



**SUPREME COURT**  
**DETERMINATION**  
**THE PEOPLE AT THE SUIT OF THE**  
**DIRECTOR OF PUBLIC PROSECUTIONS**

**-v-**

**JULIAN FLOHR**

**APPLICANT**

**Neutral Citation:** [2021] IESCDT 33

**Supreme Court record no:** S:AP:IE:2020:000110

**Court of Appeal record no:** 2019 No. 49

**Special Criminal Court record no:** Bill No. SCC0012/2016

**Date of Determination:** Monday, 22<sup>nd</sup> March 2021

**Composition of Court:** Clarke C.J., O'Malley J., Baker J.

**Status:** Approved

**APPLICATION FOR LEAVE TO APPEAL TO WHICH ARTICLE 34.5.3° OF THE  
CONSTITUTION APPLIES**

**RESULT:** The Court does not grant leave to the Applicant to appeal to this Court  
from the Court of Appeal

**REASONS GIVEN:**

**ORDER SOUGHT TO BE APPEALED**

<b>COURT:</b> Court of Appeal
<b>DATE OF JUDGMENT OR RULING:</b> 12 <sup>th</sup> March, 2020
<b>DATE OF ORDER:</b> 12 <sup>th</sup> March, 2020
<b>DATE OF PERFECTION OF ORDER:</b> 14 <sup>th</sup> July, 2020

THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON 16 <sup>th</sup> October, 2020 AND WAS NOT IN TIME.
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### **General Considerations**

1. The general principles applied by this Court in determining whether to grant or refuse leave to appeal having regard to the criteria incorporated into the Constitution as a result of the Thirty-third Amendment have now been considered in a large number of determinations and are fully addressed in both a determination issued by a panel consisting of all of the members of this Court in *B.S. v Director of Public Prosecutions* [2017] IESCDET 134 and in a unanimous judgment of a full Court delivered by O'Donnell J. in *Quinn Insurance Ltd. v PricewaterhouseCoopers* [2017] IESC 73, [2017] 3 I.R. 812. The additional criteria required to be met in order that a so-called 'leapfrog appeal' direct from the High Court to this Court can be permitted were addressed by a full panel of the Court in *Wansboro v Director of Public Prosecutions* [2017] IESCDET 115. It follows that it is unnecessary to revisit the new constitutional architecture for the purposes of this determination.
2. Furthermore, the application for leave filed and the respondent's notice are published along with this determination (subject only to any redaction required by law) and it is therefore unnecessary to set out the position of the parties.
3. In that context, it should be noted that the respondent does oppose the grant of leave.

### **Discussion**

4. As appears from the notices filed and from the judgments both of the Special Criminal Court (Hunt J., Special Criminal Court, 25<sup>th</sup> January, 2019) and of the Court of Appeal (see, *Director of Public Prosecutions v. Flohr* [2020] IECA

67) in this matter, the issue which is said to represent a matter of general importance justifying leave to appeal to this Court concerns the proper approach to a claim of privilege asserted by a Chief Superintendent at the trial of the applicant ("Mr. Flohr") in respect of the belief of that senior garda as to Mr. Flohr's membership of an illegal organisation.

5. As appears from the judgment of the Special Criminal Court, a significant number of issues were raised at Mr. Flohr's trial at which he was convicted. Likewise, a number of issues were canvassed on appeal before the Court of Appeal. However, the Court of Appeal upheld the conviction of Mr. Flohr and it is as against that conviction that Mr. Flohr now seeks to appeal to this Court.
6. In passing, it should be noted that Mr. Flohr seeks an extension of time in respect of his application for leave to appeal. The respondent ("the D.P.P.") does not oppose that extension of time and the Court proposes to grant the extension sought and will consider the application on the merits.
7. The issues canvassed in respect of which it is said leave to appeal should be granted have been the subject of significant case law over the years. The precise way in which opinion evidence of a senior member of An Garda Síochána on a charge of membership of an illegal organisation should be considered is now the subject matter of well-settled jurisprudence. As noted earlier in this determination, this Court is no longer a court for the correction of error save, perhaps, exceptionally in respect of matters such as the conviction of persons for serious offences where the interest of justice might require the intervention of this Court in the case of an obvious and major error.
8. In the view of this Court, Mr. Flohr has not demonstrated that any new or different issue concerning the appropriate handling of opinion evidence in

criminal prosecutions such as this arises in the circumstances of this case. Likewise, no potential error of such a type as would justify granting leave in the interest of justice has been demonstrated to be present. The adequacy of the independent evidence found to support the opinion in this case does not fall into this category.

9. In those circumstances, the Court considers that the decision of the Special Criminal Court and that of the Court of Appeal in these proceedings represents no more than the application of well-established principles to the particular circumstances of the prosecution in question. On that basis, the Court is not satisfied that it has been demonstrated that the constitutional threshold for leave to appeal to this Court has been met and leave will, therefore, be refused.

**And it is hereby so ordered accordingly.**