

Between:

MOEEN AKRAM

Applicant

– and –

THE MINISTER FOR JUSTICE AND EQUALITY and THE COMMISSIONER OF AN GARDA SÍOCHÁNA

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 29th January, 2019.

1. Pursuant to s.5 of the Illegal Immigrants (Trafficking) Act 2000, as amended ('the Act'), Mr Akram seeks leave to appeal the decision in *Akram v. Minister for Justice and anor* [2018] IEHC 643. His application falls to be determined in line with the principles identified in *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250, as supplemented in the immigration field by *S.A. v. Minister for Justice and Equality* [2016] IEHC 646. The court reiterates, mutatis mutandis, its observations in *Connolly v. An Bord Pleanála* [2016] IEHC 624, para.14; however, neither side has objected to this Court deciding the within application.

2. Three points of significance present. (1) The court's initial judgment was concerned with a statutory search power. Such a power involves the State intruding forcibly upon individual freedom, a significant intrusion in a liberal democracy. (2) Mr Akram contends that the court's judgment will impact on many people. The respondents rightly contend that the requisite public importance/interest necessary for certification under s.5 is not a 'numbers game'. But a statutory power of search is so intrusive that even if it applies only in limited instances it is important to ensure that it is interpreted/applied correctly. (3) The court's initial judgment is the first in which s.7 of the Immigration Act 2004 has been considered by a superior court. Counsel for the respondents contends that there is therefore certainty as to the law (statute says what it says, the court has said what it said, and there is no contrary authority). Conversely, however, it is not the law that the first person to raise a point of law thereby loses all prospect of securing leave to appeal.

3. *Proposed Appeal Point #1: (a) Does s.7 of the Immigration Act 2004 enable an immigration officer or a member of An Garda Síochána to search the phone of a non-national landing or embarking in the State? (b) Is the power prescribed by law?* Question (a), for the reasons identified at (1) and (2), raises a point of law of exceptional public importance that arises out of the court's initial judgment and which it is in the public interest should be (and it will be) certified for appeal. Question (b) adds nothing to Question (a) and will not therefore be certified.

4. *Proposed Appeal Point #2: If so, does that law comply with Art. 8(2) ECHR, is it 'necessary in a democratic society'?* This point was not argued in this format at hearing. Nor is it a point of law that arises from the court's judgment. It is not therefore a point in respect of which the requisite certificate/leave can or will issue.