



THE SUPREME COURT

DETERMINATION

**IN THE MATTER OF THE DATA PROTECTION ACTS 1988 AND 2003
AND IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 26 OF
THE DATA PROTECTION ACTS 1988 AND 2003**

BETWEEN

PETER NOWAK

APPELLANT

AND

THE DATA PROTECTION COMMISSIONER

RESPONDENT

AND

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN IRELAND

NOTICE PARTY

Neutral Citation: [2020] IESCDET 144

Supreme Court record no: S:AP:IE:2020:000088

Court of Appeal record no: A:AP:IE:2018:000140

High Court record no: 2014 No. 118 CA

Date of Determination: Wednesday, 16th December 2020

Composition of Court: Clarke C.J., MacMenamin J., Baker J.

Status: Approved

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

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

REASONS GIVEN:

ORDER SOUGHT TO BE APPEALED

COURT: Court of Appeal
DATE OF JUDGMENT OR RULING: 1 st July, 2020
DATE OF ORDER: 27 th July, 2020
DATE OF PERFECTION OF ORDER: 10 th August, 2020
THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON 14 th August, 2020 AND WAS IN TIME.

General Considerations

1. The general principles applied by this Court in determining whether to grant or refuse leave to appeal having regard to the criteria incorporated into the Constitution as a result of the Thirty-third Amendment have now been considered in a large number of determinations and are fully addressed in both a determination issued by a panel consisting of all of the members of this Court in *B. S. v. Director of Public Prosecutions* [2017] IESCDET 134 and in a unanimous judgment of a full Court delivered by O'Donnell J. in *Quinn Insurance Ltd. v. PricewaterhouseCoopers* [2017] IESC 73, [2017] 3 IR 812.

It follows that it is unnecessary to revisit the new constitutional architecture for the purposes of this determination.

2. Furthermore, the application for leave filed and the respondent's notice are published along with this determination (subject only to any redaction required by law) and it is therefore unnecessary to set out the position of the parties.
3. Any ruling in a determination concerns whether the facts and legal issues meet the constitutional criteria identified above, is particular to that application, and is final and conclusive only to that extent and as between the parties.
4. The respondent is opposed to the application for leave to appeal.

Background

5. This is the application of Peter Nowak ("the applicant") for leave to appeal to this Court pursuant to the provisions of Article 34.5.3° of the Constitution from the order of the Court of Appeal of 27 July 2020 following a written judgment of 1 July 2020 (Haughton J.), by which the Court upheld the decision of the trial court that the data controller was not obligated to provide data to the data subject in its original form under s. 4(9) or s. 4(1)(a)(iii) of the Data Protection Acts 1988 and 2003.
6. The appeal was brought following the decision of the High Court of 26 February 2018, in which Coffey J. determined that the obligation on the Institute of Chartered Accountants in Ireland (ICAI) to provide the applicant with personal data, whether arising from s. 4(1)(a)(iii) or s. 4(9) of the Data Protection Acts 1988 and 2003, does not include an obligation to provide the data in its original material form or, in the case of a document, to provide the original of that document. The original documents at issue were the

examination scripts of the applicant arising from exams organised by ICAI for accountancy students in 2009.

7. In the Court of Appeal, Haughton J. (with whom Ní Raifeartaigh and Binchy JJ. agreed) dismissed the appeal on the basis that the applicant had failed to point to any error of law in the High Court's interpretation of Article 12 of Directive 95/46/EC and s. 4 of the Data Protection Acts 1988 and 2003. The Court agreed with the trial judge that the obligation on the notice party as data controller does not extend to an obligation to provide the original script to the applicant or to produce it for inspection.

The Application

8. The applicant contends that the appeal is of general public importance because it concerns the interpretation of s. 4 of the Data Protection Acts 1988 and 2003 and, in particular, whether a data subject has a right to access his or her personal data in original format under Irish and/or European law. The appeal is contended to be in the interests of justice on the stated ground that the Court of Appeal's interpretation of the law is incorrect.
9. The respondent argues that the applicant fails to demonstrate any matters of general public importance merely because the proposed appeal concerns the interpretation of s. 4 of the Data Protection Acts 1988 and 2003, and the Court of Appeal decision was based on clearly-worded legislative provisions and clear guidance from the Court of Justice of the European Union.
10. The respondent submits that the interests of justice cannot be engaged by the generalised and broad pleas that the Court of Appeal's interpretation of the law was wrong.

Decision

11. The applicant was furnished with a copy of his script and has been offered the opportunity to inspect the original script, but has not chosen to take up this option and he has not made out any argument that the copy might not be a true copy of the original.
12. In the circumstances, the Court does not consider that the interests of justice justify the grant of leave, or that a matter of general public importance arises.
13. The Court does not rule out the possibility that whether a data subject is entitled to an original document might raise a matter of general legal public importance or one that might justify leave in the interests of justice, such as when issues of data erasure or rectification arise. But the present application must be refused on account of its factual context where no legal basis has been made out that might justify a consideration of that point.
14. Leave to appeal will accordingly be refused.

And it is hereby so ordered accordingly.