



**THE SUPREME COURT  
DETERMINATION**

**BETWEEN**

**FRIENDS OF THE ENVIRONMENT CLG**

**APPLICANT**

**AND**

**THE GOVERNMENT OF IRELAND  
AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**Neutral Citation:** [2020] IESCDET 13

**Supreme Court record no:** S:AP:IE:2019:000205

**Court of Appeal record no:** none

**High Court record no:** 2017 No. 793 JR

**Date of Determination:** Thursday, 13th February, 2020

**Composition of Court:** Clarke C.J., Irvine J., Baker J.

**Status:** Approved

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

**RESULT:** The Court grants leave to the Applicant to appeal to this Court directly from the High Court.

**REASONS GIVEN:**

**ORDER SOUGHT TO BE APPEALED**

<b>COURT:</b> High Court
<b>DATE OF JUDGMENT OR RULING:</b> 19th September, 2019
<b>DATE OF ORDER:</b> 22nd October, 2019
<b>DATE OF PERFECTION OF ORDER:</b> 25th October, 2019

**THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON 15TH NOVEMBER, 2019 AND WAS IN TIME.**

**General Considerations**

1. The general principles applied by this Court in determining whether to grant leave to appeal from a decision of the High Court or of the Court of Appeal have been considered in a 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 *Price Waterhouse Coopers (A Firm) v. Quinn Insurance Ltd. (Under Administration)* [2017] IESC 73, [2017] 3 IR 812.

2. In addition, because this is an application for leave to appeal directly from the High Court, it is necessary that it be established that there are “exceptional circumstances” warranting a direct appeal to this Court. The Supreme Court held in *Mackeral v. O’Donoghue* [2015] IESCDET 27 that it would generally allow a leapfrog appeal only where the exceptional factor or factors identified make it probable both that:
  - (a) the case will come to the Supreme Court in any event, and;
  - (b) the clarification of the legal issues raised would be unlikely to significantly benefit from an intermediate appeal to the Court of Appeal.
3. Furthermore, the application for leave filed and the respondents’ 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.
4. Whilst the respondents do not oppose the granting of leave, this Court must itself be satisfied that the constitutional threshold has been met.
5. 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.

### **The application**

6. This is an application for leave to appeal directly to this Court pursuant to the provisions of Article 34.5.4° of the Constitution from the order of McGrath J. who refused to grant judicial review of the decision of the Government to approve the National Mitigation Plan of 19 July 2017 (“the Plan”) adopted under the Climate Action and Low Carbon Development Act 2015.
7. The respondents filed, on time, a notice which exceeded the permitted length and seek an extension of time to re-submit the notice. The application to extend time is to be granted as the respondents acted promptly when the error was discovered.

### **Discussion**

8. The applicant and the respondents accept that there exists a degree of urgency in respect of the adoption of remedial environmental measures. There is no dispute between the parties as to the science underpinning the Plan and the likely increase in greenhouse emissions over the lifetime of the Plan. Further, the parties accept the gravity of the likely effects of climate change.

9. It is unlikely, therefore, that the questions of law or the factual issues will be further refined as a result of a hearing before the Court of Appeal.
10. The availability of judicial challenge to the legality of the Plan by the Government, the standard of such review if adoption of the Plan is justiciable as matter of law, and the broader environmental rights asserted by the applicant to arise under the Constitution, from the European Convention of Human Rights and/or from Ireland's international obligations are issues of general public and legal importance.
11. The Court is therefore satisfied that the threshold is met and that leave to appeal should be granted.

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