Cúirt Uachtarach na hÉireann
Supreme Court of Ireland

2024 Annual Report

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Cúirt Uachtarach na hÉireann
Supreme Court of Ireland

2024 Annual Report

Table of Contents

Foreword by the Chief Justice

I am pleased to present the seventh annual report of the Supreme Court which highlights the work undertaken by the Court both inside and outside the courtroom throughout 2024.

"This is surely a precious moment – the moment when Irish courts...are thrown open to administer justice according to laws made in Ireland by free Irish citizens."[1]

2024 was a memorable year for the Supreme Court as it celebrated its 100-year anniversary. The Courts of Justice Act 1924 – the legislation which established Ireland's independent courts system following the foundation of the Irish Free State – was a remarkable achievement that marked a significant milestone in the life of our new State. The provision for a courts system staffed by an independent judiciary obliged to administer justice 'without fear or favour, affection or ill-will' is an essential part of the structure of any modern democracy where government is limited by law and a constitution, and an achievement worthy of commemoration one hundred years on. Indeed, thanks to the work of a diligent committee of judges and Courts Service officials, our anniversary year provided several moments for pause and celebration, to reflect on the achievements of our system and recommit ourselves to progress yet to be made in ensuring that our system continues to evolve to meets the needs of a modern Ireland.

You will see throughout this report the vast array of projects which took place in this regard, however, a particular highlight of mine involved welcoming to Ireland court presidents and senior judicial figures from India, Tanzania, the apex courts across Europe and our neighbours in Northern Ireland and the UK for a commemorative ceremony in the Round Hall of the Four Courts last May, where we had the pleasure of hearing from the presidents of the Court of Justice of the European Union and the European Court of Human Rights and from our Minister for Justice. Details of this event, and of the reception hosted by President Michael D. Higgins at Áras an Uachtaráin for our guests, are captured in this report.

1 Chief Justice Hugh Kennedy speaking at a ceremony to mark the opening of the new courts at Dublin Castle on 11th June 2024..

Other notable developments last year include the announcement of the Court's decision to undertake a pilot project to record and broadcast the oral argument in substantive appeals before the Supreme Court. This initiative, which is consistent with the practice of a number of apex courts with a similar jurisdiction, aims to enhance access to court proceedings and to inform the public in relation to cases of public importance which come before the Court. Preparations are underway by a working group, led by Mr Justice Brian Murray, and it is hoped that the pilot will begin in 2025.

Additionally, in October the Court issued a new protocol which seeks to explain the process of producing a judgment of the Supreme Court and give guidance on what can be expected when the Court reserves judgment at the conclusion of the hearing of an appeal. The protocol, which is based on the practical experience of the Court following ten years of the operation of its reformed jurisdiction, outlines the internal working practice of the Supreme Court when preparing a judgment and sets out an agreed process regarding the steps which will be followed where a judgment is outstanding for more than a specified duration.

Finally, the Court was pleased to launch its long-awaited new website, www.supremecourt.ie. The website is the product of two years of development and aims to assist those seeking to engage with the process of appeal by offering detailed guidance on the appeal process and court procedure. It also seeks to create awareness surrounding the work of the Supreme Court more generally, and features a news archive capturing the various domestic and international engagements of the Court members which take place outside the courtroom, as well as an archive where members of the public can access papers delivered by members of the Court. Although not planned this way, it is somehow fitting that these innovations in the Court's practices which look to the future should be initiated during a year in which we have celebrated our past.

Mr Justice Donal O'Donnell, Chief Justice
Dublin, 2024

Introduction By the Registrar of the Supreme Court

Throughout its 100th anniversary year the Court administration continued to deliver an excellent service to Court users, to judges and to the public in support of the Court's objective to resolve the cases that come before it in a constitutional, fair and efficient manner and in the context of an increasing business level.

The 2024 year end position saw an increase of 14% in the number of applications for leave filed when compared to 2023. In addition, there has been a 14% increase in the number of applications determined. There have also been significant increases in the total number of appeals determined and in the number of written judgments delivered by the Court. The trend shows a significant year on year increase in business level post the Covid period. At the end of 2024 litigants at final appellate level where leave to appeal has been granted could expect a hearing within 23 weeks from the grant of leave. On that basis the Court has no structural backlog of appeals awaiting a hearing date other than by the extent to which the parties and the Court require time to fulfil the necessary procedural steps prior to the appeal hearing.

I am pleased to report that preparatory work continued apace with our IT Unit colleagues for the implementation of the new case management system (UCMS) in the Supreme Court. The business case for this initiative was approved by the Courts Service as part of its modernisation programme. It is anticipated that UCMS will be operational in the Supreme Court by mid-2025. UCMS is a single integrated system being rolled out to all court jurisdictions and the Supreme Court expects to be able to leverage significant benefits from integration with jurisdictions from which it takes its business. UCMS will also be crucial to improving digital access for Supreme Court users.

The Chief Justice and the Court approved a trial of the broadcast of appeal hearings in November continuing its mission to explain its role to the public and to underpin the transparency with which it operates. Two appeal hearings were nominated for recording with the agreement of all stakeholders. This was part of the proof of concept for the technology to be utilised and the experience gained from the recording and the technical process for broadcast will be invaluable to successfully broadcasting the Court's proceedings. It is anticipated that there will be a further trial in early 2025 prior to a full implementation.

As mentioned by the Chief Justice, in October, the Court published a protocol documenting its process

in relation to its delivery of written judgments where it has reserved its decision. It is a further initiative to enhance the transparency of the Court's operations and gives guidance to parties as to what they can expect in respect of judgment delivery by a collegiate court. The administration continues to support the Court in this regard and it enhanced its procedures to accommodate the protocol and keep parties informed of the updated position.

2024 also saw preparatory work for the publication of an online register of Commissioners for Oaths. The objective is to better assist members of the public and legal practitioners with finding a commissioner in their locality. It is expected that the register will be published in 2025 and will include commissioners who have agreed to have their contact details published.

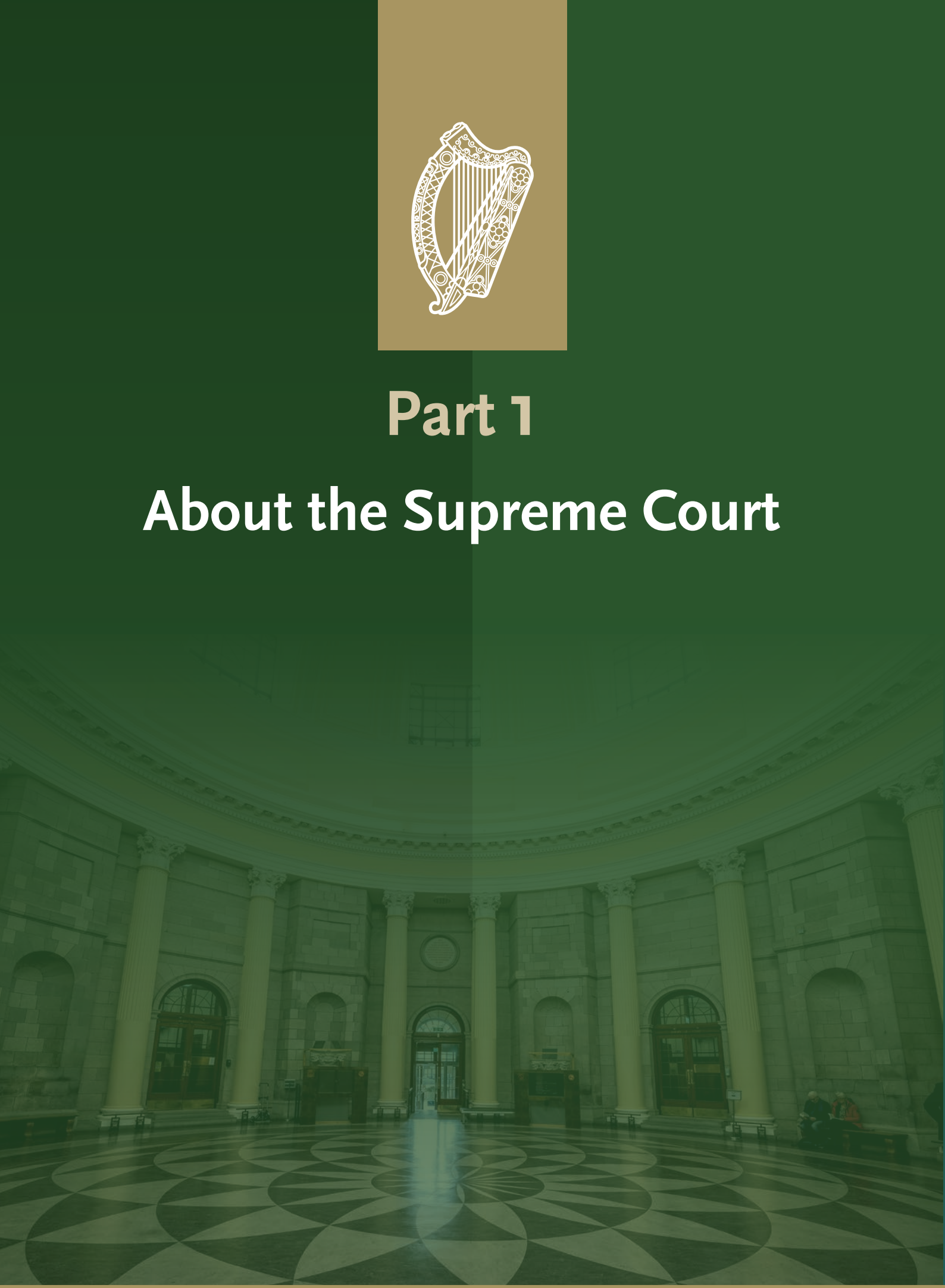
I would like to thank the Chief Justice and members of the Court for their engagement and support throughout the year. I would also like to thank the staff of the Office of the Registrar of the Supreme Court and of the Office of the Chief justice for their dedicated work throughout the year. Their diligence, commitment and team work continues to be important to the success and efficiency with which the Court carries out its constitutional function.

I hope that readers of this report will be interested in its detail and in the insights offered into the Court's business in 2024.

John Mahon, Supreme Court Registrar
Dublin, 2025

Part 1

About the Supreme Court



About the Supreme Court

The Supreme Court of Ireland sits at the top of the Irish court system and is the court of final appeal in civil and criminal matters. It also has the final say in respect of the interpretation of Ireland's basic law, Bunreacht na hÉireann (the Constitution of Ireland). As the highest court in the land, the decisions of the Supreme Court have binding precedence on all other courts in Ireland.

Composition of the Court

At the end of 2024, the Supreme Court comprised the Chief Justice, who is the President of the Court, and eight ordinary judges. In addition, both the President of the Court of Appeal and the President of the High Court are ex-officio (by virtue of their respective offices) members of the Supreme Court.

Appeals are usually heard and determined by five judges of the Court unless the Chief Justice directs that any appeal or other matter (apart from matters relating to the Constitution) should be heard and determined by three judges. Occasionally, the Supreme Court may sit as a composition of seven if the importance of the case warrants it. In instances where the Supreme Court is exercising its original jurisdiction, it sits – at a minimum – as a panel of five judges.

Applications for leave to appeal are considered and determined by a panel of three judges of the Supreme Court. The Chief Justice or an ordinary judge of the Supreme Court may sit alone to hear certain interlocutory and procedural applications, however this does not generally happen in practice. The Chief Justice appoints a judge of the Court to case manage appeals for which leave to appeal has been granted.

Back L-R: *Ms Justice Aileen Donnelly, Mr Justice Brian Murray, Mr Justice Seamus Woulfe, Ms Justice Marie Baker (retired 2024), Mr Justice Gerard Hogan, Mr Justice Maurice Collins*

Front L-R: *Ms Justice Iseult O'Malley, Mr Justice Peter Charleton, Mr Justice George Birmingham (retired 2024), Mr Justice Donal O'Donnell (Chief Justice), Mr Justice David Barniville (ex officio), Ms Justice Elizabeth Dunne*

Not pictured: *Ms Justice Caroline Costello (appointed 2024)*

Jurisdiction of the Supreme Court

1) Appellate Jurisdiction

Appeals are only heard where the Supreme Court grants permission once it determines that the relevant test set out in Article 34.5 of the Constitution has been satisfied.

- The Supreme Court hears appeals from decisions of the **Court of Appeal** where it is satisfied:
  a) that the decision involves a matter of general public importance, or
  b) it is in the interests of justice that there be an appeal to the Supreme Court.
- The Supreme Court can also hear appeals from decisions of the **High Court** ('leapfrog appeals') where it is satisfied that there are exceptional circumstances warranting a direct appeal to it, a precondition for which is the presence of either or both of the following factors:
  a) the decision involves a matter of general public importance, or
  b) the interests of justice.

2) Constitutional Jurisdiction

The Supreme Court has the final say in the interpretation of the Constitution of Ireland. It ensures that the laws enacted by the Oireachtas, Ireland's Parliament, are upheld and interpreted in light of the Constitution and the jurisprudence that has developed since it came into force in 1937. In that way, it may be said to function as a constitutional court.

This is a role of particular importance in Ireland as the Constitution expressly permits the courts to review any law, whether passed before or after the enactment of the Constitution, in order to determine whether it conforms with the Constitution. The Superior Courts (the High Court, Court of Appeal and Supreme Court) retain the power to declare invalid any legislation that is determined to be inconsistent with the Constitution.

3) Original Jurisdiction

Original jurisdiction refers to the Supreme Court's role in dealing with the following two matters when called on:

i) where a bill is referred to the Court by the President of Ireland in accordance with Article 26 of the Constitution, for a determination by the Court of whether that bill (or certain provisions of it), as passed by both Houses of the Oireachtas, is incompatible with the Constitution,
ii) where the Court is requested to determine, in accordance with Article 12.3 of the Constitution, whether the President of Ireland is incapacitated.

While no requests under Article 12.3 have come before the Supreme Court to date, the Article 26 procedure has been invoked by the President on sixteen occasions, with the Supreme Court determining in seven of those cases that the bill in question was incompatible with the Constitution. The most recent Article 26 reference came before the Court in November 2023 and concerned certain provisions of the Judicial Appointments Commission Bill 2022.[2]

4) Implementation of EU Law

The Supreme Court has a role in implementing the law of the European Union. As the court of final appeal in Ireland, it is obliged under the Treaty on the Functioning of the European Union to refer to the Court of Justice of the European Union questions regarding the interpretation of EU law which arise in cases before it, where the interpretation is not clear and clarification is necessary in order for the Supreme Court to decide a question before it.

2 In the Matter of Article 26 of the Constitution and in the Matter of the Judicial Appointments Commission Bill 2022 [2023] IESC 34.

Journey of a Typical Appeal

Decision made by the High Court or Court of Appeal and judgment handed down.

Party dissatisfied with decision may file an application for leave to appeal.

Other parties to the case given the opportunity to file notice setting out why leave to appeal should be refused.

Once satisfied that both application for leave and respondent's notice(s) are in order, application will be listed for consideration.

Panel of three Supreme Court judges convene to consider application for leave.

Panel issues determination setting out whether leave has been granted or not.

If granted, case management process begins – both parties are required to follow the directions of an assigned Supreme Court judge to ensure appeal is on track to be heard.

Once appeal is ready to be heard, a hearing date is set.

Judges assigned to hear appeal read written submissions of both parties in advance.

Oral hearing takes place during which both parties make arguments and Court poses questions to both sides.

Court reserves judgment and begins its deliberations remotely.

Judges circulate draft judgments for consideration by other members of the Court.

Court delivers its judgment in-person and the decision reached is determined by majority.

The legal effect of the judgment takes the form of a written court order which is communicated to the parties.

Members of the Supreme Court

Mr Justice Donal O'Donnell, Chief Justice

Mr Justice Donal O'Donnell was appointed the 13th Chief Justice of Ireland in October 2021. He has been a judge of the Supreme Court since January 2010.

Born in Belfast, Mr. Justice O'Donnell was educated at University College Dublin, The Honorable Society of King's Inns, and the University of Virginia. He was called to the Bar of Ireland in 1982, commenced practice in 1983, and was called to the Bar of Northern Ireland in 1989. He was admitted to the Inner Bar of Ireland in 1995. In 2024, Mr Justice O'Donnell received an award of Doctor of Philosophy (Honoris Causa) from DCU.

Mr. Justice O'Donnell was a council member of the Irish Legal History Society from 2018 to 2021 and is now a joint patron of the society. He is also an honorary member of the Society of Legal Scholars.

Ms Justice Elizabeth Dunne

Ms Justice Dunne was appointed to the Supreme Court in July 2013.

Born in Roscommon, Ms Justice Dunne was educated at University College Dublin and The Honorable Society of King's Inns. She was called to the Bar of Ireland in 1977. In 1996, Ms Justice Dunne was appointed as a Judge of the Circuit Court before her appointment to the High Court in 2004.

Ms Justice Dunne is a correspondent judge for the Supreme Court on ACA-Europe and is the current Chairperson of the Courts Service Board.

Mr Justice Peter Charleton

Mr Justice Charleton was appointed to the Supreme Court in 2014.

A native of Dublin, Mr Justice Charleton was educated at Trinity College Dublin and The Honorable Society of King's Inns. He was called to the Bar of Ireland in 1979 and to the Inner Bar in 1995. In 2006, Mr Justice Charleton was appointed to the High Court and was assigned principally to the commercial list.

Mr Justice Charleton is an adjunct professor of criminal law and criminology at the University of Galway and has published numerous texts on criminal law. In addition, he is the lead Irish representative on the Colloque Franco-Britannique-Irlandais and, in October 2023, took up the role of Director of Judicial Studies at the Judicial Council.

Ms Justice Iseult O'Malley

Ms Justice O'Malley was appointed to the Supreme Court in October 2015.

Born in Dublin, Ms Justice O'Malley was educated at Trinity College Dublin and The Honorable Society of King's Inns. She was called to the Bar of Ireland in 1987 and to the Inner Bar in 2007. In 2012, Ms Justice O'Malley was appointed to the High Court.

Ms Justice O'Malley is chair of the Sentencing Guidelines and Information Committee of the Judicial Council.

Mr Justice Seamus Woulfe

Mr Justice Woulfe was appointed to the Supreme Court in July 2020.

A native of Clontarf, Mr Justice Woulfe was educated at Trinity College Dublin, Dalhousie University, Nova Scotia, and The Honorable Society of King's Inns. He was called to the Bar of Ireland in 1987 and to the Inner Bar in 2005.

Prior to his appointment to the Supreme Court, Mr Justice Woulfe served as Attorney General to the 31st Government of Ireland from June 2017 until June 2020.

Mr Justice Gerard Hogan

Mr Justice Hogan was appointed to the Supreme Court in October 2021.

A native of Tipperary, Mr Justice Hogan was educated at University College Dublin, the University of Pennsylvania, The Honorary Society of King's Inns, and Trinity College. He was called to the Bar of Ireland in 1984 and to the Inner Bar in 1997.

Mr Justice Hogan previously served as a judge of the High Court from 2010 to 2014, as a judge of the Court of Appeal from 2014 to 2018, and as Advocate General of the Court of Justice of the European Union from 2019 to 2021.

Mr Justice Brian Murray

Mr Justice Murray was appointed to the Supreme Court in February 2022.

From Dublin, Mr Justice Murray was educated at Trinity College Dublin, the University of Cambridge, and the Honorable Society of King's Inns. He was called to the Bar of Ireland in 1989 and to the Inner Bar in 2002. He was elected a bencher of the Honorable Society of the Kings Inns in 2010.

Mr Justice Murray served as a judge of the Court of Appeal from November 2019 until his appointment to the Supreme Court. He was a lecturer in the law school at Trinity College from 1999 until 2003.

Mr Justice Murray is the lead judge for international relations at the Supreme Court. In addition, he is a member of the Superior Court Rules Committee, the Judicial Studies Committee of the Judicial Council, the Legal Research and Library Services Committee, the Judicial Editorial Board of the Irish Judicial Studies Journal, and the organising committee for the National Conference and Superior Court Conference.

Mr Justice Maurice Collins

Mr Justice Collins was appointed to the Supreme Court in December 2022.

A native of County Cork, Mr Justice Collins was educated at University College Cork and The Honorable Society of the King's Inns. He was called to the Bar of Ireland in 1989 and admitted to the Inner Bar in 2003.

In 2019, Mr Justice Collins was appointed as a judge of the Court of Appeal and served on that court until his appointment to the Supreme Court.

Since October 2020, he has been a part-time Commissioner of the Law Reform Commission.

Ms Justice Aileen Donnelly

Ms Justice Donnelly was appointed to the Supreme Court in June 2023.

Born in Dublin, Ms Justice Donnelly was educated at University College Dublin and The Honorable Society of King's Inns. She was called to the Bar of Ireland in 1988 and admitted to the Inner Bar in 2004.

In 2014, Ms Justice Donnelly was appointed to the High Court where she took charge of the extradition list as her primary responsibility. She was subsequently appointed to the Court of Appeal in June 2019, where she served for four years before her appointment to the Supreme Court.

Between December 2020 and October 2024, Ms Justice Donnelly has been Chairperson of the Judicial Studies Committee, a statutory committee of the Judicial Council. She served as a member of the Board of the Judicial Council, as the Court of Appeal representative. In 2024, Ms Justice Donnelly become a member of the Board of Trustees of the European Academy of Law.

Ex Officio Members of the Supreme Court

New Appointment - Ms Justice Caroline Costello

Ms Justice Costello was appointed President of the Court of Appeal in 2024, succeeding Mr Justice George Birmingham as the third president of that court since its establishment in 2014.

Born in Dublin, Ms Justice Costello was educated at University College Dublin, the University of Oxford and The Honorable Society of King's Inns. She was called to the Bar of Ireland in 1988 and admitted to the Inner Bar in 2010.

In 2014, Ms Justice Costello was appointed to the High Court where she took charge of the chancery and bankruptcy lists. She was subsequently appointed to the Court of Appeal in November 2018.

Since 2015, Ms Justice Costello has been one of the judges representing the Irish judiciary at the European Network of Councils of the Judiciary (ENCJ), including serving as a member of the Board between 2019 and 2021.

Mr Justice David Barniville

Mr Justice David Barniville was appointed President of the High Court in 2022.

Born in Dublin, Mr Justice Barniville was educated at University College Dublin and The Honorable Society of King's Inns. He was called to the Bar of Ireland in 1990 and admitted to the Inner Bar in 2006.

In 2017, Mr Justice Barniville was appointed to the High Court where he took charge of the commercial division of that court and became the designated arbitration judge.

He was appointed to the Court of Appeal in 2021 where he served until his subsequent appointment as President of the High Court, succeeding Ms Justice Mary Irvine.

Ms Justice Baker pictured with Chief Justice O'Donnell on her retirement

Ms Justice Baker pictured on the bench

Retirements

Ms Justice Marie Baker

On 15 April, Ms Justice Marie Baker retired as a judge of the Supreme Court. Ms Justice Baker had served as a member of the Supreme Court since 2019. Before that, she had served both as a judge of the Court of Appeal (2018-19) and a judge of the High Court (2014-18). During her time as a judge of the Supreme Court, Ms Justice Baker was the assigned judge for the purposes of the Data Protection Act 2018. In 2023, Ms Justice Baker was appointed the first chair of An Coimisiún Toghcháin (the Electoral Commission) by President Higgins.

Paying tribute to Ms Justice Baker at her final sitting in the Supreme Court, The Chief Justice commented on her career as judge, stating:

> "It is obvious that a large part of the work today of being a judge in the Superior Courts, is in producing judgments and indeed, reading the judgments of colleagues, past and present. In Marie's case her judgments have...shown the benefit of her background in philosophy and, indeed, her love of literature. They show an appreciation of nuance and subtle distinctions and also a commitment to precision of expression. She was willing to take on any issue.
>
> In this Court she delivered judgments on issues of conveyancing, property law, wardship, and personal insolvency, but also a landmark decision in relation to the legal position of the President, as well as decisions on European Arrest Warrants. In all of these judgments there is both an elegance and clarity of expression but there is something more; a constant focus upon and sympathy with the individuals involved."

The Chief Justice further remarked that when he asked members of the Court to describe Ms Justice Baker, "the words used [were] instructive":

> "... instinctively generous; intuitively pragmatic and someone who always sought to see the individual involved, not just with the litigants and lawyers who appeared before her, but also with her colleagues; philosopher; thinker; talker; mediator; incorrigible optimist; gardener; chef; walker and friend. The judgments of Baker J. will be consulted for some time to come. But there are many, many more judgments which [Baker J.] influenced for the better."

Tribute remarks were also delivered by Rossa Fanning SC, Attorney General; Sara Phelan SC, Chair of the Council of The Bar of Ireland; Barry McCarthy, President of the Law Society; Angela Denning, CEO of the Courts Service; Kevin O'Neill, Secretary to the Judicial Council; and John Mahon, Supreme Court Registrar.

Mr Justice George Birmingham

On 3 August, Mr Justice George Birmingham retired as President of the Court of Appeal and as an ex officio judge of the Supreme Court. Mr Justice Birmingham had served as President since 2018, when he succeeded Mr Justice Seán Ryan and became the second judge to hold that position. Before that, Mr Justice Birmingham had served as a judge of the Court of Appeal (2014-2024) where he took charge of the criminal division, and as a judge of the High Court (2007-2014) where he sat across almost all lists and had charge of the Minors' List.

On 26 July, Mr Justice Birmingham sat for the final time in Court 1 of the Court of Appeal building. Paying tribute to Mr Justice Birmingham, the Chief Justice remarked that:

> "It was inevitable that [Mr Justice Birmingham] would be appointed to the High Court in 2007. His appetite for work was prodigious, and he was that most valued of judges in the High Court, a safe pair of hands who could be relied upon to take on any and every task. [...]
>
> It was no surprise that he was chosen in 2014 to be a part of the first wave of judges to be appointed to the new Court of Appeal... He immediately took over the criminal division of the Court and it became a model of understated efficiency. [...]

As a judge of the Court of Appeal and as President of the Court of Appeal, his output has been nothing short of phenomenal. In his judgments, he has an enviable capacity to marshal the facts, to simplify the issues and to make them easily understood to any reader... His experience in politics, his interest and empathy for people, has helped him to manage a courtroom and also, as President, to manage the talented individuals in the Court of Appeal.

During his career as a judge, and most recently as President of the Court of Appeal, [Mr Justice Birmingham] has done more than most to keep the country in good heart, the community ordered with justice and mercy. He has made sacrifices, has shown courage and, particularly, loyalty to the courts system, to his many colleagues and, most of all, to the administration of justice in Ireland. He deserves our good wishes today, but, more than that, our gratitude."

Tributes were also paid to Mr Justice Birmingham by Rossa Fanning SC, Attorney General; Sara Phelan SC, Chair of the Council of The Bar of Ireland; Barry MacCarthy, President of the Law Society; Catherine Pierse, Director of Public Prosecutions; Angela Denning, CEO of the Courts Service; Kevin O'Neill, Secretary to the Judicial Council; Angela Willis, Assistant Garda Commissioner; and Owen Duffy, Court of Appeal Registrar.

Part 2

Statistics

Statistics

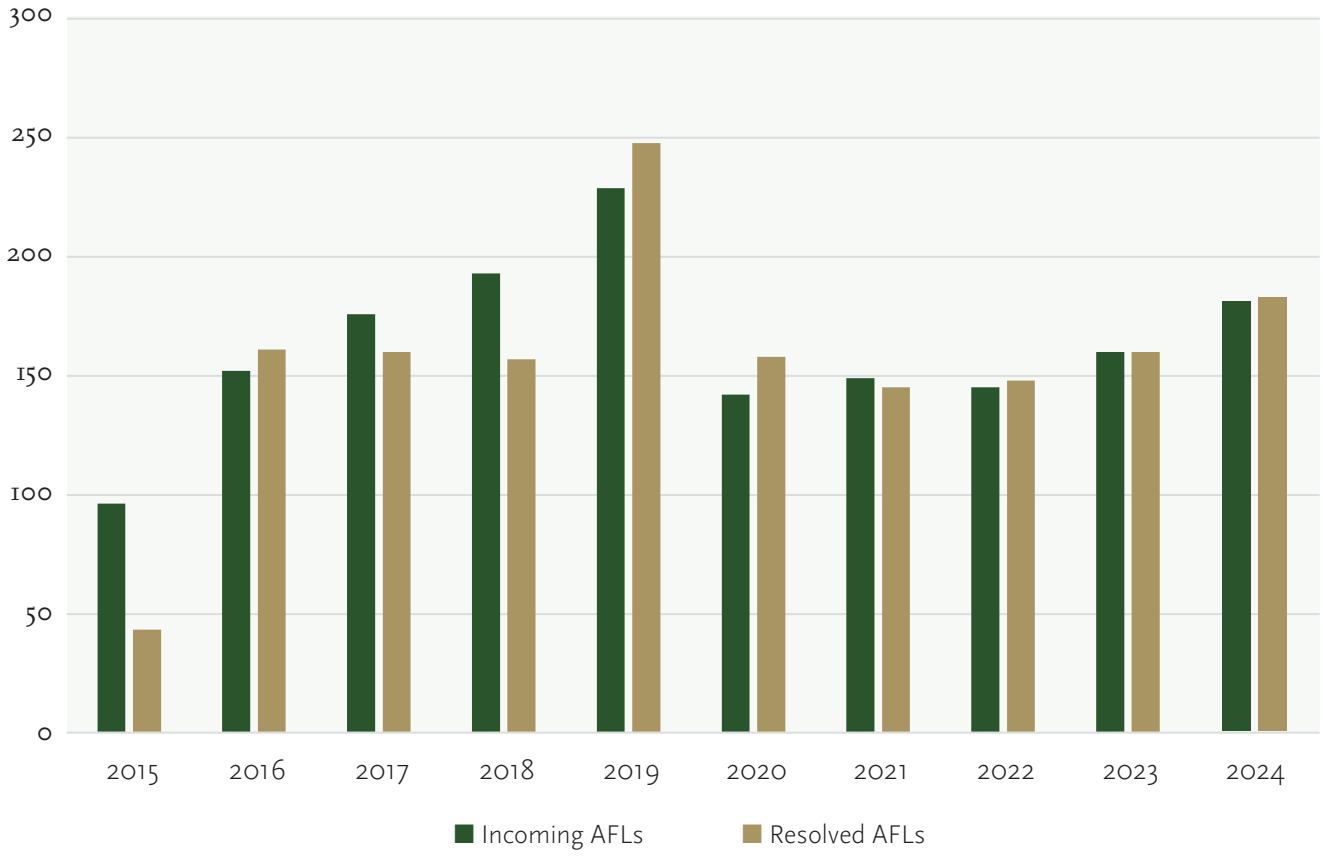
Applications for leave to appeal

The Supreme Court resolved 183 applications for leave to appeal in 2024, and a total of 1,565 since the Court began to determine applications for leave to appeal under its reformed jurisdiction in 2014.

The number of applications for leave to appeal ('AFLs') brought to the Supreme Court each year since 2015 is set out in the graph below, *'Incoming and Resolved AFLs: 2015-2024'*. Of the 183 applications for leave to appeal determined in 2024, the Court granted leave in relation to 49 applications (27%) and refused leave in relation to 123 (67%). The 11 remaining applications were withdrawn before determination (6%).

The figure of 183 represents the continued increase in applications determined since the COVID-19 pandemic, with an 14% increase from 2023.

Incoming and Resolved AFLs: 2015-2024



3 While the jurisdiction of the Supreme Court was reformed in 2014, 2015 is used as year one for the purposes of statistical analysis as it represents the first full year of the reformed jurisdiction.

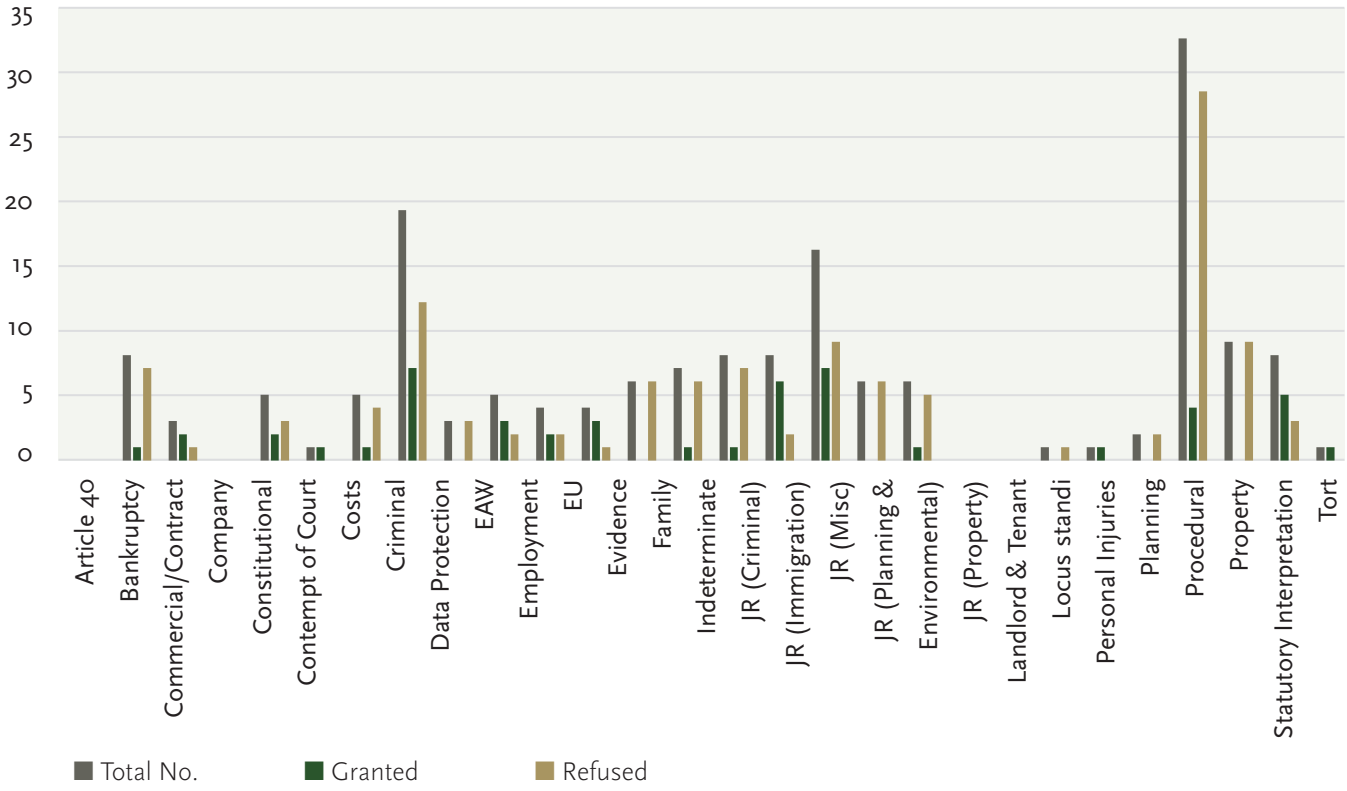
Categorisation of applications for leave to appeal

The chart below categorises all determined applications for leave to appeal brought from both the High Court and the Court of Appeal to the Supreme Court in 2024 according to areas of law[4]. It is important to keep in mind that many appeals involve issues which could potentially be categorised into several areas of law. Therefore, the categorisation attempts to identify the single most relevant category relating to each appeal. It does not take into account that there may be features of a case which involve important issues in other categories. As was the case in 2021, 2022 and 2023, procedural issues gave rise to the highest number of determinations in 2024 (19% of applications). These primarily involved applications for an extension of time to appeal or general aspects of civil procedure.

The area of substantive law which gave rise to the highest number of applications for leave to appeal determined in 2024 was criminal law (11%). The next largest categories were as follows: judicial review (immigration) (10%); property law (5%); bankruptcy (5%); statutory interpretation (5%); judicial review (criminal) (5%); indeterminate (5%); family (4%); evidence (4%); and judicial review (planning and environmental) (4%); miscellaneous judicial review (4%).

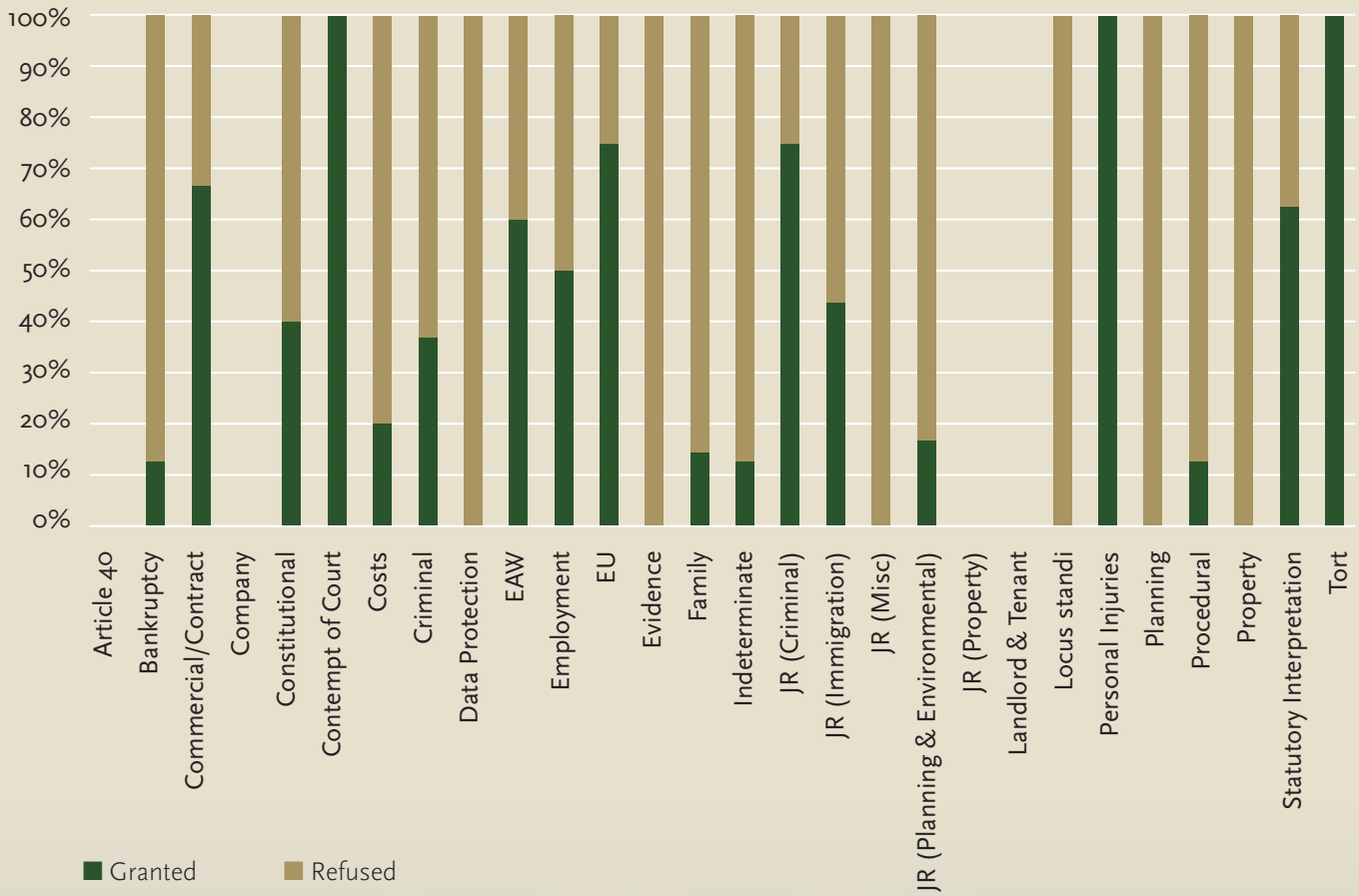
Of these areas of law, leave to appeal was granted in: 13% of the applications involving issues of procedure; 44% of the applications concerning judicial review (immigration); 0% of the applications concerning property; 13% of the applications concerning bankruptcy; 63% of the applications concerning statutory interpretations; 14% of the applications concerning family; 0% of the applications involving evidence; 75% of the applications involving judicial review (criminal); 17% of the applications involving judicial review (planning and environmental).

Categorisation of AFLs Determined in 2024



4 Determined applications refers to those which were considered by a panel of three judges and were either granted or refused leave to appeal. It does not include the applications for leave which were withdrawn.

% of AFLs Granted per Category



Breakdown of applications for leave to appeal

The Constitution provides for an appeal from the Court of Appeal to the Supreme Court if the Supreme Court is satisfied that the decision involves a matter of general public importance, or it is necessary that there be an appeal in the interests of justice. The Constitution also provides for a direct appeal (often referred to as a 'leapfrog' appeal) from the High Court to the Supreme Court in exceptional circumstances.

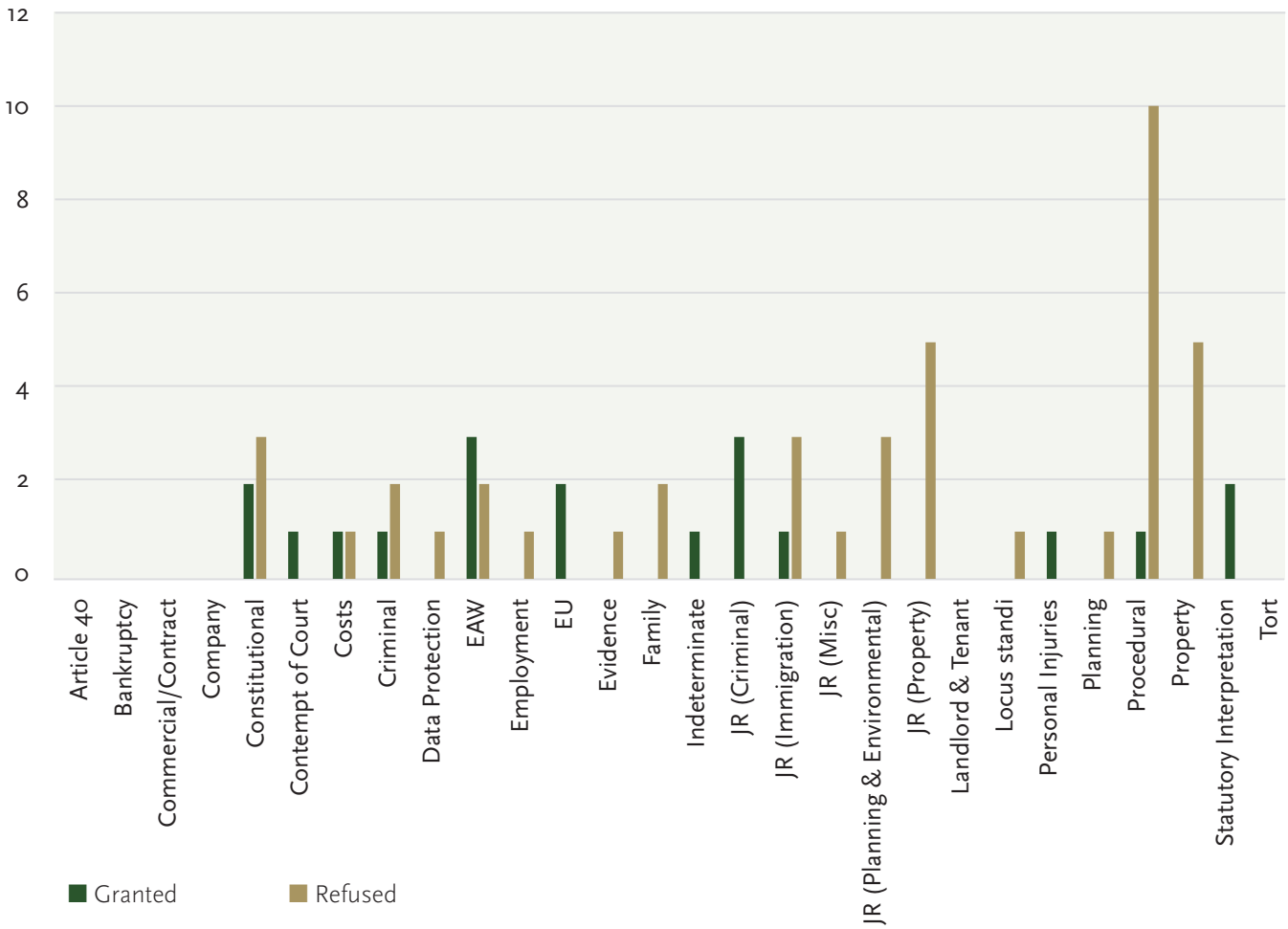
Appeals from the High Court

56 of 168 (33%) applications for leave to appeal determined in 2024 were leapfrog appeals.[5] This is an increase in comparison to 2023, where 31% of applications made were leapfrog appeals.

The Supreme Court granted leave to appeal in 19 of the 56 (34%) applications for leave to appeal directly from the High Court and refused leave in 37 of the applications (66%)

A categorisation of determinations in which applications for a leapfrog appeal were sought indicates that decisions involving European Arrest Warrants and judicial review (criminal) matters both accounted for the highest percentage of successful applications for leave (5%). The next largest categories, accounting for 4% of the determined applications for which leapfrog appeals were granted, include constitutional law, EU law and statutory interpretation.

Categorisation of Determined AFLs from High Court



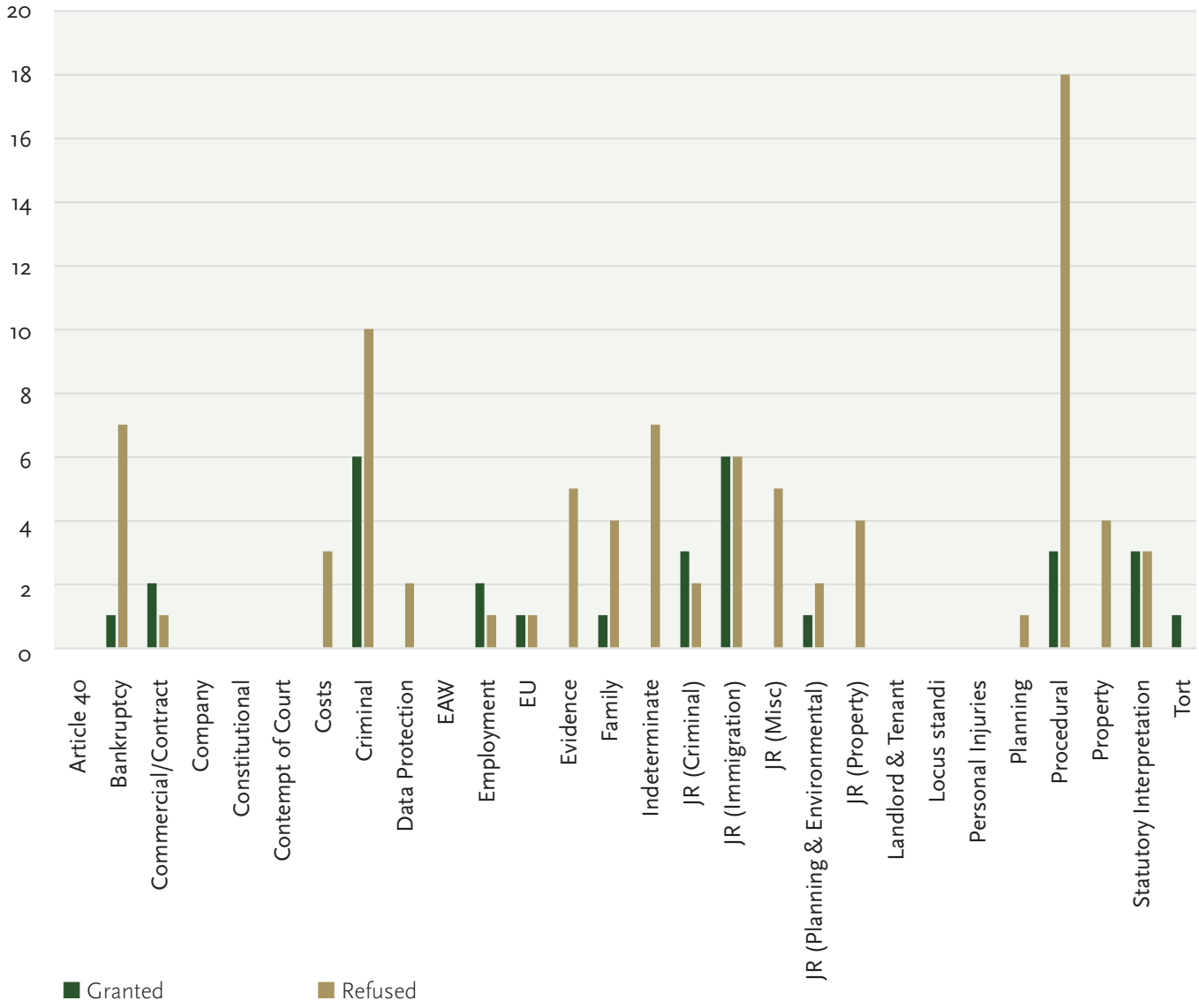
5 Determinations available on www.courts.ie

Appeals from the Court of Appeal

112 of the 168 applications for leave to appeal (67%) determined by the Supreme Court in 2024 related to decisions of the Court of Appeal. Procedural matters formed the largest category of applications for leave from the Court of Appeal determined in 2024 (19%). The next largest category was criminal appeals (14%) followed by judicial review of immigration matters (11%). The Supreme Court granted leave to appeal in 30 of the 112 (27%) determined applications for leave to appeal from the Court of Appeal and refused leave in 82 of the applications (73%).

Leave to appeal from decisions of the Court of Appeal was granted in 5% of applications involving matters of criminal law and judicial review (immigration); 3% of applications concerning matters of statutory interpretation, procedure and judicial review (criminal); 2% of applications involving matters of employment law; and 1% of applications concerning tort law, judicial review (planning and environmental), family law, EU law and bankruptcy.

Categorisation of AFLs from the Court of Appeal



Full appeals resolved

The Supreme Court resolved 56 'full' appeals in 2024, which is an increase on the figure of 32 in 2023, and a decrease on the figure of 66 for 2022.

Waiting times

The average waiting time from the filing of complete documents in respect of an application for leave to appeal to the issue by the Supreme Court of its determination of the application was 2.75 weeks. This is a reduction from 4.5 weeks in 2023.

The average length of time from the grant of leave to appeal to the listing of an appeal hearing was 25 weeks.

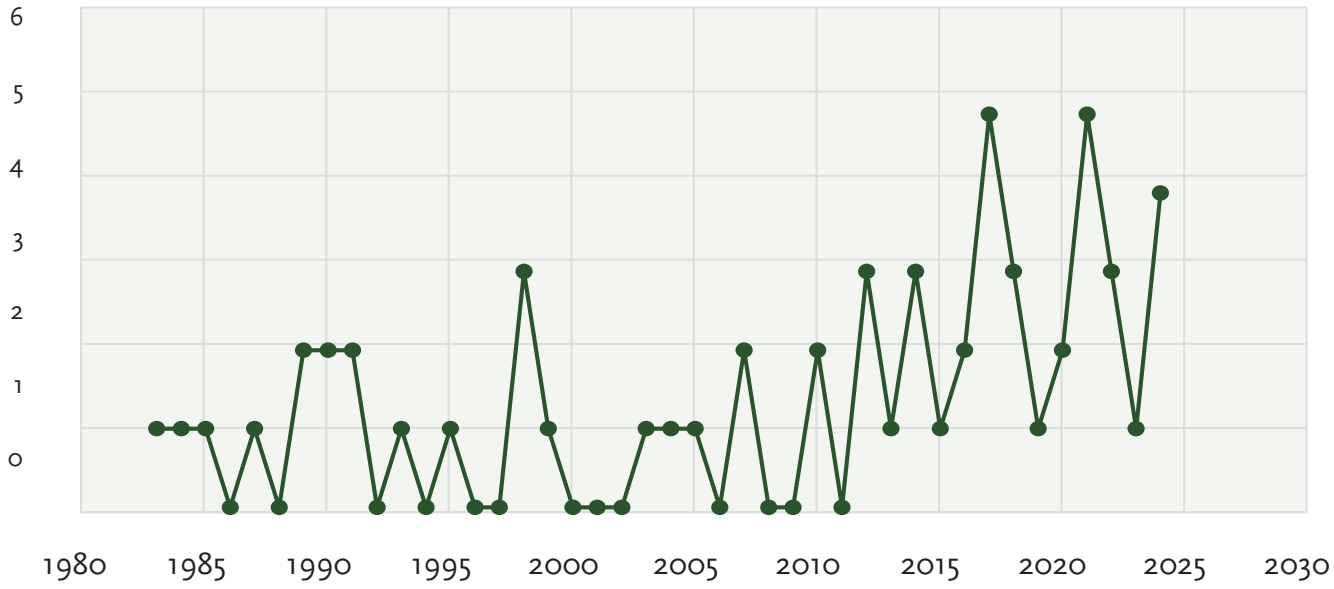
Written judgments

The Supreme Court delivered 93 reserved judgements in 2024, which was an increase on the 61 delivered in 2023. Judgments are publicly available on the website of the Courts Service.

Requests for preliminary rulings to the Court of Justice of the European Union

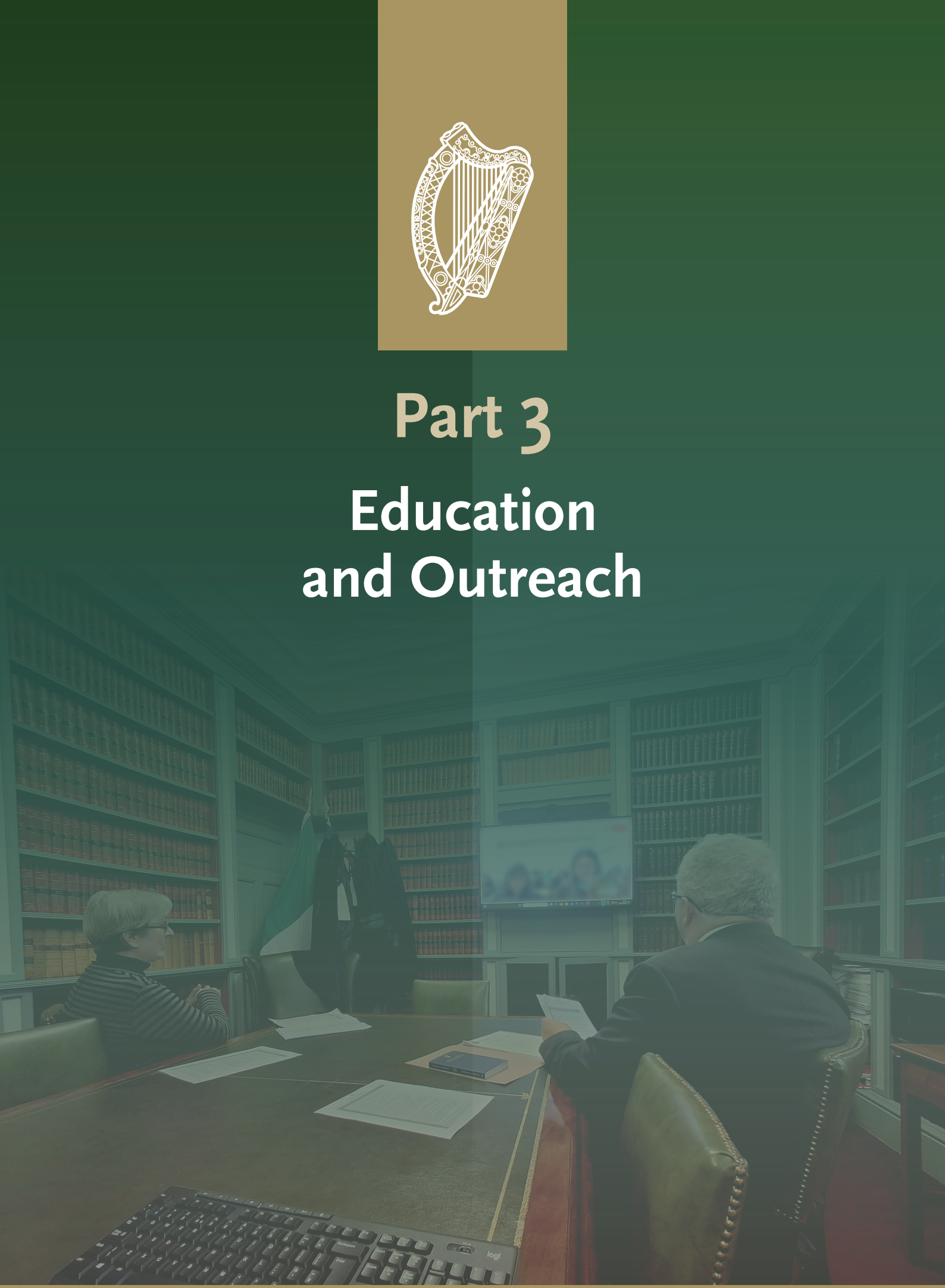
Requests for preliminary rulings to the Court of Justice of the European Union under Article 267 of the Treaty on the Functioning of the European Union ('TFEU') provides a mechanism whereby national courts that apply European Union law in cases before them may refer questions of EU law to the Court of Justice of the European Union ('CJEU') where clarification is necessary to enable them to give judgment. The Supreme Court, as the court of final appeal, is under a duty to refer questions to the CJEU where necessary before it concludes a case. The Supreme Court of Ireland has requested preliminary rulings under Article 267 of the TFEU (or formerly under Article 234 EC) in 57 cases since 1983, as depicted in the below graph. The Supreme Court made four references to the CJEU in 2024.

Requests for Preliminary Rulings 1983-2024



Part 3

Education and Outreach



Education and Outreach

The Supreme Court values its engagement with educational institutions, the legal professions and wider society, and considers such interaction to be important in creating an awareness of the role of the Supreme Court and its work. Education and outreach make Supreme Court proceedings more accessible to citizens, which is critical in light of the Court's role in deciding cases of public importance. It also provides an opportunity for judges of the Supreme Court to discuss the law and the legal system with those who are interested in it and allows students to gain an insight into possible career paths in the law. Some of the ways in which the Supreme Court engages with wider society are outlined below.

Comhrá: 'Comhrá' (the Irish word for 'conversation') is an outreach programme which allows secondary school students around Ireland to participate in live video calls with judges of the Supreme Court. In 2024, members of the Supreme Court held comhrá calls with students of Loreto Community School in Milford, Donegal, Scoil Chaitríona in Glasnevin, Dublin, and Seamount College in Kinvara, Galway.

Third level institutions: Members of the Supreme Court engage regularly with and hold positions in third level educational institutions. Mr Justice Barniville is an adjunct professor at the University of Limerick and University of Galway. Mr Justice Charleton is an adjunct professor of law and criminology at the University of Galway.

Mooting, mock trials and debating: Members of the Supreme Court regularly judge or preside over moot competitions and mock trials which allow students to act as legal representatives in simulated court hearings and trials. Debating and negotiating competitions also provide a platform for students to develop and enhance skills which are important to practising law.

Publications: Members of the Supreme Court regularly publish articles and contribute to legal publications.

Mr. Justice Charleton chairs the Judicial Editorial Board of the Irish Judicial Studies Journal, of which Mr Justice Murray is also a member. The journal is a peer-reviewed legal publication interfacing between the judges, legal practitioners, and academics, and published in conjunction with the University of Limerick. The 2024 volume features an article co-authored by Mr Justice Charleton and Judicial Assistant Victoria O'Connor entitled, 'Try Something Else: Contempt and Confusion'.

The Chief Justice, Mr Justice Hogan and Mr Justice Collins each have papers featured in *A Century of Courts* (Four Courts Press, 2024) edited by Dr Niamh Howlin which reflect on some of the innovations of the Courts of Justice Act 1924. The book was published during the year of the Act's centenary.

Speeches: Members of the Supreme Court often chair, contribute to or participate in panel discussions at conferences, seminars, and CPD events. Details of these engagements have been captured further on in this section.

The Honorable Society of King's Inns: The Honorable Society of King's Inns is the institution of legal education with responsibility for the training of barristers in Ireland. King's Inns comprises barristers, students and benchers, which includes all judges of the Supreme Court, Court of Appeal and High Court. The affairs of King's Inns are managed by a Council which includes a Judicial Benchers Panel of which the Chief Justice, the President of the Court of Appeal and the President of the High Court are *ex officio* members.

Judges of the Supreme Court are regularly involved in the delivery of education at King's Inns and participate in related events, and their engagements in this regard are captured further on in this chapter.

The judges also serve on various King's Inns committees. Throughout 2024, Mr Justice Birmingham served as the external examiner for the assessment in Criminal Litigation and as a member of the Board of Examiners for the Barrister-at-Law Degree. Mr Justice Barniville served as the external examiner for the assessment in the Advocacy 2 module. He also served as a member of the Board of Examiners for the Barrister-at-Law Degree and as a member of the Standing Committee. Mr Justice Hogan served as the external examiner for the constitutional law entrance exam and as a member of the Entrance Examination Board of Examiners. Mr Justice Murray chaired the Entrance Examination Board of Examiners.

The Bar of Ireland: The Bar of Ireland is the representative body for the barristers' profession in Ireland and is an independent referral bar. Members of the Supreme Court regularly chair, contribute to or engage in conferences, seminars, and other initiatives organised by the Bar or specialist bar associations.

The Law Society: The Law Society is the educational, representative, and regulatory body of the solicitors' profession. Members of the Supreme Court regularly chair, contribute to or engage in conferences, seminars, and other initiatives organised by the Law Society and its committees.

The Placement Programme: Introduced in 2013, the Chief Justice's Summer Placement Programme for Law Students ('the Programme') sees law students nominated from third level institutions take part in a four-week placement and shadow a judge of the Superior Courts. The programme emerged out of longstanding links with Fordham Law School in the United States and has gradually expanded to become an Irish and international programme involving universities across the island of Ireland; Fordham University School of Law, New York; the University of Missouri, Kansas City; and Bangor University, Wales.

Hardiman Lecture Series: A lecture series named in honour of the late Mr. Justice Adrian Hardiman, judge of the Supreme Court, is an integral part of the Summer Placement Programme. In 2024, the lectures were delivered in-person in the Four Courts and in Green St Courthouse. They were open to all participating students, judges, judicial assistants, Courts Service staff, members of the Bar of Ireland and of the Law Society. The 2024 Lecture Series featured a conversation about the challenges facing legal journalism today with Orla O'Donnell (RTÉ) and Mary Carolan (The Irish Times), an examination of the legacy of US Judge Oliver Wendell Holmes by Mr Justice Hogan, an update on developments in Irish law on injunctions from Eileen Barrington SC, and an explainer on running Central Criminal Court trials from Ms Justice Caroline Biggs.

The Chief Justice's Working Group on Access to Justice: Established in 2021 by former Chief Justice Frank Clarke and continued under the leadership of The Chief Justice, this working group recognises that equality before the law is a fundamental principle in a democratic state which requires equality of access to justice to achieve it, and brings together key stakeholders with an interest in advancing access to justice to collaborate on initiatives which work towards achieving this objective.

Engagements at a Glance 2024

17 JANUARY

Mr Justice Barniville hosted, in conjunction with the Commercial Litigation Association of Ireland, a ceremony to mark the 20th anniversary of the Commercial Court. The Chief Justice and Mr Justice Birmingham attended the ceremony, which involved speeches by Attorney General Rossa Fanning SC, Mr Justice Peter Kelly, former President of the High Court, and Mr Justice Denis McDonald, judge in charge of the commercial list.

18 JANUARY

The Chief participated in an event organised jointly by the University of Galway Law Review and the School of Law. The event saw the Chief Justice sit down for a two-part interview with Tom O'Connor, co-editor-in-chief of the Law Review, and Dr Shivaun Quinlivan, senior lecturer in law. The discussion spanned a range of topics from the Chief Justice's background and experience with the law, to the use of artificial intelligence, access to justice and judicial training.

29 JANUARY

Mr Justice Charleton delivered two lectures at the University of Galway on 'Participation in Crime' and on 'The Law of Habeas Corpus'.

3 FEBRUARY

The Chief Justice received the Manus in Manu award and delivered the keynote speech at the Intervarsity Law Summit 2024, the theme of which was 'equity and diversity in the law'.

22 FEBRUARY

Members of the Supreme Court attended a dining at the King's Inns, during which Mr Koen Lenaerts, President of the Court of Justice of the European Union, was made an honorary bencher of the Society.

23 FEBRUARY

The Chief Justice chaired the 64th Irish Times Debate Final held at UCD.

29 FEBRUARY

Mr Justice Barniville gave a speech at the parchment ceremony for newly qualified solicitors at the Law Society.

Mr Justice Hogan judged the Eoin Higgins Memorial Moot 2024, which took place in the Four Courts and was won by the King's Inns team.

12 APRIL

The Chief Justice, Mr Justice Hogan and Mr Justice Collins all delivered papers at a conference titled 'A Century of Courts'. Details of this event have been captured further on in this section.

Ms Justice O'Malley was the guest speaker at the annual dinner of the Defence Forces Legal Service Club.

25 APRIL

Mr Justice Collins chaired an event jointly held by the EU Bar Association and Irish Criminal Bar Association titled 'The Impact of EU Law on the Irish Criminal Process'.

27 APRIL

Ms Justice Baker and Ms Justice Donnelly participated in a panel discussion as part of the Tort and Insurance Bar Association's Annual Conference which took place at ATU Connemara.

29 APRIL

The Chief Justice nominated Ms Justice Dunne to take the position of Chair of the Board of the Courts Service.

8 MAY

The Chief Justice participated in a panel discussion as part of a seminar organised by the Trinity Centre for Constitutional Law and Governance titled 'The Challenges of Judging in a Democracy'.

17 MAY

The Chief Justice delivered a pre-recorded opening address for the second day of the World Bar Conference which took place at Dublin Castle.

Mr Justice Barniville chaired and Ms Justice Dunne participated in a panel discussion titled 'An Independent Bar and an Independent Judiciary: Perspectives from Judges in ICAB Jurisdictions' organised as part of the World Bar Conference. Ms Justice Dunne spoke in particular about access to justice in Ireland, and the development of the civil legal aid scheme.

28 MAY

A commemorative ceremony was held in the Four Courts to mark the centenary of the Courts of Justice Act 1924 and the 100th anniversary of the establishment of the Irish courts system. Details of this event has been captured further on in this section.

5 JUNE

The Chief Justice chaired the conferral ceremony for the award of the Hibernian Law Medal to Mr Justice Frank Clarke, former Chief Justice.

7 JUNE

The members of the Supreme Court attended the Superior Courts Conference, hosted by the Judicial Council, at which the Chief Justice delivered the opening remarks.

10 JUNE

Mr Justice Birmingham, along with Mr Justice Cregan and Ms Justice Reynolds, judged the Brian Walsh Memorial Moot, an in-house mooting competition held each year by the King's Inns in memory of the late Mr Justice Brian Walsh, a judge of the Supreme Court and European Court of Human Rights.

Mr Justice Barniville addressed the Bar of Ireland ADR Committee on "Opportunities in International Arbitration".

13 JUNE

Mr Justice Hogan delivered a lecture titled 'Was Oliver Wendell Holmes Really a Good Judge?' as part of the Hardiman Lecture Series.

14 JUNE

Mr Justice Barniville spoke at the 10th annual conference of the Construction Bar Association held at the King's Inns, on "Construction Litigation & Arbitration in Ireland – Potential Reforms?"

Mr Justice Barniville also delivered the opening address at the Dublin Forum on International Commercial Dispute Resolution.

15 JUNE

The Chief Justice, along with members of the judiciary from the High Court and District Court, delivered a number of tours of the Four Courts to members of the public as part of the celebrations to commemorate the Courts of Justice Act 1924.

24 JUNE

Mr Justice Barniville moderated the Chartered Institute of Arbitrator's Annual McQuillan Lecture event delivered by David Huebner on 'International Arbitration - between tradition & innovation'.

Mr Justice Barniville also delivered the introductory remarks and the 'Views from Ireland's Bench' at the Media Law Resource Centre's European Media Lawyers Conference at the Google Headquarters in Dublin.

27 JUNE

The Chief Justice delivered the opening address at the International Bar Association's Global Professional Ethics Symposium held at the Law Society.

28 JUNE

Mr Justice Barniville delivered the keynote address at the 2nd International Bar Association Global Professional Ethics Symposium.

Mr Justice Barniville also addressed the Urological Training Day at St. James's Hospital, Dublin, about medicolegal litigation and the role of the President of the High Court in professional regulatory matters.

4 JULY

Mr Justice Barniville delivered the opening address at a conference on family law arbitration, hosted by the Chartered Institute of Arbitrators.

11 JULY

Mr Justice Barniville delivered a speech at a parchment ceremony for newly qualified solicitors at the Law Society.

17 JULY

Mr Justice Barniville chaired the Bar Council's Civil State Bar Committee's CDP event which reflected on the Assisted Decision Making (Capacity) Act 2015 a year after its commencement.

26 JULY

The Chief Justice delivered the tribute on behalf of the judiciary on the occasion of the retirement of Mr Justice George Birmingham, former President of the Court of Appeal.

9 SEPTEMBER

The Chief Justice chaired the first session of the Biennial Conference of the International Association of Refugee and Migration Judges. Ms Justice Donnelly also delivered remarks at the conference titled 'How do we deliver quality justice? By answering the question'.

19 SEPTEMBER

Mr Justice Hogan spoke at a book symposium organised by the Trinity Centre for Constitutional Law and Governance (TRiCON) and the School of Law at Trinity College Dublin.

21 SEPTEMBER

Mr Justice Murray participated in a panel discussion on the subject of 'climate, environment and the law' as part of the German-Irish Lawyers and Business Association Conference 2024.

26 SEPTEMBER

Mr Justice Collins participated in a seminar organised by the British Institute of International and Comparative Law titled '[p]roduct liability, litigation funding and collective actions – redressing the balance?'. Mr Justice Collins chaired the session on the new European Product Liability Directive which introduces presumptions in favour of plaintiffs with plausible cases and other significant reforms, and the funding of complex tort cases, including third party funding.

27 SEPTEMBER

Mr Justice Barniville chaired a session at a conference hosted by the Nursing and Midwifery Board of Ireland dealing with "The Case for Reform in Fitness to Practise Matters".

2 OCTOBER

Mr Justice Barniville participated in a discussion with Chancellor Kathaleen McCormick on the topic of 'shareholder activism' as part of a conference titled 'Dispute Resolution in an Uncertain World' organised under the auspices of Dublin International Disputes Week. Kathaleen McCormick is an American lawyer and judge on the Delaware Court of Chancery, first as a vice chancellor from 2018 to 2021 and now as the current chancellor since 2021.

4 OCTOBER

Mr Justice Hogan participated in The Bar of Ireland's Voluntary Assistance Scheme Annual Conference 2024. This year's conference examined human rights and pro bono practice, and Mr Justice Hogan moderated a panel session which examined the impact of state funding on charitable advocacy.

7 OCTOBER

The Chief Justice, in partnership with the Courts Service, hosted a ceremony in the Four Courts to mark the opening of the legal year 2024/25. Ms Justice Elizabeth Dunne, in her capacity as chair of the Board of the Courts Service, opened the ceremony, and the Chief Justice delivered the keynote address.

8 OCTOBER

Ms Justice Costello attended the Legal Services Regulatory Authority Legal Partnerships Launch at the National Gallery of Ireland.

9-11 OCTOBER

The Chief Justice and Mr Justice Hogan participated in the European Law Institute ('ELI') Annual Conference which took place across three days between the King's Inns and the Law Society. Mr Justice Hogan chaired an industry event on the subject of artificial intelligence and GDPR, and The Chief Justice delivered a welcome address at the gala dinner.

10 OCTOBER

Mr Justice Barniville delivered an address titled '[a]bitration in an Irish context: opportunities for Ireland as a dispute resolution hub?' at an event hosted by the University of Galway on international arbitration and the future of arbitration in Ireland.

Mr Justice Barniville delivered an address titled 'Arbitration in the Irish Context: Opportunities for Ireland as a Dispute Resolution Hub?' at an event hosted by the University of Galway on 'International Arbitration and the Future of Arbitration in Ireland'.

11 OCTOBER

Mr Justice Hogan delivered a keynoted address at the AGO and CSSO Public Law Conference, hosted by the Attorney General and Chief State Solicitor at the Convention Centre. The address, titled 'Four Score and Seven Years of the Constitution: A New Birth of Freedom',[6] examined certain trends in constitutional reform.

9 OCTOBER

Mr Justice Charleton participated in a panel discussion on 'The Rule of Law and Democracy in France and Ireland', organised as part of a 'Soirée du Droit' (an evening of law) hosted by the French Embassy in Ireland at the UCD Sutherland School of Law. The event was inspired by the 'Nuit du Droit' in France which was held on 3 October to celebrate the 66th anniversary of the French Constitution.

16 OCTOBER

Mr Justice Murray delivered a lecture to students at Trinity College Dublin on the topic of judicial review of administrative action.

17 OCTOBER

6 This speech is available on www.supremecourt.ie

The Chief Justice and the other court presidents attended an engagement in the Four Courts to mark the signing of the commencement order for the new Judicial Appointments Commission Act 2023, a body that the Chief Justice chairs.

Mr Justice Murray delivered remarks on '[t]he price of litigation: legal costs and third-party funding' at the second annual conference of the Corporate Enforcement Authority held at the King's Inns.

21 OCTOBER

Mr Justice Woulfe and Ms Justice Donnelly participated in a 'comhrá' with students of Loreto Community School in Milford, Co. Donegal. Students asked considered and insightful questions on topics such as the selection process for judges in Ireland, how judges go about making decisions, how we can increase diversity within the legal profession and judiciary, and what aspects of the role the judges find most challenging and most rewarding.

24 OCTOBER

The Chief Justice was honoured by Dublin City University and conferred with the award of Doctor of Philosophy (Honoris Causa). In his acceptance remarks, the Chief Justice spoke about the value of education and the role played by young lawyers in building Ireland's legal system in 1924, and he encouraged those graduating to adopt the same energy, radicalism and idealism when shaping Ireland's second century of independence.

4 NOVEMBER

The Chief Justice delivered opening remarks at the mid-year meeting of the New Jersey State Bar Association which took place in Dublin.

6 NOVEMBER

Mr Justice Charleton visited the University of Galway and delivered two papers to law students. The first paper, which was titled 'Sentencing chaos or sentencing bands?', considered the development of judicial guidance on sentencing in Ireland in comparison to England and Wales and the United States, and was delivered to students undertaking the LLM (Criminology, Criminal Justice and Human Rights). The second paper, titled 'A Guide to Evidence in Sexual Violence Cases' and which considered features of evidence law that impact on the effectiveness of prosecutions for sexual violence offences, was delivered to students undertaking the law of evidence.

8 NOVEMBER

Mr Justice Barniville delivered the opening remarks at the annual conference of the Professional, Regulatory and Disciplinary Bar Association held at the Distillery Building.

Mr Justice Barniville also spoke as part of a panel at a conference of the New Jersey State Bar Association on the topic of current developments in international mediation and arbitration.

12 NOVEMBER

The Chief Justice was conferred with the honour of Vice-Presidency of UCD Law Society at an event held in the Sutherland School of Law. Accepting the honour, the Chief Justice delivered some reflections on his path to becoming Chief Justice and on his own time at UCD and involvement with the Law Society in the late 1970s to an audience of students, faculty, and former Law Society members.

15 NOVEMBER

Mr Justice Charleton and Mr Justice Hogan participated in a 'comhrá' with 4th and 5th year students of Scoil Chaitríona, an Irish-speaking school in Glasnevin, Dublin. The 'Comhrá' took place through Irish and involved a lively discussion, during which students asked the judges about the decision-making process in the Supreme Court, what they think the greatest challenges facing the legal system today are, and about how the courts system could be made more accessible to citizens.

16 NOVEMBER

Ms Justice Hogan chaired the annual 'Criminal and Public Law Update' hosted by Irish Rule of Law International at Blackhall Place.

22 NOVEMBER

Members of the Supreme Court attended the National Judicial Conference 2024, at which the Chief Justice delivered the opening remarks and Mr Justice Charleton delivered the closing remarks. Ms Justice Costello, Mr Justice Murray and Ms Justice Donnelly also spoke throughout the day.

Mr Justice Barniville attended the 12th Annual Dublin International Arbitration Day Conference, hosted by Arbitration Ireland, and moderated the 'quickfire panel'.

28 NOVEMBER

Ms Justice Costello attended a charity CPD event which was hosted by the Bar of Ireland at the Capuchin Day Centre, with all funds raised going to the organisation. The topic of the event was 'Expert Witnesses', and the President delivered a speech on the subject.

Mr Justice Barniville chaired the Legal Tech Ireland Conference held in Dublin and delivered a chairperson's address titled 'Legal Challenges and Future Solutions'. Mr Justice Barniville delivered the keynote address at the Euronext Debt and Funds Capital Markets Dinner in Dublin.

Mr Justice Barniville also attended and delivered the keynote address at the launch of Volume XXIV of the UCD Law Review.

6 DECEMBER

Mr Justice Barniville delivered the closing remarks at the annual conference of the Sports Law Bar Association held at the Distillery Building. The conference examined issues which arose before, during and after the Paris 2024 Olympic Games.

11 DECEMBER

Ms Justice Dunne and Mr Justice Charleton participated in a 'comhrá' with students of Seamount College in Galway. During the hour-long call, the judges addressed a range of interesting questions curated by the participating students like what the role of a Supreme Court judge involves; whether, as the Constitution approaches its 100-year anniversary, it is still fit for purpose; how the judges set aside their own values in order to adjudicate impartially; and whether the judges had ever presided over or acted in a case that impacted their perspectives on justice and the law.

16 DECEMBER

Mr Justice Barniville delivered a CPD talk at an event hosted by the Alternative Dispute Resolution Committee of the Bar of Ireland, entitled 'Internship Opportunities in International Arbitration'.

"Today we mark this important milestone in Ireland's history. The Act is one of the most significant pieces of legislation passed in the Free State, establishing as it did the basic structure of our courts system, which has endured for a century, with only the addition the Court of Appeal in 2014 and the Special Criminal Court, the first of which was established in 1972 and the second in operation since 2016."

President of Ireland, Michael D. Higgins on the significance of the Courts of Justice Act, 1924

Centenary Events Spotlight

2024 marked the centenary of Ireland's independent courts system, including the Supreme Court. In order to appropriately recognise and celebrate this occasion, the The Chief Justice established a committee ('the Centenary Committee') involving judges and Courts Service officials to host a programme of commemorative events and projects throughout 2024.

'A Century of Courts' Academic Conference

On 12 April, exactly 100 years to the day that the Courts of Justice Act 1924, the legislation which established our independent courts system, was signed into law, the Centenary Committee hosted an academic conference in Dublin Castle. The conference venue was the location of the first sitting of the new courts in 1924.

The conference involved collaboration between the Judiciary, Courts Service, University College Dublin, the Irish Legal History Society, An Post, Four Courts Press, the OPW, and members of the academic community.

An Post commissioned a special stamp to commemorate the centenary of the courts.

'A Century of Courts' Academic Conference

'A Century of Courts' Academic Conference

Commemorative Stamp

The Courts of Justice Act, 1924

The focus of the conference was the Courts of Justice Act, 1924. Articles 64-72 of the 1922 Constitution provided for '*Courts of First Instance and a Court of Final Appeal to be called the Supreme Court*.' However, the details as to how these courts would operate and function was left to legislation. In early 1923, a commission known as the '*Judiciary Committee*' was established, in the words of WT Cosgrave, '*to advise the Government on matters judicial*.' In his letter to each of the committee members, Cosgrave wrote:

> *"... there is nothing more prized among our newly won liberties than the liberty to construct a system of judiciary and an administration of law and justice according to the dictates of our own needs and after a pattern of our own designing."*

Chaired by Lord Glenavy, the former Lord Chancellor, the Committee worked for several months and produced a unanimous report in May 1923 full of detailed recommendations for the establishment and operation of the District, Circuit, High and Supreme Courts. The Courts of Justice Bill 1923 was published in July and after much debate, the Courts of Justice Act 1924 was signed into law and commenced in the summer of 1924.

The Act can be regarded as one of the most significant pieces of legislation passed in the Free State. It established the basic structure of our courts system, which has endured for a century with only the addition of one new court, the Court of Appeal, in 2014. New Circuit Courts replaced County Courts as well as subsuming much of the jurisdiction of the centralised High Court. Local District Courts were established, to be presided over by qualified and salaried District Justices; petty and quarter sessions and Justices of the Peace disappeared.

Book launch

The contributions of the legal scholars, historians and judges at the conference were edited by Dr. Niamh Howlin of UCD and published in a book. The publication was launched in the Supreme Court in November.

Launch of 'A Century of Courts' by Dr. Niamh Howlin

Commemorative Events in May

Round Hall event

In May, the Centenary Committee hosted a commemorative ceremony in the Round Hall of the Four Courts. The event marked the commencement on 5 June 1924 of Part 1 of the Courts of Justice Act 1924 which formally established the new High Court and, for the first time, a Supreme Court of Ireland. The ceremony was chaired by His Honour Judge Paul Kelly, President of the District Court, and speeches were delivered by Minister for Justice, Helen McEntee TD, President of the Court of Justice of the European Union, Koen Lenaerts, then President of the European Court of Human Rights, Síofra O'Leary and The Chief Justice.

The event was attended by Chief Justices and Court Presidents across the EU and beyond, as well as members of the judiciaries of Ireland, Northern Ireland, Scotland and England and Wales, members of the practising professions, members of the Courts Service, representatives from the Department of Justice and other key stakeholders in Ireland's justice system.

Minister McEntee, pointing to some notable constitutional cases, remarked that "[o]ver the past century, the court system has significantly reshaped Irish society, our democracy, and our place in the world". She commented on the independence of the judiciary as a foundation of a democratic society and emphasised that "[s]upporting this crucial foundation ensures that justice can be administered impartially, free from external pressures and influences, and upholding the rule of law." The Minister described the central role of the modernisation programme in shaping our court system of the future. Expressing pride in Ireland's Judiciary and Courts Service, she concluded by thanking those in attendance for their public service.

President O'Leary of the European Courts of Human Rights, gave a "prospective retrospective" on the European Convention on Human Rights, tracing the Irish courts' history of engagement with the Convention and providing some thoughts on what the future may hold.

Court of Justice of the European Union President Lenaerts described the relationship between the Irish courts and the Court of Justice of the European Union, commenting:

> "The dialogue between Irish courts and the Court of Justice is, in my view, a shining example of European integration moving forward through law and in keeping with the rule of law."

The Chief Justice referenced the bombardment, explosion and fire that destroyed the Four Courts 102 years previously. The rebuilding of the Four Courts, he said, reflected what was being done in the Courts system, in that architect T.J. Byrne "took the best of this building, discarded any features which no longer served their purpose, and replaced them with contemporary features, so that the building became not a monument to a colonial past, but a functioning courthouse for an independent future." He likened this to the evolution and a radical restructuring of the legal system in 1924.

Describing some of the many changes in the courts system in the last century, the Chief Justice noted that the purpose of the occasion was not merely to commemorate and celebrate, but to provide us with an opportunity "to take stock and to reengage with the same spirit of radical evolution and indeed idealism that was present in 1924".

On the margins of the Four Courts event, the Chief Justice hosted a Board meeting of the Network of the Presidents of the Supreme Judicial Courts of the European Union. As well as meeting to discuss issues of interest, the relevant Chief Justice and Supreme Court Presidents from other EU countries joined the centenary celebrations.

In May, the Centenary Committee hosted a commemorative ceremony in the Round Hall of the Four Courts.

President of Ireland's Reception

The May commemorations included a reception hosted by the President of Ireland, Michael D. Higgins at his residence, Áras an Uachtaráin. The event was attended by the Taoiseach, Simon Harris TD, the Chief Justice, Donal O'Donnell, members of the Supreme Court, the Attorney General, Rossa Fanning SC, Court Presidents, judges from each of the Courts, and representatives from across the Irish legal system. Chief Justices and other senior judges and legal figures from neighbouring jurisdictions, Europe and beyond were also in attendance.

Addressing those in attendance, the President commented on the significance of the Courts of Justice Act, 1924:

> "Today we mark this important milestone in Ireland's history. The Act is one of the most significant pieces of legislation passed in the Free State, establishing as it did the basic structure of our courts system, which has endured for a century, with only the addition the Court of Appeal in 2014 and the Special Criminal Court, the first of which was established in 1972 and the second in operation since 2016."

The President noted that "[w]hile every country has its own courts system – some of which are very different to the system we have in this country – they all aspire to the same aim: ensuring that justice is achieved and that the outcome of the case is fair and reasonable."

He emphasised that importance of the courts, observing:

> "One may well ask if there is any aspect of our republic more essential to its effectiveness and continuity than the independence of our nation's courts and their ability to uphold the rule of law? It is, after all, our judiciary that has an enormous responsibility in being part of a system that seeks to ensure, not only that order is based on a legitimate and democratically sourced assent, is maintained in our nation, but also that the struggles in which the citizens of our country engage with each other—whether over law, ideas, politics, or social values—are resolved reasonably, and fairly."

The Chief Justice responded to the President's address and presented him with the first copy of the new edition of 'The Supreme Court of Ireland: A History'; a book published by the Centenary Committee as part of its programme of commemoration.

The May commemorations included a reception hosted by the President of Ireland, Michael D. Higgins at his residence, Áras an Uachtaráin.

Public Tours

On Saturday 15th June, we marked the centenary of the first sitting of the Supreme Court (on 16th June 1924) with a series of guided tour for members of the public in the Four Courts complex.

The guides, which included members of the Judiciary and Courts Service, shared their in-depth knowledge of the history of the site and the development of law in Ireland.

The Irish Courts Podcast

The Irish Courts Podcast series, which comprises five episodes, features landmark cases, influential figures, and the evolution of our legal system. It involves insightful discussions with prominent judges, lawyers, legal scholars, and historians. Each episode aims to illuminate our legal heritage and its impact on modern society, and the first episode went live on 11th October. The Chief Justice and Mr Justice Hogan contributed to the first episode entitled 'From Revolution to a New Courts System' which examines the sweeping reforms of the 1924 court system, highlighting its significance in fostering a fair and independent Ireland. In another episode, 'Two Seminal District Court cases', Ms Justice Donnelly and James Dwyer SC recalled the cases of *The State (Healy) v Donoghue* and *People (DPP) v Gary Doyle* and how they established crucial rights for defendants in criminal justice proceedings.

Chief Justice O'Donnell and Judge Gráinne Malone of the District Court with Retired Probation Officer Maura O'Looney. Ms O'Looney participated in an episode of the Irish Courts Podcast on the topic of Judge Eileen Kennedy, Ireland's first woman judge.

Four Courts Refurbishments & Artwork

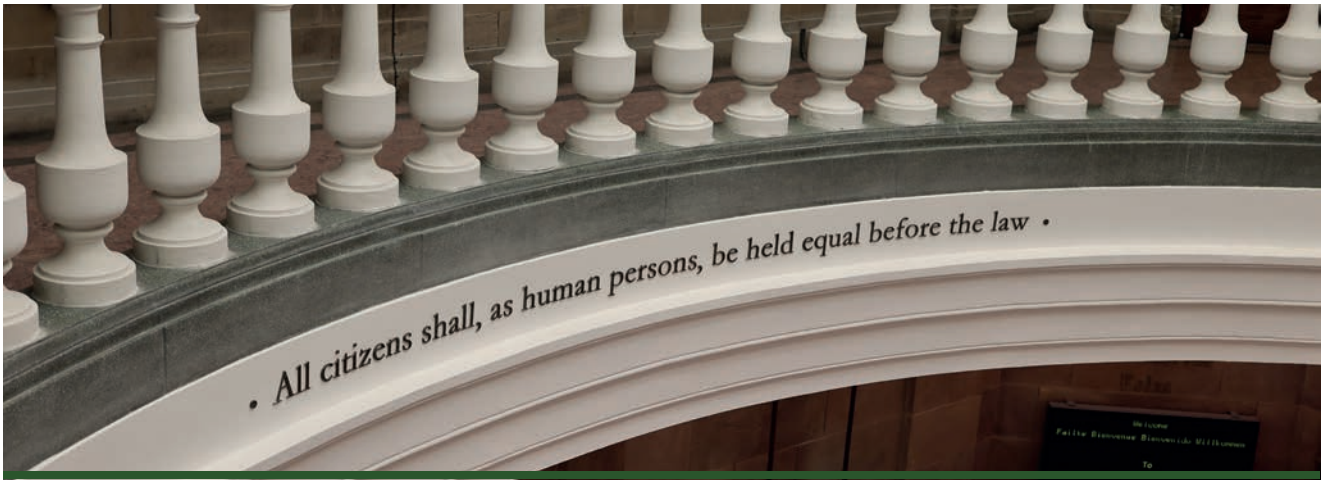
The Office of Public Works, in collaboration with the Courts Service and the Centenary Committee undertook some restoration in the Four Courts. In addition to refurbishment of the doors and upgrade of lighting at the entrance to the Supreme Court courtroom, the following text of the equality guarantee found in Article 40.1 of the Irish Constitution was inscribed in Irish and English along the oval architrave which sits above the foyer outside the courtroom.

> "Áirítear gurb ionann ina bpearsain daonna na saoránaigh uile i láthair an dlí
>
> All citizens shall, as human persons, be held equal before the law"

In his address marking the centenary the Chief Justice noted that the inscription echoes and complements the inscription on the Bridewell Courts at the back of the Four Courts complex: *fiat justitia ruat caelum* - "Let justice be done though the heavens fall", observing that:-

> "These words [are] both an inspiration and a challenge to us. A challenge as we hurry through this building and all court buildings, whether as judges, lawyers, litigants or, as the successors to C.P. Curran, staff and officers of the Courts Service, to raise our gaze, and our sights. To connect with the evolutionary radicalism and idealism of the generation of 1924 and to strive each day to live up to those ideals. And a reminder to ensure that justice is administered, to every person coming before the courts in those great words inherited from the common law system, which we adapted and made our own 100 years ago in the 1924 Act that we celebrate today: 'without fear or favour, affection or ill will'."

Inscription in Irish seen from below



Inscription in English seen from above

Part 4

International Engagement

International Engagement

Formal legal engagement

The Supreme Court engages with the Court of Justice of the European Union *via* the avenue of dialogue provided for in the preliminary reference system in Article 267 of the Treaty on the Functioning of the European Union. It is also common for senior courts of countries with a common law legal tradition to refer to judgments of other jurisdictions in which the same or similar issues arise. Such judgments are persuasive rather than binding. Under the European Convention on Human Rights Act 2003, courts in Ireland must have regard to the jurisprudence of the European Court of Human Rights in Strasbourg. Outside of these formal legal channels, there is an increasing level of cooperation between the Supreme Court and other senior courts through, for example, bilateral meetings or through the Supreme Court's membership of international bodies.

International organisations

The Supreme Court cooperates on a multilateral basis via its membership of several international networks and organisations which facilitate cooperation with courts and institutions in other jurisdictions. The areas of law associated with each of these organisations varies but they have in common the aim of providing a forum in which courts of similar jurisdiction can meet to discuss their work, the nature of their functions and the organisation of their systems, and to promote dialogue between such courts.

Some organisations of which the Supreme Court or the Chief Justice is a member include:

ACA-Europe - An organisation comprising the Councils of State or the supreme administrative jurisdictions of each of the members of the European Union and the Courts of Justice of the European Union. Through ACA-Europe, the Supreme Court exchanges views and information with other member institutions on jurisprudence, organisation, and functioning, particularly with regard to EU law.

Network of the Presidents of the Supreme Judicial Courts of the European Union - A network of the Presidents of the Supreme Courts of EU Member States with general jurisdiction (as opposed to constitutional courts or courts with final jurisdiction in particular areas of law, such as supreme administrative courts). Supreme Court Presidents, including the Chief Justice of Ireland, participate in meetings and exchange information through this network, which also consults with institutions of the EU. Following his appointment as Chief Justice in October 2021, Mr. Justice O'Donnell was elected a member of the Board (Vice-President) of the Network.

Conference of European Constitutional Courts ('CECC') - An organisation comprising European constitutional or equivalent courts with a function of constitutional review. Meetings and exchange of information on issues relating to the methods and practice of constitutional review are the key feature of this organisation, which aims to advance shared values of democracy, the rule of law and the protection of fundamental rights. Every three years, the presiding constitutional court organises a pan-European congress to discuss fundamental doctrinal and conceptual issues. The Conference is currently chaired by the Constitutional Court of the Republic of Albania. The XXth Congress of the CECC is scheduled to take place in Albania in 2027.

Judicial Network of the European Union ('JNEU') - An association which was established on the initiative of the President of the Court of Justice of the European Union and the Presidents of the Constitutional and Supreme Courts of EU Member States at the Meeting of Judges hosted by the Court of Justice in 2017. The JNEU is based on an internet site designed to promote greater knowledge, in particular from a comparative law perspective, of law and legal systems of Member States and contribute to the dissemination of EU law as applied by the Court of Justice of the European Union and the national courts.

Superior Courts Network - In 2021, the Supreme Court joined the Superior Courts Network ('SCN'), which is managed by the Jurisconsult of the European Court of Human Rights. The aim of the SCN is to enrich dialogue and the implementation of the Convention by creating a practical and useful means of exchanging relevant information on Convention case-law and related matters.

Venice Commission Joint Council on Constitutional Justice and World Conference of Constitutional Justice - Through the Joint Council on Constitutional Justice, the Supreme Court cooperates with constitutional courts and courts of equivalent jurisdiction in Member States of the Venice Commission, the Council of Europe's advisory body on constitutional matters. This is primarily achieved through the sharing of information between liaison officers of member courts, including officials in the Office of the Chief Justice of Ireland.

Bilateral engagement

The Supreme Court benefits from bilateral meetings with courts in neighbouring jurisdictions, other EU states and further afield.

Other international engagements

Members of the Supreme Court regularly attend and participate in conferences, seminars and working groups held by courts in other jurisdictions on matters of mutual interest for the purposes of knowledge-sharing and strengthening international dialogue between jurisdictions.

International Engagements 2024

19 JANUARY

Opening of the ICC Judicial Year

On 19 January 2024, the 6th Judicial Seminar and the Opening of the Judicial Year of the International Criminal Court was held in the Hague. The purpose of the annual seminar is to provide a space for a frank exchange of views on topical issues in the international criminal justice system. The participants of the seminar are judges of the ICC, senior judges of the national jurisdictions of the States Parties to the Rome Statute, as well as senior judges of international and regional courts. topic chosen for the 6th Judicial Seminar was: "Securing Meaningful Justice for Victims – Models and Experiences". The Opening of the Judicial Year is a ceremonial, symbolic event, which underlines the Court's special nature among international organisations as an independent judicial institution, and signals the beginning of another cycle of annual work in the Court's life. Ms Justice Aileen Donnelly attended on behalf of the Supreme Court.

26 JANUARY

European Court of Human Rights Judicial Seminar

The Chief Justice and Mr Justice George Birmingham attended a judicial seminar held by the European Court of Human Rights to mark the solemn opening of the Court's new legal year. The theme of this year's seminar was 'Revisiting Subsidiarity in the Age of Shared Responsibility'. The seminar was opened by the then President of the Court, Síofra O'Leary, and discussions spanned a wide range of topics including the impact of Protocol 15 to the European Convention on Human Rights on the principle of subsidiarity, as well as an exchange of views between national judges on subsidiarity.

28 JANUARY

European Network of Councils for the Judiciary

Ms Justice Costello hosted a meeting of the working group on the independence and accountability of judiciaries across Europe, under the auspices of the European Network of Councils for the Judiciary ('ENCJ'). The ENCJ brings together the national institutions in the Member States of the European Union which are independent of the executive and legislature, and which are responsible for the support of the judiciaries in the independent delivery of justice.

14 FEBRUARY

The Lady Chief Justice of England and Wales, Dame Sue Carr, pictured with Chief Justice O'Donnell

Visit from Lady Chief Justice of England & Wales

The Lady Chief Justice of England and Wales, Dame Sue Carr, visited the Four Courts to meet with the Chief Justice, followed by a working lunch with members of the Court of Appeal and the Supreme Court of Ireland. That evening, the Lady Chief Justice delivered a fascinating overview of the history of women in law at the King's Inns where she was made an honorary bencher of King's Inns.

19 FEBRUARY

ACA-Europe Seminar

Mr Justice Woulfe travelled to Zagreb, Croatia, for an ACA-Europe seminar co-hosted by the High Administrative Court of Croatia on the subject of 'mechanisms of counteracting conflicting rulings from different domestic courts and from the CJEU and European Court of Human Rights'. A general report on the various responses for the participating states was presented by Professor Dario Đerđa, Dean of the Law Faculty at the University of Rijeka, and discussed among attendees.

8 MARCH

Lecture at Middle Temple

Mr Justice Barniville delivered a lecture at the dinner organised in honour of the Irish and Northern Irish Bar by the Honourable Society of the Middle Temple. The title of the President's address was 'Celebrating 20 Years of Ireland's Commercial Court & Other Musings on the Irish Legal and Judicial System.'

21 MARCH

Annual Lecture at the Judicial Institute for Scotland

The Chief Justice delivered the annual lecture of the Judicial Institute of Scotland. The lecture, titled 'From the Acts of Union to the European Union: One Hundred Years of Constitutionalism', focused on the historical and constitutional developments between Ireland and the UK through the lens of the Acts of Union, while comparing these to similar legislative acts in Scotland.

Paris Arbitration Week

Arbitration Ireland and Ireland for Law hosted a discussion followed by a networking reception as part of Paris Arbitration Week 2024. The event featured opening remarks by Mr Justice David Barniville, Ireland's designated arbitration judge, followed by a panel discussion on culture and advocacy in international arbitration.

16-18 APRIL

Visit from the Austrian Association of Judges

A delegation of 30 Austrian judges and prosecutors visited the Four Courts as part of a study visit organised by the Austrian Association of Judges – Section for European Law and International Judicial Cooperation. The programme for the visiting judges, jointly organised by the offices of the Chief Justice and the President of the High Court, involved a welcome address by the Chief Justice, followed by the observation of proceedings across the Superior Courts, meetings with Irish judges and meetings with members of the Courts Service's senior management team to discuss court operations, ICT and human resources. The Association organises a study visit to a different European country each year to learn about other legal systems, meet colleagues and discuss issues of mutual interest.

18 APRIL

British Irish Commercial Bar Association Forum

Mr Justice Barniville attended the annual law forum of the British Irish Commercial Bar Association which took place in Edinburgh. He spoke as part of a panel titled 'cross-border collaboration: overcoming common practicalities' which focused on common cross-border issues affecting commercial litigators including service, evidence gathering and enforcement of judgments.

20-21 APRIL

International Forum of Commercial Courts

Mr Justice Barniville attended the Fifth Full Meeting of the Standing International Forum of Commercial Courts which took place in Doha, Qatar. He also delivered the closing address titled, 'sharing of best practice between our courts and encouraging courts to work together to keep pace with rapid commercial change'.

2 MAY

Chief Justice O'Donnell - Meeting of Judges at the CJEU

Meeting of Judges at the CJEU

The Chief Justice and Mr Justice Barniville attended a 'meeting of judges' hosted by the Court of Justice of the European Union, during which the Chief Justice moderated a working session on the topic of 'artificial intelligence to support judicial activity'. Co-chaired by Advocate General Tamara đapeta, the session examined the transformative potential and challenges in utilising artificial intelligence within judicial processes, highlighting the importance of ethical considerations and responsible use in the legal field. The meeting coincided with a conference organised by the CJEU to mark the 20th anniversary of the enlargement of the membership of the European Union which took place in 2004.

8 MAY

Presentation by Mr Justice Charleton to a visiting delegation of German Judges

Visit from delegation of German Judges

The German Section of the International Commission of Jurists ('ILC') visited the Four Courts. This visit was organised as part of a study visit to Ireland to meet with representatives of legal institutions in Ireland for expert discussions. During their visit, the delegation met with members of the Irish judiciary for informal discussions, followed by an engaging presentation delivered by Mr Justice Peter Charleton on the role of the Supreme Court and the challenges facing the Supreme Court and members of the judiciary.

20 – 22 MAY

Ireland for Law Trade Mission to Delaware

Mr Justice Barniville travelled to Delaware, Pennsylvania and Washington DC as part of an Ireland For Law Trade Mission, during which he spoke at a number of events including: a discussion with the Chancellor of the Delaware Court of Chancery, Kathaleen McCormick, on 20 May; a panel discussion on 'Corporate Restructuring And Corporate Insolvency – The Case For Irish-Us Cooperation' on 21 May; and a panel discussion on 'Why Choose Irish Law for Life Sciences?' on 22 May. Mr Justice Barniville also hosted an Ireland for Law networking event with Geraldine Byrne Nason, the Irish Ambassador to the United States, at her residence in Washington DC.

21 – 24 MAY

XIXth Congress of the Conference of European Constitutional Courts

Mr Justice Hogan attended the XIXth Congress of the Conference of European Constitutional Courts ('CECC') hosted in Chisinau, Moldova, by the Constitutional Court of the Republic of Moldova as part of its presidency of the CECC. The Congress was attended by presidents and judges of almost 40 European Constitutional Courts, the President of the European Court of Human Rights and the President of the Venice Commission. Discussions at the Congress examined the topic of 'forms and limits of judicial deference: the case of constitutional courts'.

27 MAY

Network of Presidents Board Meeting

Network of Presidents Board Meeting

The Chief Justice hosted a meeting of the Board of the Network of the Presidents of Supreme Judicial Courts of the European Union in his capacity as a Vice President of the Network. The meeting was held at Farmleigh House and Estate in Phoenix Park, Dublin, and coincided with the celebration of the centenary of the Irish courts system.

Working Session with the Hon'ble Mr Justice Sanjiv Khanna

Working Session with the Hon'ble Mr Justice Sanjiv Khanna

Following the conclusion of the Board's business, the Board welcomed a working session with the Hon'ble Mr Justice Sanjiv Khanna, then judge of the Supreme Court of India and, as of November 2024, Chief Justice of India.. The working session involved a presentation by President of the Network and President of the Supreme Court of Sweden, Mr. Anders Eka, on the function of the Network, following which Mr Justice Khanna and the other board members discussed issues such as legal aid, the right to access justice, and the adoption of information technology and artificial intelligence within the Indian Judiciary, particularly through the National Judicial Data Grid.

28 MAY

Roundtable Discussion with Professor Matej Accetto

On 28 May, the School of Law and Government at Dublin City University, in association with the Trinity Centre for Constitutional Law and Governance, UCD Sutherland School of Law and the Supreme Court of Ireland, hosted a roundtable discussion with Professor Matej Accetto, President of the Constitutional Court of Slovenia. The roundtable featured contributions from President Accetto and Mr Justice Murray on 'common law and civil law approaches to constitutional review'. The event was chaired by Mr Justice John MacMenamin, a retired judge of the Supreme Court, and was attended by other members of the judiciary, including Mr Justice Hogan and Mr Justice Collins of the Supreme Court, and Ms Justice Úna Ní Raifeartaigh, formerly of the Court of Appeal and recently elected to the European Court of Human Rights.

6-8 JUNE

Franco-British-Irish Judicial Cooperation Committee

From 6 to 8 June 2024, the Franco-British-Irish Judicial Cooperation Committee ('FBICC') met in Edinburgh for its biannual colloquium. The FBICC was set up in 1994 to strengthen judicial cooperation between France and the United Kingdom. Ireland joined the committee in 2007. The organisation aims to promote dialogue between judges, strengthen cooperation between magistrates, and promote mutual understanding between legal systems. The first round table focused on the 'gig economy' and the judicial response to the legal issues raised by the use of platform-based work. Mr Justice Murray's contribution examined the Irish position through the lens of the Supreme Court's judgment in Karshan v. Revenue Commissioners [2023] IESC 24 which concerned the tax regime for pizza delivery drivers, and in particular, discussed the five-stage reasoning used by the Court in concluding that the delivery drivers were not independent contractors but were instead operating under a "contract of service".

12-14 JUNE

ENCJ General Assembly

Ms Justice Costello attended the 20th General Assembly of the European Network of Councils for the Judiciary which took place in Rome. The theme of the General Assembly was 'access to justice', with keynote addresses delivered in respect of access to justice in the practice of the Court of Justice of the European Union, access to justice for vulnerable people, and artificial intelligence and access to justice. The discussion formed the basis of the 'Declaration of Rome 2024 on Access to Justice', which was adopted by the members during the plenary session.

Mr Justice Brian Murray - Franco-British-Irish Judicial Cooperation Committee in Edinburgh

Ms Justice Costello attended the 20th General Assembly of the European Network of Councils for the Judiciary which took place in Rome.

14 JUNE

Meeting of the Academy of European Law

Ms Justice Donnelly attended a meeting of the Academy of European Law (known by the German acronym ERA for "Europäische Rechtsakademie") which is an international centre for training for lawyers that aims to promote awareness, understanding and good practice of European law. The meeting in question took place in Dublin over two days and centred on the use of artificial intelligence and the criminal justice system. The key topics explored included what legal practitioners need to know about artificial intelligence, practical issues for police investigations, the use of artificial intelligence to predict crimes, facial recognition technology in policing, bias in machine-learning and artificial intelligence systems, and sentencing and artificial intelligence.

2 JULY

Judicial Exchange Programme

The Supreme Court hosted Mr Kostiantyn Pilkov, Judge of the Supreme Court of Ukraine, and Ms Isabelle De Silva, President of the 6th Chamber of the Conseil d'État, as part of this year's judicial exchange programme. Over the course of two weeks, the visiting judges engaged with the Irish legal system, observing hearings in the Supreme Court, Court of Appeal and High Court, and met with judges across each of the jurisdictions to discuss their areas of specialism.

Mr Pilkov and Ms De Silva were selected to participate through ACA-Europe and the Network of the Presidents of the Supreme Judicial Courts of the European Union. During their time, the visiting judges focused their attention on their areas of specialism, which included administrative law, criminal law, judicial training and ethics. The exchange programme, which takes place annually, facilitates a valuable exchange of knowledge and practices between European judicial systems.

3 – 5 SEPTEMBER

Ireland for Law Trade Mission to New York

Mr Justice Barniville travelled to New York as part of an Ireland for Law Trade Mission, alongside Minister of State James Brown TD, the Attorney General and several senior legal practitioners, to promote Irish law and the use of Irish legal services. While in Manhattan, Mr Justice Barniville participated in a number of events including a panel discussion on Ireland's Commercial Court and the case for US/Irish cooperation with Mr Justice Joel Cohen of the New York State Supreme Court, during which discussions focused on cross-border legal collaboration and the role of Irish law in international arbitration, and a panel discussion on corporate restructuring and corporate insolvency.

15 – 20 SEPTEMBER

International Bar Association Annual Conference

Mr Justice Barniville attended the annual conference of the International Bar Association ('IBA') in his capacity as chair of the Judges' Forum of the IBA, which took place in Mexico City. The panel discussions which formed part of the conference covered a wide range of themes, including alternative dispute resolution, the consequences of underfunded national judicial systems, a comparative analysis of judicial intervention in arbitration, and defending and restoring the rule of law.

3-4 OCTOBER

Network of Presidents Board Meeting

Network of the Presidents Conference

The Chief Justice attended the annual conference of the Network of the Presidents of the Supreme Judicial Courts of the European Union which took place at the Academy of Athens in Greece. The conference featured presentations and exchanges between the members of the Network on two key themes: the impact of European law on national law and the attractiveness of the judiciary.

14-15 OCTOBER

Spanish Judicial Exchange

Ms Justice Costello hosted Judge José Antonio Valera, a Magistrate in the Civil and Criminal Chamber of the Superior Court of Justice of Galicia, as part of a Spanish Judicial Exchange organised through the Judicial Council. As part of the exchange visit, Judge Valera observed proceedings across all jurisdictions, both in the Criminal Courts of Justice and the Four Courts.

28 – 20 OCTOBER

Meeting of the International Judicial Dispute Resolution Network

Mr Justice Barniville attended (remotely) the 3rd Meeting of the International Judicial Dispute Resolution Network ('JDRN'). The JDRN is a non-binding and voluntary group of judiciaries which are like-minded in seeking to collectively promote the early, amicable and cost-effective resolution of court disputes through the judicial dispute resolution process to achieve fair outcomes for litigants.

The Supreme Court of Ireland hosted members of the Supreme Court of the United Kingdom at Farmleigh House in Dublin for a bilateral meeting.

1 NOVEMBER

Ireland-UK Bilateral

The Supreme Court of Ireland hosted members of the Supreme Court of the United Kingdom at Farmleigh House in Dublin for a bilateral meeting. The delegation from the United Kingdom included:

- The Right Honorable Lord Reed of Allermuir, President of the Supreme Court
- The Right Honorable Lord Hodge, Deputy President of the Supreme Court
- The Right Honorable Lord Briggs of Westbourne
- The Right Honorable Lord Stephens of Creevyloughgare
- The Right Honorable the Baroness Carr of Walton-on-the-Hill, Lady Chief Justice of England and Wales,
- The Right Honorable Dame Siobhan Keegan, Lady Chief Justice of Northern Ireland, and
- The Right Honorable Lord Carloway, Lord President of the Court of Session in Scotland.

Following a series of working sessions during which papers were delivered by members of both judiciaries on topics of mutual interest, the delegation concluded its visit at The Honorable Society of King's Inns where Lord Hodge was made an honorary bencher.

8 NOVEMBER

Talk from Mr Justice Charleton to a delegation from the Flemish Association of Legal Professionals

Visiting delegation from Flemish Association of Legal Professionals

The Supreme Court welcomed a delegation from the Flemish Association of Legal Professionals to the Four Courts. The delegation comprised judges, lawyers and law professors who practice in Belgium and who had travelled to Dublin on a study visit to learn about Ireland's legal system, constitution and courts structure. The delegation received a tour of the Four Courts, as well as a talk from Mr Justice Charleton on the composition and jurisdiction of the Supreme Court.

The Supreme Court welcomed a delegation of judges from Malawi

26 NOVEMBER

Visiting delegation of Malawian Judges

The Supreme Court was pleased to welcome a delegation of judges from Malawi to the Four Courts. The delegation of visiting judges included The Honourable Chief Justice Rizine Robert Mzikamanda; The Honourable Justice Frank Edgar Kapanda (Justice of Appeal, Supreme Court); The Honourable Justice Etness Chanza (Judge of the High Court); and His Honour Patrick Kamisa (Special Assistant to the Chief Justice).

The delegation was also accompanied by Seán McHale and Kate Loughran of Irish Rule of Law International.

The visit formed part of Irish Rule of Law International's 'Access to Justice in Malawi' programme which seeks to improve access to justice for adults and children in Malawi, strengthening institutional capacity, coordination and accountability through the criminal justice system using a human rights-based approach.

The meeting was attended by the Chief Justice, Mr Justice Barniville, Mr Justice Charleton and Ms Justice Donnelly, and members of the two judiciaries discussed topics of mutual interest. The Malawian delegation's ten-day visit to Ireland includes meetings with members of the judiciaries in Ireland and Northern Ireland, opportunities to observe of court proceedings, participation in the National Judicial Conference and opportunities to learn about courts administration and judicial training.

28-29 NOVEMBER

ACA-Europe Seminar in Versailles

Ms Justice Dunne participated in a seminar organised by the Conseil d'État (French Council of State) in cooperation with ACA-Europe. The seminar, which took place at the Administrative Court of Appeal of Versailles, comprised a number of roundtable discussions involving over 60 participants from 31 European countries. The roundtables examined the ethics and recruitment of members of the supreme administrative courts in light of responses submitted by participants to a questionnaire sent out in advance of the conference.

Ms Justice Dunne participated in a seminar organised by the Conseil d'État (French Council of State) in cooperation with ACA-Europe at the Administrative Court of Appeal of Versailles

29 NOVEMBER

Conference at the Cour de Cassation

The Chief Justice attended a symposium held at the Cour de Cassation in Paris titled 'The Dynamics of Comparative Law – Civil Law and Common Law in an Era of Globalisation'. The Chief Justice delivered a paper as part of a roundtable discussion on 'the laws governing new technologies – overcoming the divides between continental law and common law'. Other themes explored throughout the conference included divergences and convergences between 'the practices and office of the continental and common law judge', 'the evolution of the notion of jurisprudence', and 'the role of comparative law and law as a tool of globalisation'.

3 DECEMBER

Visit from German Ambassador to Ireland

The Chief Justice and members of the Supreme Court met with the new German Ambassador to Ireland, Mr David Gill, in the Four Courts. The ambassador also observed a Supreme Court hearing as part of his visit.

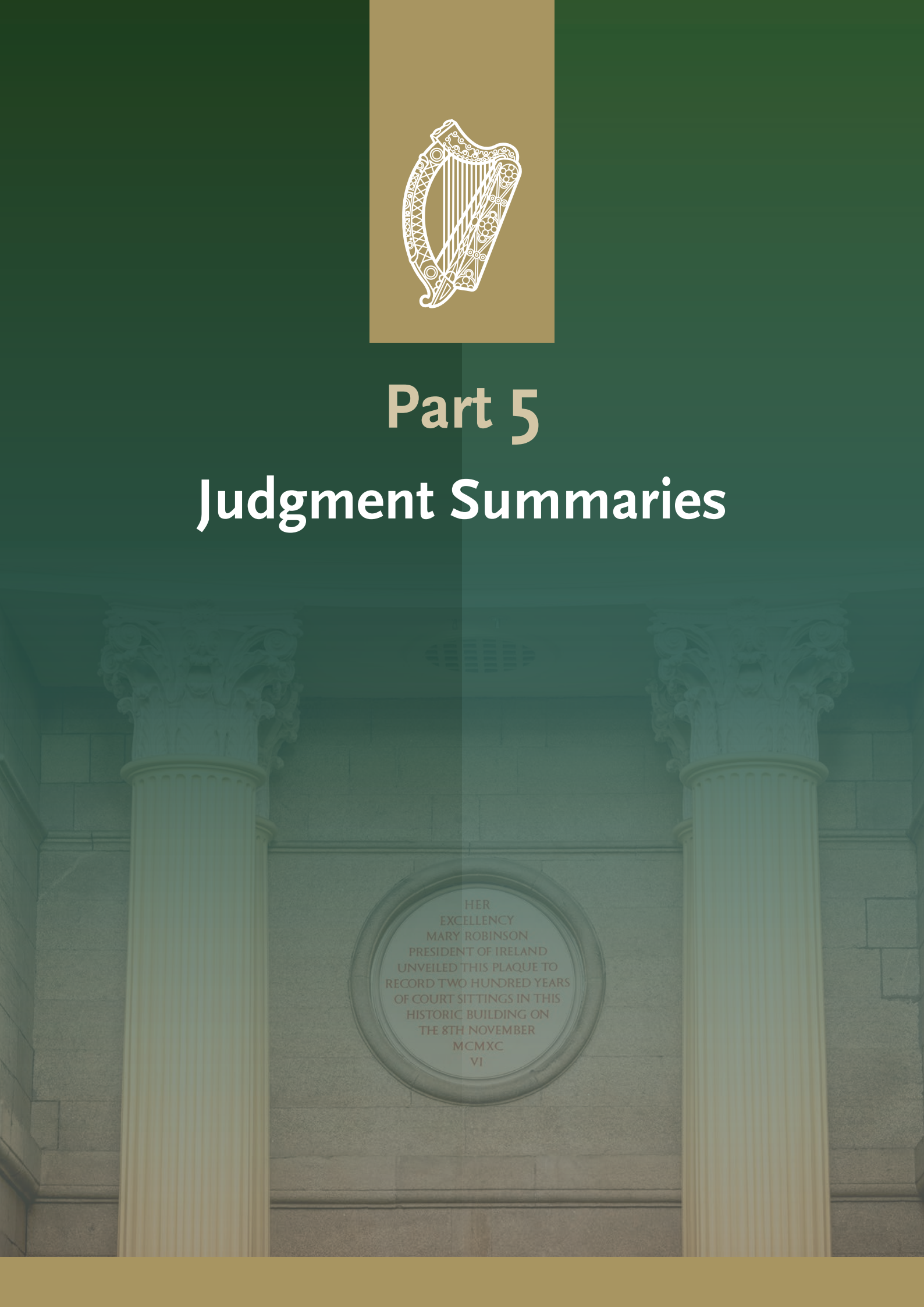
6 DECEMBER

Scientific and Advisory Council of the Constitutional Court of the Republic of Kazakhstan

Ms Justice Donnelly presented online at the Fourth Meeting of the Scientific and Advisory Council of the Constitutional Court of the Republic of Kazakhstan. She delivered a speech entitled 'Vindicating the Rights of Non-Citizens and Stateless Persons: An Irish Perspective' which focused on access to justice and *locus standi* enjoyed by persons regardless of their citizenship or residence status. The event was attended by judges of the Kazakh Constitutional Court, Supreme Court, members of the Kazakh Parliament, as well as representatives of Kazakh state bodies and the scientific community.

Part 5

Judgment Summaries



Judgment Summaries

The following eleven judgment summaries have been included to provide a sample of some of the cases considered by the Supreme Court in 2024. They do not form part of the reasons for the decision in the respective cases, nor do they intend to convey a particular interpretation of the case summarised. The judgment summaries are not binding on the Supreme Court or any other court. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at www.courts.ie/judgments.

O'Meara & Ors v. The Minister for Social Protection & Ors

On appeal from: [2022] IEHC 552

Judgment delivered on 22 January 2024
[2024] IESC 1

Headline

The Court finds that s. 124 of the Social Welfare Consolidation Act, 2005 is invalid having regard to the provisions of Article 40.1 of the Constitution.

Composition of Court

O'Donnell C.J., Dunne, O'Malley, Woulfe, Hogan, Murray, Collins JJ.

Judgments

O'Donnell C.J. (with whom Dunne, O'Malley, Murray and Collins JJ. agree)

Woulfe J. (with whom Hogan J. agrees)

Hogan J. (with whom Woulfe J. agrees)

Background to the Appeal

The appellants appeal the judgment and order of the High Court ([2022] IEHC 552 (Unreported, Heslin J., 7 October 2022)), which dismissed a challenge to a decision of the first respondent to refuse the first appellant's application for the payment of Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension ("WCP") provided for by Chapter 18 of Part 2 of the Social Welfare Consolidation Act, 2005 ("the 2005 Act") under which a pension is payable to the surviving spouse or civil partner (as defined) on the death of their spouse or civil partner, and which pension is increased in respect of each dependent child. The first appellant was the long-term partner of M.B., who died in 2021. The second, third and fourth appellants are the minor children of the first appellant and M.B. The first appellant and M.B. had been living together and in a committed relationship for 20 years but they had not married or entered a civil partnership. The appellant's application for WCP was refused on the grounds that he was not the widower or surviving civil partner of M.B. as required by s. 124 of the 2005 Act (as amended). The appellants challenged the constitutionality of Chapter 18 of Part 2 of the 2005 Act. Heslin J. dismissed the challenge for reasons set out in that judgment. This Court granted leave to appeal directly to this Court pursuant to Article 34.5.4° on the issues of whether the non-payment of WCP in the circumstances here is consistent with Article 40.1 and 41 of the Constitution and/or compatible with the European Convention on Human Rights particularly Article 14, read with Article 8 and/or Article 1 of the First Protocol.

Reasons for the Judgment

The Court concludes, unanimously, that the provisions of s. 124 of the 2005 Act, as amended by s. 17(4) of the Social Welfare and Pensions Act, 2010 are invalid having regard to the provisions of Article 40.1 of the Constitution insofar as it does not extend to the first appellant as a parent of the second, third and fourth appellants.

The Court unanimously, grants an order of *certiorari* quashing the decision of the Respondent of 27 May, 2021 refusing the first appellant's application for WCP.

O'Donnell C.J. (Dunne, O'Malley, Murray and Collins JJ. concurring) concludes that the provision is a contributory social welfare benefit addressed to a loss giving rise to a recognised need for support, where that loss, both emotional and financial, is not in any way different whether the survivor is married or not. **[30]** Furthermore, WCP is increased when there are dependent children which recognises the survivor may not just be a spouse (or civil partner) but is also a parent and the survivor will have additional costs and expenses associated with maintaining any dependent children. The Constitution as interpreted recognises the rights of all children irrespective of the status of their parents. Nor is there any difference in the duties and obligations which parents, married or unmarried, owe to their dependent children. **[31,32]** The differentiation made by the section is not made on the basis of present marital status: the definition of spouse and civil partner includes a divorced

spouse and civil partner after dissolution. **[33]** Furthermore, the section recognises cohabitation but only negatively: s. 124(2) and (3) removes the entitlement to WCP on remarriage, entry into a new civil partnership or if and so long as the recipient is a cohabitant. Thus, the Act recognises that an unmarried partner supplies the same benefits to a partner and children as a married partner does, but only for the purpose of removing the benefit. **[35]** Accordingly, viewed in this way, applying the test in *Donnelly v. Ireland* [2022] IESC 31, [2022] 2 I.L.R.M. 185 *("Donnelly")*, insomuch as the section permits payment of WCP to be made to a surviving spouse with dependent children, but refuses any such payment to a surviving partner of a non-marital relationship with dependent children, it makes a distinction that is arbitrary and capricious, and one which is not reasonably capable, when objectively viewed in the light of the social function involved, of supporting the precise classification challenged and fails to hold them as parents equal before the law contrary to Article 40.1. **[35-38]**

In his judgment, Woulfe J. addresses the second question referred to in *Donnelly*, in terms of the rationality of the legislative differentiation, and whether the discrimination is arbitrary, or capricious, or otherwise not reasonably capable, when objectively viewed in the light of the social function involved, of supporting the selection or classification complained of. He notes that the answer to this question would entail consideration of proportionality, insofar as proportionality may be seen as an intrinsic aspect of rationality. **[105]** As regards application of this test to the current case, Woulfe J. was satisfied that the discriminatory provisions in the 2005 Act cannot meet the test of rationality and proportionality, notwithstanding the presumption of constitutionality and the principle of deference to the Oireachtas in matters of social welfare, for the following reasons. **[108]**

He concludes that the differential treatment as regards payment of increased WCP between the marital family/civil partnership family and a non-marital family cannot be objectively justified, as the factors which give rise to the increased rate of WCP payment, i.e. payment of the social insurance contributions, the responsibilities of the deceased and the survivor towards their children, bereavement and consequential financial loss, are experienced in exactly the same way by the appellants' family as by the families who are given entitlement to increased rate WCP. The impact of the death upon the appellants, and the financial and other needs of the family members, are precisely the same. There is no rational connection between the legitimate aim of promoting and encouraging marriage and civil partnership and the means employed in the 2005 Act, which involves denying the appellants the benefit of the PRSI contributions paid by both the first appellant and by M.B., thereby adversely impacting upon the children. While couples may have a choice whether or not to marry, children cannot make the choice between marriage and cohabitation. **[111]** The manner in which "spouse" is defined in s. 2 of the 2005 Act has an arbitrary and capricious aspect by including a party to a marriage that has been dissolved, so that a widower may include a divorced former husband, or a surviving civil partner post dissolution, irrespective of how long the marriage or civil partnership lasted. These elements of the legislative selection or classification are not consistent with the stated aims of promoting and encouraging marriage and civil partnership, and consistent with excluding a surviving long-term partner like the first appellant from payment of the benefit. **[112]**

Woulfe J. concludes that the relevant provisions of Chapter 18 of Part 2 of the 2005 Act are invalid, having regard to Article 40.1 of the Constitution, insofar as they exclude payment of increased rate WCP to the first appellant as a parent of the second, third and fourth appellants.

Woulfe and Hogan JJ. would find that the statement made in *The State (Nicolaou) v. An Bord Uchtála* [1966] I.R. 567 *("Nicolaou")* that the family referred to in Article 41 is limited to the family based on marriage is wrong and the case and the subsequent case law accepting and endorsing it should be overruled, and the appellants were a Family for the purposes of Article 41. Hogan J. held that the decision was plainly wrong and totally unsatisfactory at almost every level, and it was based on an incomplete interpretation of the text of the relevant constitutional provisions, including Article 41.2, Article 41.3, Article 42.1, Article 42.3, Article 42.4, the "old" Article 42.5

and Article 44.2.4°, which had not been fully considered by the Court in that case. **[49]** Hogan J. held that the reasoning in *Nicolaou*, had, in any case, been overtaken by the "new" Article 42A.2.1°. **[27-29, 49]** Although not every form of cohabitation will come within the scope of Article 41 and 42, in these circumstances, the entitlement of the appellants to constitutional protection qua family for the purposes of Article 41 and 42 was considerable, approximating to a couple who were married, even if it fell slightly short of that status. As such, there was no justification for their differential legislative treatment as compared with married couples and their children and that treatment was a direct and obvious infringement of Article 40.1. **[35-38, 40, 47]**

Woulfe and Hogan JJ. would also overrule the decision in *O'B. v. S.* [1984] I.R. 316 *("O'B. v. S.")*. That judgment upheld the constitutionality of legislation which had effected the real and tangible discrimination of the kind in respect of non-marital children which Article 40.1 was designed to protect against.

O'Donnell C.J. (Dunne, O'Malley, Murray and Collins JJ. concurring) holds that it is clear that it is not necessary to consider the correctness of the statement made in *Nicolaou* (and upheld thereafter) that the Article 41 Family is limited to the marital family, in order to resolve this case. **[57]** If the matter was to be addressed and views expressed in this case, then the statement made in *Nicolaou* is correct as a matter of interpretation, and in any event, has not been shown to be "clearly wrong" to require it to be overruled (*Mogul of Ireland v. Tipperary (NR) C.C.* [1976] I.R. 260 (*"Mogul"*) and *Jordan v. Minister for Children and Youth Affairs* [2015] IESC 33, [2015] 4 I.R. 232). The fact that a later Court, particularly a divided Court, might prefer a different conclusion is not in itself sufficient to justify overruling an earlier decision (*Mogul*). **[54]** Furthermore, it has been repeatedly endorsed in subsequent case law and in particular in relatively recent considered decisions of the Supreme Court (*W.O'R. v. E.H.* [1996] 2 I.R. 248 and *J. McD. v. P.L.* [2009] IESC 81, [2010] 2 I.R. 199) **[115-123]** and has become the accepted basis for proposed and actual law reform. **[124-129]** Moreover, precedent is an important part of the rule of law. **[51-54]** The coming into force of Article 42A did not purport to, and could not be understood to, alter, the well-established interpretation of Article 41. **[131-136]** O'Donnell C.J. (Dunne, O'Malley, Murray and Collins JJ. concurring) further consider that it is not necessary to consider, still less overrule, *O'B. v. S.* to come to a conclusion in this case. **[158]**

While the UK cases cited (*Re McLaughlin* [2018] UKSC 481, [2019] 1 All E.R. 471 and [2020] EWHC 183 (Admin), [2020] 1 W.L.R. 1441) in relation to the ECHR were instructive and helpful in the analysis of the claim by reference to the Constitution, they had to be approached with some caution in the light of further developments in that jurisdiction in the approach to the interpretation of the ECHR. In the circumstances, it was unnecessary to come to a conclusion on the compatibility of the section with the ECHR in the light of the conclusion the Court has reached on the constitutional claim. **[39-49]**

References in square brackets are to paragraphs in the respective reserved judgments.

Bridget Delaney v. The Personal Injuries Assessment Board, The Judicial Council, Ireland and the Attorney General

On appeal from: [2022] IEHC 321

Judgment delivered on 9 April 2024
[2024] IESC 10

Headline

This was a constitutional challenge to the validity of the personal injury guidelines, passed by the Judicial Council, comprising all judges, on 6 March 2021. While a majority of the Court concludes that the power given to the Judicial Council to make guidelines contained in section 7(2)(g) of the Judicial Council Act 2019 ("the 2019 Act") is unconstitutional in its present form, a majority of the Court also concludes that the validity of the guidelines was confirmed by virtue of the provisions of the Family Leave and Miscellaneous Provisions Act 2021 ("the 2021 Act") whereby the Oireachtas affirmed the personal injury guidelines which had been approved by the Judicial Council. Judgment as to liability as to the plaintiff's claim for tripping on a public path, and any damages that may result, should be assessed in court in the ordinary way and having regard to the personal injury guidelines as confirmed by the 2021 Act. While the personal injury guidelines continue to have effect following affirmation in this fashion by the Oireachtas, any further changes to those guidelines will require legislative intervention by the Oireachtas.

Composition of the Court

Charleton, Hogan, Murray, Collins, Whelan, Faherty, Haughton JJ

Judgments

Charleton, Hogan, Collins, Faherty, Haughton JJ.

Background to the Appeal

This appeal is a constitutional challenge to the legal basis for the drawing up and passing of the personal injury guidelines, adopted by vote of all judges participating, by the Judicial Council, under the Judicial Council Act 2019, on 6 March 2021. Those were the guidelines "in force" affirmed in the Family Leave and Miscellaneous Provisions Act 2021, the relevant provision having been commenced by Ministerial order on 24 April 2021. These guidelines, the majority hold, substantively affect how judges should determine awards for pain and suffering in the actions to which they apply. The guidelines do not impact on the award of special damages, also known as out-of-pocket expenses, comprising such matters as medical bills, loss of wages or living alterations necessitated by any wrongful injury to a plaintiff.

On 12 April 2019, the appellant, Bridget Delaney, tripped when walking on a public footpath in Dungarvan, Co. Waterford. Liability and contributory negligence are in issue. Her injuries consisted of a grazed knee and an undisplaced fracture of the tip of her right lateral malleolus; typically occurring when an ankle is twisted or rolled. For treatment the appellant had to wear a walker boot for about four weeks and was advised that she would have swelling in her ankle for approximately six to nine months but would have no significant long-term sequelae. An application was made for assessment, as the law requires, to the Personal Injuries Assessment Board (PIAB) on 4 June 2019. The appellant was advised by her own legal advisors that, based on the Book of Quantum which guided injuries coming before a court at the time of the accident, her injuries could attract general damages in the region of €18,000 - €34,000. When PIAB made its assessment, on 14 May 2021, its recommendation was made under the personal injuries guidelines promulgated by the Judicial Council, and then in force. PIAB's recommended figure for her personal injury damages was €3,000.

It was contended that since no assessment has been made by a court, significant reduction in the value of the applicant's claim was due to the fact that the earlier Book of Quantum no longer applied when the appellant's claim was valued by PIAB. The Family Leave and Miscellaneous Provisions Act 2021 was signed by the President on 27 March

2021. Section 30 of the 2021 Act amended section 99 of the Judicial Council Act 2019 and inserted a new section 100 into that legislation and further, by section 31, amended section 20 of the Personal Injuries Assessment Board Act 2003, requiring that in the assessment of personal injuries, when the matter comes to court, judges "have regard to the personal injuries guidelines (within the meaning of that Act) in force" and "where they depart from those guidelines, state the reasons for such departure and

include those reasons in the assessment in writing". The relevant sections were signed into law on 24 April 2021: see the Family Leave and Miscellaneous Provisions Act (Part 9) (Commencement) Order 2021, SI 180/2021. Under the legislation, Bridget Delaney was required to apply to PIAB for assessment as to the value of her injuries and that assessment issued on 13 May 2021 by reference to the new guidelines: the amendment being then in force.

Issues on this Appeal

In these proceedings the appellant contended that the guidelines are a form of law; that, as such they constitute an impermissible delegation of legislative power, vested exclusively in the Oireachtas under Article 15.2.1° of the Constitution, to the Judicial Council; that the provisions giving legal effect to the guidelines are contrary to Article 35.2 of the Constitution providing for the independence of the judiciary; that giving power to judges to vote on subsidiary legislation having normative effect trenches on the democratic nature of the State guaranteed by Article 5 of the Constitution; that the imposition of the guidelines was impermissibly retrospective in nature in depriving the appellant of vested rights to be assessed under the prior guidelines; and that the provisions of the guidelines that, arguably, reduce the award payable to the appellant are disproportionate and/or irrational and infringe the appellant's property rights, right to bodily integrity and equality.

These various grounds, of which this is a concise summary, were invoked to challenge both the vires of the guidelines, the constitutional validity of the provisions pursuant to which the guidelines were adopted, and the provision in the 2021 Act whereby the appellant argued that this did not have the effect of the Oireachtas affirming the guidelines.

In challenging the *vires* of the guidelines it was further contended that the Judicial Council erred in taking into account matters other than the level of damages awarded by the courts to date and, in particular, in having regard to awards in other jurisdictions and in failing to have regard to the Book of Quantum which guided judges prior to the guidelines and decisions of the Courts on the award of damages other than for the period 2017-2020. It was also contended that the Judicial Council wrongly proceeded on the basis that the purpose of the guidelines was to reduce the level of damages.

Reasons for the Judgments

Five judgments are being delivered by the seven members of the Court: those of Charleton J, of Hogan J (with whom Whelan J agrees), of Collins J (with which Charleton and Murray JJ agree), and of Faherty J and of Haughton J. Because of the complexity of the issues raising questions regarding the separation of powers, democratic accountability, delegated legislation, the independence of the judiciary, statutory construction, constitutional construction, the limits of judicial competence, retrospectivity, vested rights, equality, affirmation of secondary legislation by subsequent legislative enactment and the nature of what a guideline is, together with the construction and effect of Article 5, Article 15.2.1đ, Article 34.1, Article 35.2, Article 40.1 and Article 40.3 of the Constitution there are various differences between the members of the Court on the reasoning as to the issues arising in the case. However, it is useful to clarify as follows:

1. A majority of the Court (Charleton, Murray, Collins, Faherty and Haughton JJ; Hogan and Whelan JJ dissenting) consider that the personal injury guidelines voted into force by the Judicial Council, which comprises all sitting judges, on 6 March 2021 have normative/legal effects. This means that the guidelines are legally binding. Three members of the court (Charleton, Collins and Murray JJ) define the standard thus: the guidelines should only be departed from where there is no reasonable

proportion between the guidelines and the award which should otherwise be made.

2. In view of that decision, a majority of the Court (Hogan, Whelan, Faherty and Haughton JJ; Charleton, Murray and Collins JJ dissenting) conclude that section 7(2)(g) of the Judicial Council Act 2019 Act is unconstitutional, in its present form, as being contrary to the independence of the judiciary as guaranteed by Article 35.2 of the Constitution.

3. A majority of the Court (Charleton, Hogan, Murray, Collins, Whelan and Faherty JJ; Haughton J dissenting) consider that the guidelines were subsequently independently ratified by the Oireachtas and given legal effect by the enactment of the Family Leave and Miscellaneous Provisions Act 2021, which entered into force on 24 April 2021. Thus, the personal injury guidelines passed by the Judicial Council on 6 March 2021 are in force as a matter of law and have thereby been given legal effect.

4. A majority of the Court (Charleton, Murray, Collins and Haughton JJ; Hogan, Whelan and Faherty JJ dissenting) consider that the transitory provisions of the 2021 Act are not unconstitutional and that there were no vested property or personal rights in the appellant to have her case adjudicated by the Personal Injuries Assessment Board, or by a court, under any earlier guidelines than those passed by the Judicial Council on 6 March 2021 as confirmed by the provisions of the 2021 Act.

Given the complexity of the issues addressed in the judgments delivered by five members of the Court, it is thus appropriate to indicate the orders which, consequent upon that analysis, the Court proposes to make. Hence, this Court will make:

1. A declaration that section 7(2)(g) of the Judicial Council Act 2019 is unconstitutional in its current form;

2. A declaration that the personal injury guidelines adopted by the Judicial Council on 6 March 2021 were given force of law by virtue of section 30 of the Family Leave and Miscellaneous Provisions Act 2021 and are consequently in force;

3. A declaration that the Personal Injuries Assessment Board, accordingly, acted properly and in accordance with law in applying the personal injuries guidelines to the appellant's application to be assessed as to her pain and suffering in May 2021;

4. An order that, save for the declaration of unconstitutionality in respect of section 7(2)(g) of the 2019 Act and the order for costs.

The appeal from the order of the High Court is to be dismissed; and presumptively, given those orders of the Court, an order that the appellant should be awarded costs as against Ireland and the Attorney General, with the Personal Injuries Assessment Board to abide its own costs.

Angela Kerins v. Dáil Éireann & ors

On appeal from: [2022] IEHC 489

Judgment delivered on 18 June 2024
[2024] IESC 24

Headline

The Supreme Court dismissed the appellant's appeal, holding that while the Court may in certain limited circumstances be able to scrutinise the utterances of a Dáil committee for the purposes of ascertaining jurisdiction, it does not follow that such utterances could be used to mount a claim for damages flowing from harm to one's reputation, as this would breach the immunities and privileges provided for in Article 15 of the Constitution. Accordingly, discovery could not be ordered in support of such a claim.

Composition of Court

O'Donnell C.J., Dunne, Charleton, O'Malley, Hogan, Murray and Edwards JJ.

Judgments

O'Donnell C.J., (with whom Dunne, Charleton, O'Malley, Hogan, Murray and Edwards JJ. agreed); Hogan J.; Murray J. (with whom O'Donnell C.J., Dunne, O'Malley, Hogan and Edwards JJ. agreed).

Background to the Appeal

The issue in this appeal concerned an application for discovery, but the determination of that issue required the Court to address a fundamental issue of constitutional law: could the claim for damages in this case be maintained in the light of the privileges and immunities guaranteed to members of the Oireachtas under Article 15 of the Constitution?

The appellant had been the Chief Executive of the Rehab Group ("Rehab"). She was invited to appear before the Public Accounts Committee ("PAC") of Dáil Éireann on 27 February, 2014 to address certain issues set out in the letter of invitation of 18 February. Rehab received public funding as a result of a competitive tendering process for the provision of certain services, but was not a state entity, was not subject to audit by the Comptroller and Auditor General, and the appellant was a private sector employee and not a public servant. The meeting on 27 February, 2014 went on for seven hours, was broadcast and reported on extensively. Some members of the PAC were extremely critical of the appellant, who was traumatised by the experience and was subsequently admitted to hospital.

A second meeting took place on 10 April, 2014. The appellant did not attend due to her illness, but it was attended by the Chair of Rehab, three members of Rehab's board, and a Rehab executive. Again, members of the PAC were extremely critical of the appellant. Subsequently, the PAC sought compellability powers to compel the attendance of the appellant. However, on 16 July, 2014 the Committee on Procedures and Privileges decided that the PAC was acting *ultra vires* its powers in conducting the investigation in question.

The appellant then commenced judicial review proceedings seeking a declaration of invalidity, injunctions restraining further investigations or hearings, and damages for personal injury and injury to her reputation. The appellant sought discovery, which was granted in part by the High Court but the Court of Appeal overturned that decision, considering that since a modular hearing was proposed in the High Court, the issue of illegality and invalidity should be determined before considering any question of discovery.

A Divisional Court of the High Court dismissed the appellant's claim, but this Court in two related judgments (referred to as *Kerins 1* and *2* – [2019] IESC 11 and [2019] IESC 42) held that the PAC could be held responsible for the actions of its members and that Dáil Éireann could be substituted as a defendant. This Court made a declaration that, in conducting a hearing in a manner which was significantly outside the terms of reference and the terms of the invitation of 18 February, 2014, the PAC had acted unlawfully. The Court considered that it was possible to have regard to what was said by the members of the PAC for the purposes of determining its conduct and, in particular, whether it was acting in excess of its jurisdiction, but also observed the very significant issues which would arise if any claim for damages was to be pursued.

The appellant then reactivated her application for discovery, which was, however, dismissed by the High Court, which held that the gravamen of the claim for damages called for a judgment on the speech and debate by members of the Oireachtas and such was precluded by Article 15 of the Constitution, and that accordingly, discovery could not be ordered in support of such a claim. Leave to appeal that decision was granted by this Court.

Reasons for the Judgments

O'Donnell C.J. dismissed the appeal. It did not follow from the fact that a limited declaration as to jurisdiction had been made by the Supreme Court, that damages would follow. The claim for damages clearly related to what had been said by members of the PAC. That claim for damages related not to the fact that the investigation exceeded the jurisdiction of the PAC, but rather to what was said about the appellant on that occasion. It was not permissible to simply recharacterize the words and utterances of the members of the PAC as its conduct and actions for which the Dáil could be sued and a remedy in damages obtained. That would be inconsistent with both the logic and reasoning of the decisions in *Kerins No 1,* and the companion case of *O'Brien v. The Clerk of the Dáil* [2019] IESC 12, [2020] 1 I.R. 90, and to do so would effectively remove the privilege of members of the Oireachtas in respect of utterances made and guaranteed by Article 15. **[40-43]**

Hogan J. agreed fully with Murray J.'s analysis of Article 15 and the issues arising therefrom in this case. Hogan J. also agreed with the judgment of the Chief Justice that the judgment should be dismissed as the request for discovery concerns documents dealing with utterances withing the Houses of Oireachtas, which are absolutely privileged. Hogan J. held that while the constitutional immunity does not extend to illegal actions made by an Oireachtas committee, insofar as they relate to speech and utterances of members, the privileges contained in Article 15.12 and Article 15.13 are inviolable and indivisible, save for the quite exceptional circumstances of a *Callely v. Moylan* style proviso.

Hogan J. held that the claim for damages in the present case was a method of making members of Dáil Éireann indirectly responsible for the utterances of the PAC, which is precluded by the principle of non-amenability of such speech and is clearly barred by Article 15.13. As such, Hogan J. held that the claim for damages from the utterances of the PAC seeks to do what is barred by Article 15.13 and is therefore doomed to fail. Hogan J. held it would be inappropriate to grant discovery where proceedings have no longer any reasonable prospect of success.

Hogan J. held, however, that that Dáil Éireann is under a general duty to ensure that Ms Kerins' constitutional rights, including her constitutional right to good name and person (Article 40.3.2°) are upheld and vindicated, and in circumstances where the Courts cannot provide a remedy by reason of the operation of Article 15.13 of the Constitution, that it falls to the Oireachtas alone to defend her rights and to determine whether it has adequately discharged this obligation.

Murray J., concurring, finds that (i) The principle of non-amenability in respect of parliamentary utterance reflected in Articles 15.12 and 15.13 of the Constitution precludes the imposition of any sanction or liability on a member of either House of the Oireachtas for a statement made in those Houses. (ii) Moreover, there is a principle that members of the Houses ought not to be rendered '*indirectly*' or '*collaterally*' amenable for their statements before either House. This means that a Court cannot permit an utterance (or matters that are sufficiently closely connected to such utterances) to be made '*the subject of litigation*' and that a Court should not engage in assessing utterances made in the House, and/or reviewing the tone or manner of questioning of a person by a member of a parliamentary committee. (iii) This principle is not necessarily breached when a Court has regard to a statement made by a member of either House to a committee of either House (or both Houses) when characterising the actions of the Committee for the purposes of determining the legality of its proceedings. (iv) The foregoing proviso is, accordingly, by definition limited to circumstances in which the purpose, for which it is sought to deploy the utterance, is to allow the Court to assess the actions of a collective. It will not apply where the members of the Committee are parties to the proceedings, or where the

dominant purpose is to review the tone or manner of questioning or where the parliamentary speech is, in substance, the subject of the proceedings. (v) In determining the dominant purpose for which it is sought to deploy a parliamentary utterance and whether the utterance is in fact the subject of the proceedings, the Court must apply a principle of restraint and should assess the proposed use of the statement at a level of generality asking, in an overall sense, what conclusions the litigant is seeking to ask the Court to draw from the utterance. Unless within the situation identified in (iii) above, if those conclusions might amount to an imposition of direct or indirect amenability thus understood, the Court should not entertain evidence of the utterance. **[40]**

Applying the foregoing conclusions to this appeal, Murray J. decides that the applicant *does* seek to render the members in question collaterally or indirectly amenable for making the statements, and that in substance her purpose in doing so is not to establish what the committee was doing, but what the individual members were saying. As a result, discovery may never issue to support such a claim. **[41]**

References in square brackets are to paragraphs in the judgments of O'Donnell C.J., Hogan and Murray JJ. respectively.

Urban and Rural Recycling Limited and RSA Insurance Ireland DAC v. Zurich Insurance PLC

On appeal from: [2023] IECA 11

Judgment delivered on 10 October 2024
[2024] IESC 43

Headline

The Supreme Court allows the appeal resolving three issues of law identified by the Court as arising from the Special Case in favour of RSA Insurance Ireland DAC.

Composition of Court

O'Donnell C.J., O'Malley, Woulfe, Hogan, Murray JJ.

Judgment

Murray J. (with whom O'Donnell C.J., O'Malley, Woulfe and Hogan JJ. agree)

Background to the Appeal

The legal issues presented by this case arose from an action for damages for personal injuries brought against the first plaintiff ('*URRL*') by one of its employees ('*Mr. Moore*'). Mr. Moore sustained injuries when a truck owned by URRL was stopped at the side of a public road and while he was operating a lift to deposit the contents of a bin into the truck. When the bin was near its emptying position it fell, striking Mr. Moore on the head and seriously injuring him.

Mr. Moore instituted proceedings against URRL for damages, claiming that the injuries he had sustained had been caused by the negligence, breach of contract, breach of duty and breach of statutory duty of URRL. URRL holds policies of insurance with both Zurich (which has underwritten a motor insurance policy for the company) and RSA (which has underwritten an employer's liability policy). Neither RSA nor Zurich accepted that URRL's claim fell within their respective insurances. Because of the terms of the RSA and Zurich policies, the question of which applied depended on whether the liability of URRL to Mr. Moore (if any) was the subject of the mandatory insurance obligation provided for by s. 56 of the Road Traffic Act 1961, as amended. If any such liability was within the provisions of s. 56 it was captured by the policy underwritten by Zurich. If not, it fell within RSA's policy. The parties presented these issues by way of a Special Case. The High Court resolved the questions in favour of RSA, while the Court of Appeal resolved them in favour of Zurich.

The central question before this Court was thus whether s. 56 of the Road Traffic Act 1961, as amended ('*the RTA*'), requires that the vehicle insurance cover mandated by that provision covers the liability (if any) of URRL to Mr. Moore arising from these circumstances. There was a second, and ancillary, issue arising from whether Mr. Moore was in charge of the vehicle for the purposes of driving that also arose from the provisions of the Zurich policy.

Reasons for the Judgment

While the parties raised in submissions and by way of an issue paper a large number of questions, Murray J. identifies three essential issues of law arising from the Special Case. These are (a) whether a liability to a '*user*' of a motor vehicle as that term is used in s. 56(1) falls within that provision, (b) whether a body corporate could be such a '*user*'; and (c) whether an employer could, through the actions of its employee undertaken in the course of the employer's business, be a user.

Murray J. resolves those issues holding that a person being the user of a motor vehicle does not, in and of itself, mean that a liability to them arising from the use of the vehicle by another user is outside the scope of the insuring obligation provided for in s. 56 of the RTA. He holds that URRL as a body corporate is not, for that reason alone, incapable of being a user of such a vehicle. He further holds that it is possible for an employer to use a vehicle through the actions of its employee. On that basis he concludes that URRL was a user of the vehicle at the time the injuries were sustained by Mr. Moore insofar as the vehicle was being used on its behalf and on its business by its employees, as it is clear that the

accident occurred in the course of that use.

In relation to the distinct issue arising from one clause in the Zurich policy, Murray J. holds that Mr. Moore remained in control of the vehicle for the purposes of driving at the time the accident occurred for two reasons: (1) he was in charge while he was driving and there is no evidence that he relinquished that control to anyone else, and (2) he remained in close proximity to the vehicle being – as everyone agreed – a user of it.

Having thus answered those legal questions in favour of RSA and against Zurich, Murray J. observes that the Court cannot in deciding a Special Case resolve issues of disputed fact and thus in this case of liability, and accordingly concludes that it is now a matter for the parties to proceed to agitate the application of those findings of law in these proceedings as they think appropriate.

In the course of his judgment, Murray J. draws attention to the fact that if s. 56 does not properly implement EU law in the field of compulsory motor insurance and if it is not possible to construe the section so as to align it with those obligations, the effect may be to expose the taxpayer to the cost of compensating the victim of an accident in circumstances in which that cost was intended to be, and might be said to properly be, the obligation of a motor insurer. He suggests that the difficulties in implementation to which he refers in his judgment, and indeed the manifold issues that have surfaced over the past three decades with the State's compliance with its EU obligations in the field of compulsory motor insurance, might arise – at least in part – because the State has relied in purportedly discharging those obligations on statutory provisions that did not have EU law in view when enacted. It might also be thought that continuous piecemeal changes to those provisions increase the risk of further non-compliance, and that a complete and coherent legislative overhaul of the compulsory motor insurance obligation is long overdue. Unless and until this happens, he says, the taxpayer will remain exposed to the risk of findings of non-compliance with the State's obligations under EU law, and to a wholly avoidable exposure to claims for damages arising from losses that ought to be discharged by those who have underwritten policies of motor or other insurance.

The People (at the suit of the Director of Public Prosecutions) v. Mark Crawford

On appeal from: [2023] IECA 87

Judgment delivered on 14 October 2024
[2024] IESC 44

Headline

The Supreme Court held that where an accused raises the defence of self-defence in response to a charge of murder the applicable law is set out in the provisions of s. 18 of the Non-Fatal Offences Act, 1997 (the "1997 Act"). The appeal of Mr Crawford's conviction was dismissed on the basis that jury at trial had already determined that the appellant did not hold an honest belief that he had to use the level of force that he actually used.

Composition of the Court

Charleton, O'Malley, Hogan, Murray, Donnelly JJ.

Judgments

Donnelly J. (with whom Charleton, O'Malley, Murray, Hogan, JJ. agree); Hogan J. concurring (with whom Charleton, O'Malley, Murray, Donnelly, JJ. agree).

Background to the Appeal

The central issue in this appeal concerns whether the source of the defence of self-defence to a charge of murder is set out in the case of *The People (AG) v Dwyer* [1972] IR 416 ("Dwyer") or by the provisions of s. 18 of the 1997 Act.

On 10 September 2020, Mr Mark Crawford (the "appellant") was convicted of the murder of Mr Patrick O'Connor. The appellant had *perceived* a threat of attack from the deceased, which he contended caused him to stab Mr O'Connor six times. The appellant's subjective perception did not reflect the circumstances as they were, where there was no actual imminent attack.

At trial the appellant raised the defence of self-defence and sought a ruling from the trial judge on the objective/subjective elements of that defence. The trial judge ruled that the law on self-defence remained that set out in *Dwyer* and indicated that she would charge the jury accordingly. The charge included a direction on the partial defence to a charge of murder which would reduce the offence to one of manslaughter if, having found that the force used was not reasonable, the jury found that the force the appellant used was no more force than he honestly believed to be necessary.

The appellant contended that the charge given by the trial judge was incorrect by pointing towards a wholly objective assessment of the degree of force used. Instead, it was argued that the defence of self-defence to a charge of murder should reflect the construction as set out in the 1997 Act. It was the appellant's case that if a charge reflecting the statutory conception of self-defence had been left to the jury, he would have been fully acquitted.

The Court of Appeal subsequently heard Mr Crawford's appeal against his conviction. On 31 March

2023, the Court of Appeal (Birmingham P., Edwards and Kennedy JJ.) dismissed both of Mr Crawford's grounds of appeal.

Leave to appeal was granted by this Court by Determination of 26 July 2023 ([2023] IESCDET 102) in relation to nature and extent of the defence of self-defence when raised in answer to a charge of murder.

Reasons for the Judgment

In the course of her judgment setting out the appropriate test for the defence of self-defence, Donnelly J. considers the history of homicide offences and self-defence, and how the common law position on self-defence in relation to fatal offences, set out in *Dwyer*, interacts with the statutory defence contained within the 1997 Act.

The Court notes the difference between the objective/subjective nature of the defence provided for at common law and in statute. The common law position sets out that in order to avail of the partial defence of self-defence, the force used by the accused must be objectively reasonable in the circumstances *as they were* and not as they were *perceived* by the appellant. Conversely, s. 18(5) of

the 1997 Act provides that the reasonableness of the use of force 'shall be determined according to the circumstances as the person using the force believes them to be.' Donnelly J. gives an example of an anomaly that would arise in the law of self-defence if there are separate tests depending on whether the harm inflicted by the accused's alleged act of self-defence is fatal or non-fatal. **[59, 64]**

Donnelly J. holds that the defence of lawful use of force set out in s. 18 of the 1997 Act is 'partly subjective and partly objective'. **[67]** It is available as a complete defence where a person has an honest belief that the circumstances necessitate the use of force and uses such force as is objectively as well as subjectively reasonable in the circumstances that the accused believed them to be. The belief may be unreasonably held but it must be an honest belief. In assessing whether the accused had such a belief the court or jury must have regard to whether there is the presence or absence of reasonable grounds for that belief in conjunction with any other relevant matters, but the issue remains whether the accused genuinely held that belief. Extreme or disproportionate force may not be used by an accused because it is only such force as is objectively reasonable in the circumstances perceived by the accused that is lawful.

The Court considers that a homicide offence, either murder or manslaughter, requires there to be an unlawful killing. Establishing that a killing is unlawful is the most fundamental aspect of all homicides and for murder, where a specific intent is required, an assault is central to that analysis. **[88]** Thus, the offence of homicide cannot be committed where there is no such unlawful killing by virtue of a successful plea of self-defence. The provisions of s. 18 of the 1997 Act provides for self-defence for assault and as such also provides for the defence with regard to homicide offences.

The Court also goes onto find that the abolition of the common law defence of lawful use of force at s. 22 of the 1997 Act is not limited to offences within the Act or to non-fatal offences more generally. Donnelly J. notes the clear connection between homicide offences and the offences set out in the 1997 Act. Thus, the common law defence of self-defence has been abolished even for fatal offences by the 1997 Act. **[111]**

Donnelly J. finds that on the basis of the provisions regarding lawful use of force in s. 18(1), the appellant must fail in his appeal. The Court observes that a jury had rejected the contention that the appellant had an honestly held belief that the force used was necessary in the circumstances as he perceived them, and thus the appellant did not satisfy this crucial aspect of self-defence. **[137]**

Hogan J agrees with the judgment of Donnelly J and would accordingly dismiss the appeal. In his judgment Hogan J held that the effect of s. 18 of the Non-Fatal Offences Against the Person Act 1997 is to replace the common law rules as to self-defence in cases of homicide. **[2, 18, 22**]

Hogan J held that, notwithstanding the reference in the Short Title of the Act to 'non-fatal' offences

s. 18 of the 1997 Act sets out a defence in general terms which applies indistinctly to all offences, both fatal and non-fatal offences alike. **[3, 13, 20]**

Hogan J. held that this interpretation of s. 18 preserves the unity of defences available in criminal law as it aligns with the general principle that the scope of general defences should not depend on the nature of the specific offence and ensures that the applicability of self-defence does not rest on what might prove to be fortuitous or accidental factors. **[27]**

Hogan J. furthermore considers that this interpretation of s. 18 enjoys an internal coherence and avoids the potential for anomaly and confusion arising from the application of different rules relating to self-defence depending on whether the offence in question is fatal or non-fatal. **[7, 8, 27]**

References in square brackets are to paragraphs in the judgment of Donnelly and Hogan JJ respectively.

WC v. The Director of Public Prosecutions

On appeal from: [2023] IECA 179

Judgment delivered on 24 October 2024
[2024] IESC 48

Headline

The Supreme Court dismisses the appeal against the refusal to grant judicial review and outlines a series of principles that apply to disclosure in criminal cases. These principles fundamentally emphasise remoteness and the duty of a trial judge to realise that the alleged victim of sexual violence is not to be unnecessarily intruded upon as to their private life. As well as addressing this specific issue raised, this judgment necessarily addresses relevance, any countervailing rights of a person complaining of a crime, and the limits on cross-examination. It is only in the clearest of cases that seeking judicial review to prohibit a trial on the merits due to alleged unfairness would be appropriate. In the result, the appeal should be dismissed, and the order of the Court of Appeal affirmed.

Composition of the Court

Dunne, Charleton, O'Malley, Collins, Donnelly JJ.

Judgment

Charleton J (the Court concurring).

Background to the Appeal

The offences the subject of this prosecution comprise eight charges of indecent assault contrary to s. 6 of the Criminal Law Amendment Act, 1935 and ten charges of indecent assault contrary to s. 10 of the Criminal Law (Rape) Act, 1981. The abuse by the accused of the complainant is asserted to have happened when the alleged victim was between 4 and 14 years of age, and the accused was aged between 20 and 29 years. The allegations relate to a time between, it seems, 1975 and 1984, about 49 years ago to 40 years ago. In June 2016 the complainant made an official report to the gardaí that the accused had sexually abused her when she was a child. In January 2017, the accused voluntarily attended a garda station to take part in a cautioned interview. He denied all of the charges.

As part of the disclosure process, a redacted statement on the charges was given to the accused. When an unredacted statement was called for by the defence, and given, it mentioned other incidents of which the complainant said she had been subjected, including, one where an uncle had abused her and been prosecuted and convicted, and other occasions during her lifetime, such as being raped at a party in England & Wales. Following protracted exchanges, the complainant's ultimate position was that regarding the reference she made in her original statement to other people who allegedly abused her, she did not want to name any of these people. As a result of the complainant's refusal to supply the addresses of all the named individuals in the unredacted statement, the accused initiated judicial review proceedings in the High Court prior to the new trial date that had been set.

Issue on this Appeal

This appeal focused on the following issues:

1) Is it within the competence of criminal procedure for a notice for particulars, however formed, to be served on the prosecution, or the alleged victim of a crime, or to, in substance or in form, seek discovery from that source.

2) Are there rights which inure to the alleged victim of sexual violence to be protected from enquiry into prior alleged incidents of that kind and if there is an interests of justice exception, does such require an application to the actual trial judge under s. 3 of the Criminal Law (Rape) Amendment Act, 1981.

3) What criteria are to be applied in such application at (2).

4) Is there a privacy exception, or psychotherapeutic privilege, to an application for particulars or discovery, however formed, and when does this protect the alleged victim of sexual violence.

5) If there is any entitlement to obtain disclosure or particulars, however formed, form a complainant as to the details of any other alleged incidents of sexual violence, what

criteria are to be applied in the assessment of whether it is necessary for the purposes of ensuring a fair trial that the defendant obtains such material?

6) When may judicial review be granted instead of the trial judge ruling on applications as to the fairness of a criminal trial.

Decision

This Court makes the following observations to assist the trial judge in the discovery application:

1) It is only in the clearest of cases that it will be appropriate to seek judicial review to prohibit a trial on the merits from taking place because of an allegedly erroneous ruling as to disclosure prior to trial. Such cases will be exceedingly rare. Where disclosure of information (including documentation) (whether from a witness or from the prosecution) is concerned, the proper place for those matters to be resolved will almost invariably be at either a preliminary trial hearing pursuant to s. 6 of the Criminal Procedure Act, 2021, or during the trial of the offence. The trial court has specific powers at common law and by statute to deal with applications for such disclosure having regard to any competing rights of an alleged victim of crime or other witness, including unwarranted intrusions into privacy and any statutory considerations, and those of an accused subject to the obligation on the trial court to ensure a trial in due course of law under Article 38.1 of the Constitution.

2) It is within the competence of criminal procedure for a request for information to be made by the defence to the prosecution. The prosecution must do what it reasonably can to produce information that may realistically assist the defence case or undermine the prosecution case. But the prosecution must not produce information to the defence in a manner contrary to any provision conferring statutory rights upon a person alleged to be a victim of a crime, including a crime of sexual violence. It should always be born in mind that there are limits in terms of good sense, based on remoteness and relevance, as to what is germane in any case. There are, furthermore, also limits to the authority of the prosecution to gather information. Where a complainant, or other witness, refuses to give information, this is not within the procurement of the prosecution. The absence of information crucial to a fair trial may be a factor for the trial judge as to whether a trial in the absence of such information can be a trial in due course of law.

3) An alleged victim of sexual violence, the complainant, is entitled at trial, and it must follow in requests for disclosure prior to trial, to be protected from enquiry into prior sexual experience, which can include any prior sexual offence against them. Disclosure of material as to prior sexual experience is impacted upon by the rules in s. 3 of the Criminal Law (Rape) Act, 1981 as amended as to the questions that may be asked and evidence that may be adduced. Hence, prior to trial, disclosure as to prior sexual experience cannot be ordered by a trial judge unless the enquiry can be shown to have a material impact on the trial of the central issue in such a case, usually either consent or, for under-age prosecutions, whether any sexual contact occurred. This may necessitate a judge making an order pursuant to s. 3 of the Criminal Law (Rape) Act, 1981 as amended at a preliminary hearing carried out pursuant to s. 6 of the Criminal Procedure Act, 2021. On such an application for disclosure prior to trial, the information sought must be demonstrated to be more than a mere enquiry into credibility but, instead, shown to impact reasonably on the possibility that a false allegation of sexual violence is being made. Issues of the admissibility of material in respect of which claims to privilege, or confidentiality, are asserted, including material held by third parties are most suitably determined by pre-trial hearing and not by judicial review. For the avoidance of doubt, since the issue has again arisen on this appeal, renaming indecent assault as sexual assault has not taken either out of the scope of the applicable legislation. It is one offence.

4) The criteria to be applied in disclosure applications are those of: 1) relevance,

materiality and remoteness; 2) the exclusion of information which is to be deployed only to blacken the character of a complainant on the basis of prior sexual activity; 3) the primary privacy entitlement of a witness to any counselling record in the light of the criteria set out in s. 19A of the Criminal Evidence Act, 1992, as inserted by s. 39 of the Criminal Law (Sexual Offences) Act, 2017, where the allegation is one of sexual violence; and the right of witnesses to privacy where unnecessary intrusions of a fundamental kind are sought to be made into matters which are not central issues in a case. While statutory rights as regards counselling records in a sexual violence case can be waived, it is incumbent on the prosecution to ensure that before such a waiver, the complainant or other witness is properly advised. A similar duty attaches to the waiver or information related to fundamental aspects of privacy.

5) Privacy is part of the criteria to be considered in disclosure applications, but there is no counselling exception, or psychotherapeutic privilege, to an application for information, beyond the statutory criteria set out for sexual violence in s. 19A of the 1992 Act, as inserted by the 2017 Act. It should be noted that the Criminal Justice (Victims of Crime) Act, 2017, s. 15 and s. 19, place a responsibility on the gardaí and the Director of Public Prosecutions to have regard to privacy issues where a person has been identified as having specific protection needs; see s. 21 regarding questions of the victim in respect of their private life, a matter specifically referred to in s. 19. Issues involving serious intrusion into private life (which are not directly relevant to the alleged offence) are not generally subject to disclosure unless directly germane to an issue in a case. That would mean that even the references by this complainant, or any other witness, to past experiences of abuse may not automatically be disclosable or, if disclosable, are protected not only by s. 3 of the 1981 Act as amended but also by s. 21 of the 2017 Act. This is a matter for the trial judge and not for judicial review.

6) It is always necessary for a trial judge to ensure a trial in due course of law, as required by Article 38.1 of the Constitution. A trial becomes unfair where, on a reasonable assessment, a real opportunity is lost to put a credible defence case as to fact. Consequently, a trial judge is cloaked with the authority to make such orders as will uphold that constitutional imperative. Focus on the central issues is the imperative for any criminal trial. A fair trial is in danger of being undermined through the consideration of irrelevant material. A trial in due course of law should not involve spurious applications or arguments which aim to divert the trial process from examining the central issue before the court; which is whether the prosecution have met the burden of proving the case beyond reasonable doubt.

7) In disclosure applications, the responsibility is on a trial judge to ensure that fair trial. The trial judge has the ongoing responsibility both before and during the trial to ensure that such information as will enable a fair trial is furnished to the defence. The prosecution also has that duty and this continues throughout the criminal process in respect of any information or documents which may enable a credible defence case to be put.

8) The defence should not be restricted from asking a relevant question in aid of the accused. It can be that because of the restrictions on asking questions or calling testimony as to prior sexual experience applicable to sexual violence cases, that what is a legitimate enquiry of a witness may mistakenly be ruled out. This issue may best be approached by analysis based on a neutral example. Hence, if in a witness statement, the victim of a criminal offence mentions other crimes committed against them in the past, it might be legitimate to ask why such alleged crimes were not reported. That can possibly lead to a question as to whether that non-reporting was because of the infirmity of the allegation or because of imagination. Pursuing such a line of questioning and the consequent potential revelation of crimes which have been prosecuted in the past is a matter for decision by the defence, subject to the permission of the trial judge where s. 3 of the 1981 Act as amended applies.

9) The responsibility of deciding disputes on disclosure is on the trial judge and this is an ongoing responsibility throughout the whole of the trial. The primary responsibility to gather information and to disclose what is relevant, subject to statutory rights which may require an application to court, is on the prosecution.

H. A. O'Neil Limited v. Unite the Union & ors

On appeal from: (Unreported, High Court, O'Regan J., 23 March, 2023)

Judgment delivered on 6 March 2024
[2024] IESC 8

Headline

The Supreme Court unanimously allowed the Defendants' appeal, determining that an interlocutory injunction should not have been granted where the conditions of s. 19(2) of the Industrial Relations Act, 1990 were met. The injunction granted in the High Court was set aside.

Composition of Court

O'Donnell C.J., Woulfe, Hogan, Murray and Donnelly JJ.

Judgments

O'Donnell C.J. (with whom Woulfe, Hogan, Murray and Donnelly JJ. agree); Hogan J. (with whom O'Donnell C.J., Woulfe, Murray and Donnelly JJ. agree); Murray J. (with whom O'Donnell C.J., Woulfe, Hogan and Donnelly JJ. agree);

Background to the Appeal

On 23 February, 2023, the union (the first defendant to this appeal) balloted its members employed by the plaintiff company and another company in common ownership with the plaintiff. The ballot favoured taking industrial action in support of the union's stance on travel time payments. The union wrote to the plaintiff company giving notice of industrial action due to take place ten days later. The first strike took place on 10 March, 2023, further targeted action was to take place on a rolling basis on dates to be determined.

The parties were subject to a Sectoral Employment Order (S.I. 2018/59) which included a dispute resolution procedure and a "no strike clause" providing that no industrial action may take place until the procedure had been followed (the SEO was subsequently quashed in separate proceedings). The plaintiff claims that the effect of the SEO is that no industrial action may take place until the dispute resolution procedure has been exhausted and s. 19(2) of the Industrial Relations Act, 1990 (the '1990 Act') does not preclude the grant of an injunction to enforce that agreement.

The plaintiff sought an injunction restraining the industrial action. The trial judge applied the *Campus Oil/ Merck* test (*Campus Oil v. Minister for Industry (No. 2)* [1983] I.R. 88 and *Merck Sharp & Dohme Corporation v. Clonmel Healthcare Limited* [2019] IESC 65, [2020] 2 I.R. 1) and granted an interlocutory injunction restraining the defendants from engaging in actual or threatened industrial action on foot of the ballot (Unreported, High Court, O'Regan J., 23 March, 2023).

Reasons for the Judgment

O'Donnell C.J., Hogan and Murray JJ. find that s. 19(2) of the 1990 Act provides an absolute bar to the granting of an injunction restraining industrial action where the conditions of the section are met. **[50** O'Donnell C.J.**]** Murray J. determines that it is not enough for the plaintiff to establish that there is an arguable case or serious issue to be tried that notice was not given or that the ballot was not properly held. **[16** Murray J.**]** O'Donnell C.J. and Murray J. observe that s. 19 should not be interpreted narrowly or restrictively, as this would defeat the purpose of the legislation which is to protect unions and its members. **[59** O'Donnell C.J., **25** Murray J.**]** Hogan J. further observes that s. 19 gives effect to the right of the Oireachtas to regulate trade union activity pursuant to Article 40.6.1°, and courts should not readily circumvent or frustrate this right. **[8** Hogan J.**]** In this case, the defendants established on the balance of probabilities that the industrial action was being pursued by a registered trade union; a secret ballot was held in accordance with the rules of the trade union as provided for in s. 14 of the 1990 Act; the outcome of the ballot favoured industrial action; no less than one week's notice was given to the employer of the intention to engage in industrial action; and the defendant has established a fair case that they were acting in contemplation or furtherance of a trade dispute. In these circumstances, an injunction should not have been granted. **[62-65** O'Donnell C.J., **49** Murray J.**]**

O'Donnell C.J. and Murray J., consider that even in the absence of s. 19 the plaintiff would not

have been entitled to the grant of an interlocutory injunction and that the simple application of the *Campus Oil/Merck* test was not appropriate in this case. O'Donnell C.J. observes that in applications for interlocutory injunctions in industrial relations actions it should be presumed that the case will not go to trial unless there are particular features in the claim which may make it probable that the case will proceed to trial, and in relatively early course. **[67-71** O'Donnell C.J., **51-58** Murray J.**]**

O'Donnell C.J. observes that the freedom to form associations and unions is guaranteed by Article 40.6.1đ and the entitlement to take part in industrial action must be seen in that context, and an important aspect of any right is the choice of when and where to exercise it. Hogan J. further adds that the substance of this right must also be safeguarded, so that the constitutional right to associate and to form a trade union is given real meaning, and insufficient weight has been given to this consideration in the case-law to date. Murray J. considers that in an application for an interlocutory injunction of the kind sought in this case, a trial judge should consider the interference an injunction would have on the constitutional right, and this demands more than a consideration of whether the case is 'stateable'. **[71-72** O'Donnell C.J., **8** Hogan J., **58** Murray J.**]**

The People (DPP) v. Caolan Smyth

On appeal from: [2022] IECA 182

Judgment delivered on 17 June 2024
[2024] IESC 22

Headline

The Supreme Court (O' Donnell C.J., Barniville P., Dunne, Charleton, O' Malley, and Collins JJ.; Hogan J. dissenting) today dismissed the appeal and affirmed the Special Criminal Court's conviction of Mr Smyth for attempted murder.

Composition of Court

O' Donnell C.J., Barniville P., Dunne, Charleton, O' Malley, Hogan, and Collins JJ.

Judgments

Collins J. (with whom O' Donnell C.J., Barniville P., Dunne, Charleton, and O' Malley JJ. agree).

Hogan J.

Background to the Appeal

Mr Smyth was charged and convicted in the Special Criminal Court of the attempted murder of a Mr James Gately in May 2017 at a petrol station on the Clonshaugh Road, Dublin 17. CCTV footage of the incident showed a black Lexus pulling up next to the victim's vehicle and shots being fired from the Lexus. The prosecution's case was that Mr Smyth was the driver of the black Lexus and the person who shot Mr Gately.

The prosecution case against Mr Smyth had several strands, including the evidence of a number of Gardaí that they recognised Mr Smyth as the driver from CCTV footage from the petrol station. The prosecution also led evidence as to the movements of the Lexus on the day prior to the shooting and on the day of the shooting. The prosecution also relied on analysis of traffic and location data relating to a mobile phone number/SIM card (*"the 691 number"*) which the prosecution sought to attribute this to Mr Smyth. The location data was alleged to have been consistent with the locations of the Lexus disclosed by the CCTV evidence. The traffic data was alleged to have indicated contact between the 691 phone and family members of Mr Smyth, as well as between the 691 number and a number the prosecution sought to attribute to Gary McAreavey (*"the 773 number"*).

This traffic and location data had been retained by the relevant mobile phone operators pursuant to section 3 of the Communications (Retention of Data) Act 2011 (*"the 2011 Act"*). Gardaí accessed those data in June and November 2017 on foot of requests made under section 6 of the 2011 Act.

Mr Smyth (and Mr McAreavey also) contested the admissibility of the traffic and location data, arguing that the data retention and access provisions of the 2011 Act were incompatible with EU law and that the such evidence was inadmissible having regard to the decision of this Court in *People (DPP) v JC* [2015] IESC 31, [2017] 1 IR 417.

At the time of the trial in the Special Criminal Court, the High Court (O' Connor J) had held that the retention and access provisions of the 2011 Act were inconsistent with Article 15(1) of Directive 2002/58/EC (*"the ePrivacy Directive"*) read in the light of the Articles 7, 8 and 52(1) of the Charter of Fundamental Rights of the European Union (*"the Charter"*): *Dwyer v Commissioner of An Garda Síochána* [2018] IEHC 685, [2019] 1 ILRM 461; [2019] IEHC 48, [2019] 1 ILRM 523 That decision was appealed to the Supreme Court and in March 2020, this Court had made a reference to the Court of Justice of the European Union (CJEU) pursuant to Article 267 TFEU: [2020] IESC 4, [2020] 1 ILRM 389. That reference was pending at the time of the trial before the Special Criminal Court.

The Special Criminal Court ruled that the traffic and location data was admissible and it relied on that evidence in proceeding to convict Mr Smyth.

Mr Smyth appealed his conviction to the Court of Appeal. After the hearing of that appeal but before the court gave its judgment, the CJEU gave judgment in *Dwyer* (Case C-140/20 *GD v Commissioner of An Garda Síochána*). Following from the judgment of the CJEU, on 13 July 2022 this Court confirmed the order made by the High Court in *Dwyer*, declaring that section 6(1)(a) of

the 2011 Act, insofar as it related to telephony data retained *"on a general and indiscriminate basis"* pursuant to section 3, was inconsistent with Article 15(1) of the ePrivacy Directive read in light of Articles 7, 8 and 52(1) of the Charter.

On 28 July 2022, the Court of Appeal (Birmingham P., Edwards and Kennedy JJ.) gave judgment on Mr Smyth's appeal, upholding the decision of the Special Criminal Court to admit the traffic and location data, affirming Mr Smyth's conviction and dismissing the appeal.

Mr Smyth and Mr McAreavey applied for leave to appeal to this Court, which was granted on 16 December 2022. The Irish Human Rights and Equality Commission were subsequently granted leave to intervene as *amicus curiae*.

As a result of the case management process, the issues as far as Mr Smyth's appeal is concerned were identified as follows:

1. *Noting that it is common case that the provisions of the Communications (Retention of Data) Act 2011 relating to*
    a. *General and indiscriminate retention of phone location and call data, such as that at issue in this case, for the purpose of the investigation of crime, and*
    b. *access to such retained data for the purpose of the investigation of crime on the authorisation of a member of An Garda Síochána*

    are, for the reasons stated in the judgment of the Court of Justice of the European Union of the 5th April 2022 in Case C-140/20 GD v Commissioner of An Garda Síochána ECLI:EU:C:2022:258 in breach of EU law, in what circumstances is such data admissible in evidence against an accused?
    a. *Is the test for admissibility that set out in People (DPP) v JC [2015] IESC 31, [2017] 1 IR 417 or is some other test applicable?*
    b. *In considering the admissibility of the phone location and call data here, what is the significance (if any) of the fact that neither appellant asserted or accepted ownership of the 691 phone or the 773 phone?*
    c. *Did the Special Criminal Court err in admitting the phone location and call data in evidence in the circumstances here?*

Reasons for the Judgment

Collins J. sets out the legal background to this appeal, focussing particularly on the ePrivacy Directive, the Data Retention Directive, the 2011 Act, and the key cases in the Court of Justice of the European Union's jurisprudence: Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland*, Joined Cases C-203/15 and C698/15 *Tele2, GD,* Joined Cases C-793/18 and C-794/19 *Spacenet,* and Case C-470/21 *La Quadrature du Net*. **[40-46]**

Collins J. emphasised that *"it is, in principle, for national law alone to determine the rules relating to the admissibility and assessment, in criminal proceedings against persons suspected of having committed criminal offences"*, subject to the EU principles of effectiveness and equivalence: [101]-[102] and [106], citing in particular Case C-746/18 *Prokuratuur*. EU law's respect for the *"choices made by national law"* extends to the different policy rationales underpinning the Member States' diverse exclusionary rules: [107]-[109] and [113]. Moreover, *"the principle of effectiveness does not require the per se exclusion of evidence gathered in breach of EU law"*. **[110-111]**

Collins J. considered what is the applicable test for admissibility in the circumstances of the appeal. Collins J. considered the *JC* test to be applicable for a number of reasons. In his view, *JC* applied in all cases where evidence was gathered in breach of constitutional rights, whether expressly enumerated in the text of the Constitution or not. **[117-119]** The evidence here had been retained and accessed in breach of the Charter: in substance the retention and access provisions of the CJEU had been condemned by the CJEU because they exceeded what was permitted by the Charter. [120-128] On that basis, the principles of equivalence and effectiveness required the application of the *JC* test as the application of any less-exacting test would effectively accord rights guaranteed by the Charter a lesser status than rights protected by the Constitution which would not be consistent with the obligations of the State – and of the Court – to respect, and give full effect to, EU law. **[129, 135]**

Addressing specific arguments advanced by the Director of Public Prosecutions, Collins J. rejected the argument that the failure of Mr Smyth (and Mr McAreavey) to accept or assert ownership of the 691 number and the 773 number respectively meant that they could not assert any breach of their privacy rights. **[136-140]** He also rejected the Director's contention that there is no or no significant right to privacy in communications or information that relate to or disclose the commission of a criminal offence. While significant incursions into the right to privacy may be authorised by law for the purpose of preventing or investigating crime, where such incursions were not authorised by law, a breach of privacy occurs and it was no answer to say that, as a result of such breach, evidence relating to or disclosing a criminal offence had been obtained. **[141-155]**

Collins J. then set out considered the judgment in *JC*, as well as the subsequent decision of the Supreme Court in *People (DPP) v Quirke* (No 2) [2023] IESC 20, [2023] 1 ILRM 445. **[156–173]** He concluded that the traffic and location data was admissible by reference to the principles established in those decisions, essentially for the following reasons:

1. The application of *JC* here does not involve or require any factual inquiry or investigation but, rather, an objective assessment of whether it was reasonable for An Garda Síochána to rely on the provisions of the 2011 Act or whether such reliance involved a *"deliberate or conscious"* breach of the Charter. Collins J. considered that the Court was in a position to carry out that assessment. **[174-179]**
2. *JC* compelled the conclusion that the breach of the Charter here was not *"deliberate and conscious"* in the sense used in that case. The 2011 Act was on the statute-book when the data at issue in this appeal was retained and accessed (between June and December 2017). An Garda Síochána was entitled to rely on it. Even if there may be circumstances where a law enacted by the Oireachtas is so manifestly unconstitutional (and/or contrary to the Charter) that, even in the absence of an order of a court of competent jurisdiction declaring that law invalid, it could be reckless or negligent for a law enforcement body to rely upon it – and *JC* suggests not – such was not the position here. This Court's decision in *Dwyer* was wholly inconsistent with the argument that, as of 2017, the 2011 Act was so clearly contrary to the Charter that it could not properly or reasonably be relied on by An Garda Síochána.
3. By analogy with *JC* itself (where the search warrant had been issued pursuant to a statutory provision subsequently struck down in *DPP v Damache* [2011] IESC 11, [2012] 2 IR 266), the illegality here arose as a result of a *"subsequent legal development"*, namely the combined effect of the CJEU's judgment in *GD* and the declaration subsequently granted by this Court when the proceedings came back before it. **[180-201]**
4. In the circumstances, the traffic and location data at issue here was *prima facie* admissible under *JC*.
5. As regards the so-called *JC "backstop"*, the traffic and location data at issue here *could* have been retained and accessed in a manner compatible with the Charter. Access here was sought for the purpose of investigating a very serious crime. That is all that the backstop required. It did not require the court to hypothesise an alternative legislative regime and to hypothesise how that regime might have operated in 2017 and whether, in particular, its operation *would* have led to the retention of the traffic and location data at issue here. **[202-210]**
6. If, as *Quirke (No 2)* seemed to suggest, the backstop is properly understood as being directed at more general considerations of fairness, no basis for excluding the evidence arises here. The community's interest in the effective adjudication of the case against Mr Smyth and Mr McAreavey on its merits weighed decisively in favour of the admission of the evidence and it is the *exclusion* of that evidence rather than its *admission* that would bring the administration of justice into disrepute. Considerations including the nature and probative value of the evidence, the fact that it was gathered in accordance

> with the 2011 Act, the view taken by this Court in *Dwyer* of the lawfulness of the retention regime created by the Act, the gravity of the crime being investigated and the limited and targeted nature of the access obtained are all significant factors weighing in favour of the admission of the evidence. **[211-213]**

It followed, in Collins J.'s view, that the SCC did not err in admitting the traffic and location evidence. Mr Smyth's appeal must therefore be dismissed.

In a dissenting judgment, Hogan J. held that, in providing for the retention of telephone metadata on a mass and indiscriminate basis for a three-year period, the 2011 Act breached Article 8 of the Charter. Hogan J. held that the 2011 Act failed the key tests prescribed by the Court of Justice in Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland* by a wide margin. This was not a purely technical violation, but a clear breach of the substance of the right protected by Article 8 as interpreted by the Court of Justice. **[17, 27]**

Hogan J. held that, absent any EU laws governing the admissibility of evidence obtained in breach of the Charter, the principle of equivalence required the application of the domestic *JC* rules. Hogan J. held that the principle of equivalence required the treatment of a breach of the EU law right in the same way that the breach of a constitutional right would be. **[32-34]** Hogan J. further held that, notwithstanding the difference in scope and application of the Charter and the Constitution, both are a form of higher law providing for the protection of fundamental rights, and the general right to privacy in both the Charter and the Constitution are sufficiently similar for the purposes of the equivalence principle so that a breach of Article 8 should be treated in the same way with respect to the rules regarding the exclusion of unconstitutionally obtained evidence: **[35, 38]**

Hogan J. held that the Special Criminal Court and the Court of Appeal erred in admitting the traffic and location data. Hogan J. held that, viewed objectively, it was unavoidable to conclude that though no formal finding that the 2011 Act was contrary to EU law was made as of June 2017, the continued use of the 2011 Act at that time by An Garda Síochána was reckless and grossly negligent in the sense set out by Clarke J. in *JC*. Hogan J. observed that though the suppression of serious crime is an important public interest, so too was the maintenance of the rule of law and respect for the application of EU law and the Charter, such that to conclude otherwise would be tantamount to saying that the breaches of Article 8 were immaterial and would fail to give due weight to an important series of decisions of the Court of Justice. Hogan J. held that the evidence, therefore, should not have been admitted. **[52-54]**

Hogan J. held that the conviction of Mr Smyth should be quashed, and the matter remitted for a re-trial.

References in square brackets are to paragraphs in the judgments of Collins and Hogan JJ. respectively.

The People (DPP) v. Gary McAreavey

On appeal from: [2022] IECA 182

Judgment delivered on 17 June 2024
[2024] IESC 23

Headline

The Supreme Court today allowed the appeal and quashed Mr McAreavey's conviction under section 7(2) of the Criminal Law Act 1997.

Composition of Court

O' Donnell C.J., Barniville P., Dunne, Charleton, O' Malley, Hogan, and Collins JJ.

Judgments

Collins J. (with whom O' Donnell C.J., Barniville P., Dunne, Charleton, O' Malley, and Hogan JJ. agree).

Hogan J.

Background to the Appeal

This appeal is closely connected with the appeal brought by Caolan Smyth, in which the Court also gives judgment today: *DPP v Smyth* [2024] IESC 22.

Mr Smyth was charged and convicted in the Special Criminal Court of the attempted murder of a Mr James Gately in May 2017 at a petrol station on the Clonshaugh Road, Dublin 17. CCTV footage of the incident showed a black Lexus pulling up next to the victim's vehicle and shots being fired from the Lexus. The prosecution's case was that Mr Smyth was the driver of the black Lexus and the person who shot Mr Gately.

The prosecution further contended that shortly after the shooting, Mr McAreavey drove in convoy with the Lexus (driven by Mr Smyth) to a remote location, where it was burnt using petrol Mr McAreavey had purchased earlier that day (as demonstrated by CCTV evidence). That, the prosecution contended, amounted to an offence under section 7(2) and (4) of the Criminal Law Act 1997 (*"the 1997 Act"*). Section 7(2) provides that:

> *"Where a person has committed an arrestable offence, any other person who, knowing or believing him or her to be guilty of the offence or of some other arrestable offence, does without reasonable excuse any act, whether in or outside the State, with intent to impede his or her apprehension or prosecution shall be guilty of an offence".*

The prosecution relied on analysis of traffic and location data relating to two mobile phone numbers which they sought to attribute to Mr Smyth and Mr McAreavey. Mr Smyth and McAreavey sought to have that data excluded on the basis that they were retained and accessed unlawfully, in breach of Article 15(1) of Directive 2002/58/EC, read in light of Articles 7, 8 and 52(1) of the Charter of Fundamental Rights of the European Union. For the reasons set out in its judgment in *DPP v Smyth,* this Court held that the traffic and location data was correctly admitted into evidence.

For the reasons set out in its Judgment of 5 January 2021, the Special Criminal Court found Mr Smyth guilty of attempted murder and Mr McAreavey guilty of an offence under section 7(2) and (4) of the Criminal Law Act 1997 (*"the 1997 Act"*). The Special Criminal Court was not satisfied beyond reasonable doubt that the evidence established that Mr McAreavey assisted Mr Smyth knowing that he was guilty of the attempted murder of Mr Gateley. However, the Special Criminal Court found that Mr McAreavey knew or believed that Mr Smyth had committed an arrestable offence of some description. The Court held this was sufficient to ground a conviction under section 7(2) and that the prosecution did not have to allege or prove that Mr McAreavey knew or believed that Mr Smyth had committed any specific *"other arrestable offence".*

Mr McAreavey appealed his conviction to the Court of Appeal, contending that the Special Criminal Court erred in its interpretation and application of section 7(2). The Court of Appeal essentially upheld the reasoning and conclusions of the Special Criminal Court. Mr McAreavey applied for leave to appeal to this Court and was granted leave to appeal on the issue relating to the admissibility of the traffic and location data and on the issue relating to the proper construction of section 7(2).

As noted above, the admissibility issue has already been addressed in *DPP v Smyth* and it follows from the judgments in that appeal that Mr McAreavey's appeal on the admissibility issue fails. The remaining issue in this appeal was as follows:

> *Where in a prosecution under section 7(2) of the Criminal Law Act 1997 the prosecution fails to prove that the accused knew or believed that the principal offender was guilty of the arrestable offence proven to have been committed by that offender, does the reference to "some other arrestable offence" in that subsection require the prosecution to identify some specific "other arrestable offence" and to prove that the accused knew or believed that the principal offender was guilty of that specific offence in order to ground a conviction or is it sufficient for the prosecution to prove that the accused knew or believed that that person was guilty of an unspecified offence of sufficient gravity as to constitute an "arrestable offence"?*

Reasons for the Judgment

Collins J. considered the arguments of the parties as to the proper construction of the expression *"some other arrestable offence"*. **[20-22]** While section 7(2) was a provision creating a criminal offence and thus subject to the principle of strict construction – also referred to as the principle against doubtful penalisation – Collins J. noted that the Court's recent jurisprudence emphasised that that principle should not be applied to the exclusion of all other principles of construction. Statutory construction was *"a unitary exercise that, in all cases, has the same objective, namely the ascertainment of the intention of the legislature from the text adopted by it"*. **[23-26]** A relevant consideration in that exercise is the state of the law prior to the enactment of the statute in question. **[30]**

Prior to the enactment of the 1997 Act, the law penalised accessories to felonies both before and after the fact. As for accessories *before* the fact, the prosecution was required to prove that the accessory assisted the principal *"in the commission of the crime proved to have been committed by the principal, or the commission of a crime of a similar nature known to the accused to be the intention of the principal when assisting him"*. **[32]** Collins J. also noted that *"[t]he law in England and Wales was broadly to the same effect"* as Irish law and that the Irish jurisprudence drew significantly on English authorities. **[33]**

However, none of the authorities before this Court concerned the position of accessories *after* the fact. English and Australian authorities and Irish commentary prior to the 1997 Act suggested that *"the accused should have known the actual felony committed by the felon"*, referring to the need *"to specify both the particular felony which had been committed and that this was known to the accessory"*. **[35-39]** Collins J. considered that the introduction of the phrase *"or of some other arrestable offence"* in section 7(2) must contemplate a conviction where an accused does not know what offence was actually committed and thus involved a change to the pre-existing law. However, the interpretation urged by the Director of Public Prosecutions would involve a very significant change to the pre-existing law and a very significant expansion of the scope of the potential criminal liability for assisting an offender. **[41]**

Collins J. reviewed a number of decisions of the Court of Appeal of England and Wales (*R v Morgan* [1972] 1 QB 436 and *R v Saunders* [2011] EWCA Crim 1571), textbook commentary on those decisions, a decision of the Crown Court in Northern Ireland (*R v Donnelly* [1986] NI 54) and a number of Irish textbooks. **[42-63]** He was of the view that section 7(2) undoubtedly presented real difficulties of construction, particularly as regards the issue of whether and to what extent the accused's belief must relate to a specific *"other arrestable offence"* or category of such offences. For the reasons set out in detail in his judgment, he disagreed with the approach taken by the Special Criminal Court, which had been endorsed by the Court of Appeal. **[69-78]** Collins J. considered that section 7(2) was ambiguous. Noting that, on the Special Criminal Court's analysis, the provision consists of *"two limbs, one of which is highly specific... while the other is wholly lacking in specificity"*, he questioned why the prosecution would *ever* seek to make a case based on the first limb, given the much less challenging threshold of proof presented by the second limb. **[70]** The approach adopted by

the Special Criminal Court also appeared to be problematic at a more fundamental level, based as it appeared to be on a form of constructive belief attributed to Mr McAreavey by reason of the nature said to have been undertaken by him. **[71]** Collins J questioned how a court or – particularly – a jury could be satisfied that the accused believed that the principal offender was guilty of *"some other arrestable offence"* without having some specific offence in mind. **[72]** Such an interpretation of section 7(2) would lend an essentially arbitrary character to the provision and involve the jury being invited to engage in an essentially speculative exercise which would be difficult to reconcile with the fundamental requirements of a trial in due course of law in accordance with Article 38.1 of the Constitution. Clear words would be required before one could properly ascribe such an intention to the Oireachtas. **[72-73]** In Collins J.'s view, the interpretation of section 7(2) urged by the Director would involve a *"radical expansion of secondary liability"* which was unsupported by the purpose of section 7(2) or the context in which it was enacted. **[74, 76]** It was questionable whether an offence of such sweeping and uncertain scope would be consistent with Article 38 of the Constitution and/or Article 6 ECHR but, in any event, there is no doubt that the clearest and most express language would be required in order to warrant giving section 7(2) such a construction. The language used by the Oireachtas was certainly not apt to compel such a construction and, on that basis, the Director's construction of section 7(2) had to be rejected. [**77–78]**

As to the correct construction of section 7(2), in Collins J.'s view it would be unduly restrictive to interpret the sub-section as requiring the prosecution to prove that the accused assisted the principal offender in the belief that he/she had committed a specific identified *"other arrestable offence"*. The better reading, in his view, was to read *"some other arrestable offence"* as meaning *"an offence within the same category or of a similar nature to the offence actually committed by [the principal offender] and arising from the same transaction"*. That reading derived support from the authorities and from textbook commentary. **[79]**

Here the Director had alleged that Mr McAreavey assisted Mr Smyth knowing that he had committed the offence of attempted murder but failed to make that allegation out to the requisite standard of proof. The Director did not allege, and the Special Criminal Court did not find, that Mr McAreavey knew the facts or some of the facts of the actual offence which had been committed but believed that those facts constituted a different offence within the same category of offence or an offence of a similar nature, such as an offence of violence or an offence involving the use of a firearm. Instead, the Special Criminal Court effectively inferred from Mr McAreavey's involvement in the burning-out of the black Lexus that he must have believed that Mr Smyth had committed an arrestable offence of some kind. For the reasons set out in his Judgment, in Collins J.'s view that was not a sufficient basis on which to convict Mr McAreavey of an offence under section 7(2). **[80]**

Mr McAreavey's conviction therefore had to be quashed. Any question of consequential orders should be the subject of further argument.

Hogan J. delivered a short judgment, in which he explained that, for the reasons set out in his judgment in *DPP v Smyth*, he would allow the appeal on the telephone evidence issue. In relation to the proper construction of section 7(2) of the 1997 Act, he agreed fully with the Judgment of Collins J. set out above.

References in square brackets are to paragraphs in the Judgment of Collins J.

Crofton Buildings Management CLG & Stephanie Bourke v. An Bord Pleanála and Fitzwilliam DL Ltd.

On appeal from: [2022] IEHC 704

Judgment delivered on 10 April 2024
[2024] IESC 12

Headline

The Supreme Court dismissed the appeal against remittal of the matter to An Bord Pleanála ("the Board") but varied the Order of the High Court by deleting the directions upon which remittal had been ordered. The Court found that section 50A(9A) of the Planning and Development Act, 2000, as amended, when correctly interpreted, mandates the High Court, following the quashing of a decision/act, to grant remittal of the matter to the Board/planning authority where the applicant for planning permission makes such an application, where it is not possible for the Board to reach a lawful decision; that is a high threshold to reach.

Composition of Court

O'Donnell C.J., Charleton, O'Malley, Woulfe, Donnelly JJ.

Judgment

Donnelly J. (with whom O'Donnell C.J., Charleton, O'Malley and Woulfe JJ. agreed).

Background to the Appeal

The issues in this appeal concern the power of the High Court to remit a matter for reconsideration by the Board following an order of *certiorari* of a decision of the Board by the High Court. Specifically, the Court considers the meaning and application of the phrase "shall... remit the matter... unless the Court considers, having regard to the circumstances of the case, that it would not be lawful to do so" in section 50A(9A) of the Planning and Development Act, 2000 as amended ("the 2000 Act"), the statutory provision dealing with remittal in such cases.

The notice party, Fitzwilliam DL Ltd. ("the developer"), was granted planning permission by the Board on 28 April 2021 for their Strategic Housing Development ("SHD") application made under the procedure pursuant to s. 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (the "2016 Act"). The appellants are Crofton Buildings Management CLG, the management company for an adjacent residential development and Ms. Bourke, the owner of an apartment within that development. The appellants sought an order of *certiorari* of the decision to grant planning permission to the developer on the basis, *inter alia*, that the Board breached s. 9(6)(c) of the 2016 Act in granting the permission in material contravention of the Dún Laoghaire-Rathdown

Development Plan 2016-2022 ("the 2016 development plan"), specifically regarding building height. The Board conceded on that ground, and the developer agreed that the Board's decision must be quashed for that reason.

By the time of the application for remittal, the 2016 development plan had been replaced with the Dún Laoghaire-Rathdown Development Plan 2022-2028, and the SHD procedure has since been replaced by the Large-scale Residential Development procedure through the Planning and Development (Amendment) (Large-scale Residential Development) Act, 2021.

On 31 July 2023, this Court granted leave to appeal on the issues of, *inter alia*, the scope of the remittal power under O. 84, r. 20(7) RSC and s. 50A(9A) of the 2000 Act, the nature and extent of any directions that ought to be given following remittal and the question of which development plan should govern any remitted decision.

Reasons for the Judgment

Although the issue of which development plan ought to govern remittal was raised in the determination and in the written submissions of the Notice Party, there was no real contest challenging the correctness of the High Court's finding that the development plan applicable to a planning decision is the development plan in effect on the day that the decision is made. Donnelly J. states that this accords with a general principle of

administrative law, that in terms of *administrative decisions*, the decision must give effect to the law at the date of the administrative decision. Moreover, nothing in any of the relevant sections which have been referred to in submissions, be it ss. 2, 9 or 34 of the 2000 Act or s. 9(2) of the 2016 Act, requires the Board to have regard to anything other than the development plan in effect on the date of the decision in respect of an SHD under the 2016 Act. The judgment proceeds on that basis. **[30]**

Donnelly J. considers the High Court's discretion to remit following an order of *certiorari* under O. 84, r. 27(4) RSC and remittal under s. 50A(9A) of the 2000 Act. Prior to the introduction of s. 50A(9A), the High Court had a broad discretionary power to remit planning decisions back to the Board under O. 84, r. 27(4), as reflected in the extensive jurisprudence associated with the provision. [33] Once the High Court decides to quash a planning decision or act, there is now, pursuant to s.50A(9A), a statutory imperative to remit unless it would not be lawful to do so. Thus, it is no longer a discretionary power to remit, rather it is a statutory direction to remit save in limited circumstances. The wording of the subsection is entirely consistent with a legislative intention that this is an entirely new statutory scheme in an area that was otherwise covered by the Rules of the Superior Court, inherent jurisdiction and case law. The only discernible purpose for enacting the legislation is to bring about change to planning cases from the existing position that applies to all judicial reviews. **[36, 38]**

The Court further considers the definition of *lawful* in the context of s. 50A(9A), and when the High Court could refuse to grant remittal on the basis that doing so would not be lawful. Donnelly J. holds that the word *lawful* must relate to the High Court's decision to remit the matter. There is nothing unlawful about a remittal that would permit the Board to take a valid decision on the matter. This is consistent with the presumption that the Board is obliged only to act within their powers and to act fairly. **[51]** The ordinary meaning of s. 50A(9(A) demands a different approach to remittal than has been applied previously. Instead of extensive, lengthy, and costly proceedings the subsection brings about a change which would place matters back in the planning arena as soon as possible after the quashing of a planning decision/act if requested by the applicant for permission/approval. The only restriction on same would be where it is not possible for the Board to reach a lawful decision on a remitted matter; this is a very high threshold. **[52]**

The Court considers the question of directions accompanying a High Court order to remit. Donnelly J. rejects the submission that directions could be used to make a grant of planning permission *lawful*. **[57]** Instead, Donnelly J. finds that the combination of the statutory imperative to remit and the presumption that the Board will comply with fair procedures and will act *intra vires* in making its decisions means that it will usually be unnecessary for a court to give specific directions to the Board on reconsideration procedures. **[59]**

Donnelly J. holds that pursuant to the subsection it is the *matter* that is to be remitted for reconsideration by the Board. The matter to be remitted may well vary with the circumstances of a case. Here, the decision of the Board *on the application* for permission having been quashed, remittal ill therefore require the reconsideration of the application. **[61]**

References in square brackets are to paragraphs in the judgment of Donnelly J.

MD (A minor suing by his father and next friend MD) v. Board of Management of a Secondary School

On appeal from: [2023] IEHC Record No. 121 JR

Judgment delivered on 09 April 2024
[2024] IESC 11

Headline

The Supreme Court held that the High Court is not empowered by Order 84 Rule 20(8) to grant interlocutory injunctions ex parte following the grant of leave to apply for judicial review. The Court held that only interim relief which is time limited may be granted in this manner, and that the moving party must apply for an interlocutory injunction, on notice to the respondent, where the moving party bears the onus of proof that the injunction should be granted.

Composition of Court

O'Donnell C.J., Woulfe, Hogan, Collins, Donnelly JJ.

Judgment(s)

Hogan J. (with whom O'Donnell C.J, Woulfe, and Donnelly JJ. agree); Collins J. (concurring) (with whom O'Donnell C.J., Woulfe J., Hogan J. Donnelly J. agrees); O'Donnell C.J.

Background to the Appeal

MD was a secondary school student in his Junior Certificate year at a particular secondary school. However, following serious allegations of misconduct made against MD, including very serious allegations of bullying directed at a fellow female student in the school, the Board of Management of the school on the 17 January 2023 made a preliminary decision to expel MD from the school. MD's solicitors subsequently wrote to the Principal calling upon him to permit MD to remain in the school pending the outcome of a statutory appeal of the expulsion decision pursuant to s. 29(1) of the Education Act 1998. The Chairman of the Board of Management declined to do so, stating that there was no provision in Department of Education procedures whereby a student could remain in school pending a final determination that the student in question should be permanently excluded.

Following further correspondence, MD commenced judicial review proceedings in the High Court. On the 14th of February 2023, Meenan J. granted MD leave to apply for judicial review and made an order staying the decision to exclude MD pending the determination of the s. 29 appeal. On the 3 March 2023, the school applied to the High Court to have these interim injunction orders granted by Meenan J. set aside. This application was refused by Bolger J. in a judgment delivered on 8th March 2023.

By virtue of s. 24(4) of the Education (Welfare) Act 2000, a period of 20 school days must elapse before the Board of Management can make a final decision to exclude a student. This 20-day period, taking account of the mid-term break, expired on 2 March 2023. The Board of Management met on 9th March 2023 and determined that MD should be permanently excluded. At this point, MD duly invoked the s. 29 procedure, obliging the Secretary General of the Department of Education and Skills to appoint an appeal committee and hear a *de novo* appeal of the decision.

Following further allegations of serious misconduct directed at the female student who was the subject of the original alleged acts of bullying, the school made a further application to vary or set aside the earlier order of Bolger J. on the 17 April 2023. This application was refused. On the 25 May 2023, this Court granted leave pursuant to Article 34.5.4° of the Constitution for a direct appeal from the decision of Bolger J. on the 8 March 2023. In the interim, the Appeal Committee on the 8 June 2023 rejected MD's appeal pursuant to s. 29 of the 1998 Act. Notwithstanding that this decision of the Appeal Committee rendered the matter moot, in view of the importance of the underlying issues and their systemic importance for the education sector and the manner in which interlocutory relief

may be granted in judicial review proceedings, this Court proceeded to address the merits of the issues on appeal in line with its decision in *Odum v. Minister for Justice* [2023] IESC 3.

Reasons for the Judgment

Hogan J., in allowing the appeal of the school, held that the principles pertaining to Order 84, Rule 20(8)(b) apply irrespective of whether the proceedings have been commenced by plenary action or by way of judicial review. Hogan J. concluded that Order 84, Rule 20(8) should not be read as empowering the High Court to grant mandatory interlocutory injunctions *ex parte* following the granting of leave to apply for judicial review. Hogan J. held that the High Court has no jurisdiction to grant a mandatory interlocutory injunction on an *ex parte* basis. Hogan J. furthermore held that if interim relief is granted in judicial review proceedings, that the relief should be time limited, and the onus should lie on the moving party to apply for interlocutory relief on notice to the respondent at that point. **[29, 43]**

Hogan J. accordingly held that the High Court fell into error in granting the order to stay the decision to exclude MD pending the determination of the s. 29 appeal. Hogan J. held that the order granted was one which in substance amounted to the grant of a mandatory interlocutory injunction on an *ex parte* basis. Hogan J. held that this was problematic insofar the High Court had no jurisdiction to do so, the school was not heard, and it wrongfully placed the onus of proof was placed on the school to demonstrate why the injunction should be discharged. Such was further problematic insofar as it was effectively a heavier burden of proof than that of establishing that it should be granted. Doing so furthermore complicated the school's capacity to fairly address the issues arising in the litigation or to adduce evidence regarding the balance of convenience. **[34-36]**

Hogan J. held that was in any case an error of principle to treat the granting of leave to apply for judicial review as dispositive of whether the first limb of the *Campus Oil* test of a 'serious issue to be tried' was satisfied. Hogan J. held that in fact MD never advanced a significant case on the merits of the judicial review application such that interlocutory relief would be merited. Hogan J. moreover held that especially insofar as any challenge to the validity of the expulsion decision or the fairness of the expulsion process were disclaimed, the student's challenge to the decision fell well-short of the elevated 'strong arguable case' standard set out in *Maha Lingham*, required for applications for mandatory interlocutory injunctions. **[37-38]**

Hogan J. as such held that the manner in which the order restraining expulsion was granted by the High Court was not in accordance with the established legal principles regarding the granting of interlocutory injunctions. Hogan J. held that there was no proper consideration of the balance of convenience and that the High Court did not pay any recognition to the fact that the application was one in substance for a mandatory interlocutory injunction. **[40, 42]**

Hogan J. held that, properly constructed, the onus should have been on the student as the moving party to apply for an interlocutory injunction on notice following the expiration of the original interim order granted *ex parte*, at which point the student would be required to demonstrate the existence of an arguable case, that the balance of convenience rested in his favour, that damages were not an adequate remedy, and as it was in substance an application for a mandatory interlocutory injunction, the student would be required to prove the most exacting standard of a strong arguable case. **[31]**

In such circumstances, Hogan J. held that it was unnecessary to express a view on whether the High Court enjoys a free-standing jurisdiction to grant an injunction in aid of an administrative appeal even if the claimant has no cause of action in the High Court itself, save for drawing attention to certain broad and complex issues that arise from the determination of the question, and insofar as Hogan J. notes that s. 29 of the 1998 Act does not itself provide for any interim relief pending the outcome of the s. 29 appeal and that, in general, that where possible, school disciplinary matters are bets dealt with by means of the specific remedy provided by statute. **[13, 20, 44, 46]**

Collins J. would also allow the appeal. In his

judgment, Collins J. emphasises that an applicant for judicial review is not entitled to a stay or injunction as a matter of right and such orders should not be made reflexively or as a matter of routine. **[2]** Here, despite its prohibitory framing and that it was sought and made prior to the final expulsion decision, the Order made by the Court was clearly mandatory in character. **[11-12]** On that basis, the Order could only have been granted if the Applicant established a *"strong case"*. The application of such a threshold was reinforced by the fact that there was never going to be a trial of the proceedings. **[13]** That threshold was not met on the facts.

In Collins J.'s view, the High Court erred in making an interim order having effect pending the determination of the s. 29 appeal. Any interim order granted in the absence of the school should have been granted *"for a specified and limited duration only"* to allow an application for an interlocutory order on notice to the school. **[18-21]** Procedural fairness required where the Order was made in the terms it was, and the school having applied to set it aside, that the Applicant should have the onus of establishing that an injunction ought to be granted. **[23 -28]**

In Collins J.'s view, the High Court erred in its approach to the set-aside application by limiting itself to considering whether the additional evidence the school had put before the Court was sufficient to demonstrate that the interim order would not have been granted had such evidence been before the Court at the leave stage. **[30]** Collins J. also considered that the High Court erred in giving the weight it did to the fact that the school had not sought to set aside the grant of leave to seek judicial review. **[31]** The fact that leave had been granted was not probative of the Applicant's entitlement to continuing injunctive relief. **[32–34]**

Collins J. also differed from the High Court Judge's assessment of the balance of convenience. In his view, the learned Judge failed to give appropriate weight to the interests of the school and its students in the implementation of the school's decision to expel the Applicant (which was unchallenged in the proceedings). Collins J. held that it was a very significant imposition on the school, its management and staff to require it to allow the Applicant to continue to attend as a student in any capacity after the school made an assessment that the Applicant's conduct warranted permanent exclusion. **[37]** Conversely, the learned Judge gave too much weight to the effect on the Applicant of a refusal of an injunction. **[38]** Finally, Collins J. considered that it was not necessary to address that interesting and difficult issue of the High Court's jurisdiction to grant an injunction ancillary to and/or in aid of the Applicant's s. 29 appeal in order to resolve the appeal. **[39]** Even if the High Court had power to grant such an injunction, the exercise of such a power would be justified only exceptionally. **[40]**

O'Donnell C.J. agrees with the decision of Hogan and Collins JJ. that the appeal should be allowed and makes two further observations. First, as to whether the relationship between pupil and school was governed by public law and second, expressing the view that it was not necessary to address the question of the power of the Rules Committee in order to determine the case. Subject to these observations, O'Donnell C.J. agrees with both judgments.

References in square brackets are to paragraphs in the judgments of Hogan and Collins JJ. respectively.

Director of Public Prosecutions (at the suit of Garda McCluskey) v. Jonathan O'Flaherty

On appeal from: [2023] IEHC 625

Judgment delivered on 25 November 2024
[2024] IESC 54

Headline

The Supreme Court has held that the statutory provision requiring the driver of a vehicle to provide a specimen for the purpose of a drug test at a checkpoint encompasses a requirement to wait for the result.

Composition of Court

O'Donnell C.J., Dunne, O'Malley, Murray, Donnelly JJ.

Judgment

O'Malley J. (with whom O'Donnell C.J., Dunne, Murray, Donnelly JJ. agreed)

Background to the Appeal

This appeal arises from a case stated to the High Court by District Judge Gráinne Malone. The context is the exercise by a member of the Garda Síochána, on duty at an authorised checkpoint, of the statutory power to require a driver to provide a specimen of oral fluid for the purpose of a drug test. The specimen must be provided by using an apparatus for indicating the presence of drugs. Failure to comply with such a requirement is an offence and gives rise to a power of arrest. While there was in this case no dispute as to the power to require a driver to provide a specimen of oral fluid, the District Judge raised a concern as to the lawfulness of a requirement for the driver to wait pending the result of the analysis.

On the evidence in this case, the respondent was required to provide a specimen and was told by the garda that he would have to wait for up to one hour for the result of the analysis by the apparatus. As it happened, the analysis was complete in a relatively short time. The total time involved from the time of stopping the car to the display of the result was under twenty minutes. The apparatus indicated the presence of cannabis. At that point the respondent was arrested and taken to a garda station. A blood specimen was subsequently taken from him in accordance with other provisions of the Act. He now stands charged with the offence of driving while there was in his blood a concentration of cannabis and a concentration of cocaine greater than the concentrations specified in a Schedule to the Act, contrary to s.4(1A) of the Road Traffic Act 2010.

The appellant - the Director of Public Prosecutions - appealed against the finding of the High Court that the Road Traffic Act 2010, as amended, did not at the relevant time confer a power on a member of the Garda Síochána to require a driver who had given a specimen of oral fluid to wait at the checkpoint until the drug-testing apparatus had completed an analysis of the specimen. As of the date of the events giving rise to the prosecution, and the date of the decision of the High Court, the Act did not make any express provision in this regard. The case made by the appellant is that it must be interpreted as conferring an implied power to require the driver to wait. In brief, the respondent submitted that there is no power to require the driver to wait for the analysis to be completed and the driver's obligation is only to provide the specimen required.

Reasons for the Judgment

O'Malley J. considered the scheme of s.10 of the 2010 Act in order to determine the function and purpose of the oral fluid test. She noted that it was a striking feature of the provision as a whole that it created a power to require a specimen to be given, whether or not the garda stopping a motorist at the checkpoint had any grounds for suspicion at all. This differed from previous measures, which generally required the garda to form some opinion, based on observation of the driver, or of the mode of driving, or of other relevant factual circumstances, to the effect that an offence might have been committed. [62]

O'Malley J. held that to "use" an apparatus "for indicating the presence of drugs" must mean using it to get a result that will indicate the presence

or absence of drugs. In turn, this meant that the person required *to provide the specimen by using the apparatus* (the driver) must wait for the result – the *use* of the apparatus does not conclude until that point. It was held that a positive result would constitute sufficient grounds for an arrest. This was clearly what was intended by the legislature, since otherwise the whole procedure would be pointless. It was also in accordance with the well-established law relating the results of alcohol breath tests. No proof of the blood concentration, and hence no proof of the offence, would ever be forthcoming if the person did not have to remain for the result and if there were no other grounds for arrest. This would negate the intent of the legislature. **[87-88]**

O'Malley J. determined that this interpretation was fully encompassed within the words of the section. A requirement to provide a specimen by using the apparatus includes within it the requirement to wait until the use of the apparatus has finished. There is no need to imply any further garda powers, or any additional criminal liability on the part of a person chosen for testing. **[89]**

Additionally, O'Malley J. observed that it would not be in accordance with principle to find that a statute had conferred a power to detain by implication, simply in order to make the statute more workable. In any event, she did not see it as necessary for any statutory purpose to imply any additional garda powers into the section. While the very recent amendment effected by s.13 of the Road Traffic Act 2024 may have clarified the situation, under the statute as it stood at the time a requirement to provide a specimen by using an apparatus for indicating the presence of drugs clearly included a requirement to wait for a result. **[91]**

Therefore, it was an error of law for the garda to tell the respondent that he was obliged to wait for a period of one hour. It is now a matter for the District Court to determine whether or not that error had any material effect in circumstances where the respondent was in any event obliged to wait for the result, and the actual time taken by the entire process was considerably shorter than one hour. **[92]**

References in square brackets are to paragraphs in the judgment of O'Malley J.

The Supreme Court of Ireland would like to thank all of the organisations, bodies and courts mentioned throughout this report that kindly provided photographs for use in its publication.

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