCA CIV 207 AND [2016] EWCA CIV 301 (CA)

Whether circumstances sufficiently exceptional to avoid deportation; whether freestanding assessment of article 8 considerations permissible.

LT (Kosovo) and DC (Jamaica) v SSHD

[2016] EWCA CIV 1246 (CA)

Whether criminality had caused "serious harm" for the purposes of deportation regime; weight to be attached to Secretary of State's view.

JZ (Zambia) v SSHD

[2016] EWCA CIV 116, [2016] IMM AR 781 (CA)

Whether factors in Immigration Rules 399 and 399A could form part of the aggregation of matters which collectively constituted "exceptional circumstances" for the purposes of avoiding deportation under Rule 398.

Keyu v Secretary of State (Batang Kali Judicial Review)

[2015] UKSC 69, [2016] AC 1355, [2015] 3 WLR 1665, [2016] HRLR 2 (SC)

Whether Article 2 ECHR or customary international law required a public inquiry into historic deaths occurring in Batang Kali, Malaysia in 1948. Whether the standard of irrationality review should be Wednesbury review or proportionality review, and whether decision not to hold an inquiry was irrational.

JA (Ghana) v SSHD

[2015] EWCA CIV 1031 (CA)

Whether UT, having identified error of law, was correct to reach a fresh determination rather than to remit.

RMT v UK

(2015) 60 EHRR 10 (ECTHR)

Whether the provisions of TULRECA constitute an unjustifiable interference with Art 11 ECHR (drafting of application following EDF Energy Powerlink Ltd v RMT [2010] IRLR 114).

Advising compatibility of the Trade Union Bill 2015 with the ECHR.

Achievements

Appointments

- Queen's Counsel (2020)
- Adjunct Professor, City University of Hong Kong (2020, 2021)
- Recorder (Crime 2018, Civil 2019)
- Attorney General's Panel of Counsel to the Crown: A Panel (2019), B Panel (2014) C Panel (2008)
- Advocacy Trainer (Gray's Inn) (2014)
- Pupil Supervisor (2010)

News, Articles & Publications

Regular Publications

- Civil Court Practice ('the Green Book') (contributor 2016-date)
- Tolley's Employment Law Handbook (contributor 2013-date)

Book Chapters

- *Munkman on Employer's Liability,* Bennett (Ed), chapter on the liability of third parties to an injured employee *(2019)*
- *Research Handbook in EU Health Law,* Hervey & Young (Eds), chapter on EU law and policy on pharmaceuticals marketing and post-market control including product liability *(2017)*
- *Cambridge Companion to European Private Law,* Twigg-Flesner (Ed), chapter on Product Liability *(2010)*
- *Discrimination in Employment,* Tucker & George (Eds), chapter on Injury to Feelings Awards *(2007)*

Articles

- *Procurement of Covid-19 vaccines: why were legal liabilities transferred to the public sector? InDret 2.2021 p364-366 (available here)*
- *Products in a Pandemic: Liability for Medical Products and the Fight against Covid-19 (2020) European Journal of Risk Regulation, 1-39. (available here)*
- *European product liability after Boston Scientific: an assessment of the Court's judgment on defect, damage and causation (2017) 28 European Business Law Review 879*
- *The Product Liability Directive: Time to get Soft? (2013) 4 Journal of European Tort Law 1*
- *Transferred Discrimination in European Law: Case C-303/06 Coleman v Attridge Law (2008) 37 ILJ 384*
- *Direct and Indirect Discrimination: Is there something in between? (2008) 37 ILJ 347*
- *A Dog's Dinner? Reconsidering Contractual Illegality in the Employment Sphere (2008) 37 ILJ 279*
- *Taking Discrimination Personally? An Analysis of the Doctrine of Transferred Discrimination (2008) 19 Kings College Law Journal 265*
- *Expert Evidence: The Requirement of Independence [2008] JPIL 224*
- *Illegally Formed Contracts of Employment and Equal Treatment at Work (2005) 34 ILJ 158*
- *The Development Risk Defence – Knowledge, Discoverability and Creative Leaps [2004] JPIL 258*

Research

- *Common Core of European Private Law – Product Liability Project* (Joint Editor), ongoing.

Education

University of Oxford (St John's College and Universität Regensburg, Germany)
MA English Law with German Law, First Class Honours.

University of Manchester
PhD: *European Product Liability – A Comparative Study of "Development Risks" in English and German Law*

Other

Languages

- German
- French (basic)

Scholarships

- Lord Justice Holker Scholar of Gray's Inn

Memberships

- Discrimination Law Association
- Employment Lawyers Association
- Employment Law Bar Association
- Industrial Law Society
- International Bar Association
- Product Liability Forum of the British Institute of International and Comparative Law

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