



**SUPREME COURT
DETERMINATION**

BETWEEN

FRIENDS OF THE IRISH ENVIRONMENT CLG

APPLICANT

AND

THE LEGAL AID BOARD

RESPONDENT

AND

IRELAND AND THE ATTORNEY GENERAL

NOTICE PARTIES

Neutral Citation: [2021] IESCDET 20

Supreme Court Record No.: S:AP:IE:2021:000003

Court of Appeal Record No.: N./A.

High Court Record No.: 2019/169 J.R.

Date of Determination: Friday, 19th February, 2021.

Composition of Court: O'Donnell J., McKechnie J., Charleton J.

Status: Approved

**APPLICATION FOR LEAVE TO APPEAL TO WHICH ARTICLE 34.5.4° OF THE
CONSTITUTION APPLIES**

RESULT: The Court does not grant leave to the Applicant to appeal to this Court from the High Court.

ORDER SOUGHT TO BE APPEALED

REASONS GIVEN:

COURT: HIGH COURT.
DATE OF JUDGMENT OR RULING: 15 TH OF SEPTEMBER, 2020.
DATE OF ORDER: 16 TH OF NOVEMBER, 2020.

DATE OF PERFECTION OF ORDER: 17TH OF DECEMBER, 2020.

THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON THE 6TH OF JANUARY, 2021, AND WAS IN TIME.

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, (Unreported, Supreme Court, 6 December 2017) 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 the so-called leapfrog appeal directly from the High Court to this court can be permitted were addressed by the court in *Wansboro v. Director of Public Prosecutions* [2017] IESCDET 115, (Unreported, Supreme Court, 20 November 2017). Accordingly, it is unnecessary to revisit the new constitutional architecture for the purpose 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 in any detail. No aspect of this ruling has precedential value as a matter of law.

Discussion

3. This is an application pursuant to Article 34.5.4^o of the Constitution for leave to appeal to this Court directly from the decision of the High Court (Hyland J. – [2020] IEHC 454) dismissing the applicant's claim that the term "person" in the Civil Legal Aid Act 1995 ("the 1995 Act") should be interpreted to include a legal person such as the applicant. The applicant argued that the 1995 Act should be interpreted to include legal persons on a twofold basis: first, in reliance on the terms of the Interpretation Act 2005; and, second, by reference to an interpretative obligation sought to be derived from the provisions of Article 47 of the Charter of Fundamental Rights and Article 9(4) of the Aarhus Convention.

- 4.** The applicant had commenced a challenge to the National Planning Framework (“N.P.F.”) and the National Development Plan (“N.D.P.”) and contended that it ought to be entitled to legal aid under the 1995 Act to pursue that challenge. It claimed that it was one of the few environmental non-governmental organisations with sufficient knowledge and ability to bring complex environmental law litigation and was dependent on a small pool of lawyers with sufficient expertise willing to engage in difficult and time-consuming litigation with no guarantee of payment.
- 5.** In order to obtain leave to appeal directly to the Supreme Court from the High Court, it is not only necessary to satisfy the constitutional threshold of establishing that the appeal involves a point of general public importance, or that it is otherwise in the interest of justice that an appeal should be brought to the Supreme Court, but, also, to establish that there are exceptional circumstances justifying a direct appeal to the Supreme Court. It is well established that the Constitution envisages, therefore, that the normal route of an appeal from a decision of the High Court is to the Court of Appeal and that it is only in exceptional circumstances that a leapfrog appeal will be justified. In that regard, the applicant contends, in essence, that it is highly likely that the case would be of sufficient gravity that any decision made in the Court of Appeal would, itself, be appealed to the Supreme Court and further argues that there is no benefit in an intermediate appeal to the Court of Appeal, since there is no issue of fact involved which could be refined and that the legal issues raised will be the same on appeal to this court as on appeal to the Court of Appeal. The applicant also seeks a priority hearing and a possible reference to the Court of Justice of the European Union.
- 6.** It is of some relevance that the case challenging the N.P.F. and N.D.P. proceeded in the High Court ([2020] IEHC 225 (Unreported, High Court, Barr J., 24th of April, 2020)) where Barr J. dismissed the claim and has been appealed to the Court of Appeal and is due for hearing on the 27th and 28th of April, 2021. This Court refused an application for leapfrog appeal pursuant to Article 34.5.4^o of the Constitution: [2020] IESCDT 83.
- 7.** The respondent contends that since this is the first time since the passage of the 1995 Act that a legal person has sought to contend that the provisions of that Act are capable of applying to a legal, rather than natural, person, the point raised is not one of general public importance. This a relevant consideration but does not itself establish that the points raised are not of general importance. It is not

however clear that this is an exceptional case such as would justify a leapfrog appeal. It is correct that it raises issues of law which might, therefore, be expected to be essentially unchanged after an appeal to the Court of Appeal. This is a consideration in favour of a leapfrog appeal, but it does not determine the application. Litigation is unpredictable. Furthermore, the possibility should not be discounted that the parties would accept the decision of the Court of Appeal. However, more importantly, the Constitution makes it clear that appeal to the Court of Appeal is the normal route for all cases and does not distinguish between cases which raise only discrete legal issues and others. It does not follow, therefore, that because a decision in the High Court contains no dispute as to fact and raises only issues of law that it must follow that an appeal can be brought to the Supreme Court if it is established the issue of law can be considered to be of general importance. There are no considerations of urgency. The substantive application has been heard, and the applicant was represented and the appeal is due to be heard in the Court of Appeal. Assuming without deciding that the point is capable of being considered a matter of general importance the Court is not satisfied that it has been established that the case is sufficiently exceptional to depart from the normal process of appeals under the Constitution, and accordingly leave to appeal to this court under Article 34.5.4 is refused.

And it is hereby so ordered accordingly.