

THE HIGH COURT

Between:

E

2018 No. 670 JR

– and –

Applicant

CHIEF INTERNATIONAL PROTECTION OFFICER
AND THE MINISTER FOR JUSTICE AND EQUALITY

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 3rd April, 2019.

1. Pursuant to s.5 of the Illegal Immigrants (Trafficking) Act 2000, as amended, Mr E seeks leave to appeal this Court's decision in *E v. CIPO & anor* [2019] IEHC 39 (the 'Decision'). This judgment is informed by *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250, as supplemented in the immigration field by *SA v. MJE* [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 this application.

2. Mr E proposes the following purported points of law of exceptional public importance:

[1] If a non-judicial/civil servant decision-maker (such as an international protection officer) conducts an examination of an application (such as an application for international protection) with knowledge of information highly prejudicial to the applicant, whilst purporting to disregard it entirely, could it create in the mind of a reasonable observer an apprehension of reasonable bias? Here there was *undisputed* evidence that the Eurodac material of concern was (a) not considered and (b) of no significance to the assessment of the claim. That would be known to the relevant reasonable observer, so the issue contended for cannot arise from the Decision. There is no allegation of subjective bias (nor could it present given the fact/substance of the just-mentioned undisputed evidence).

[2] Whether it is acceptable for someone other than the decision-maker to swear an affidavit on behalf of a respondent, when meeting a claim of objective bias made by an applicant in judicial review proceedings, which purports to offer averments as to what was significant or otherwise in the mind of the decision-maker. There was no allegation of subjective bias made, so no need to 'get inside' the actual decision-maker's mind. As for objective bias, no point of law of exceptional public importance seems to the court to present in an informed official other than the decision-maker swearing affidavit evidence about the impugned process, especially where (as here) such evidence is not controverted and no notice to cross-examine is served.

3. Given the foregoing, leave to appeal is respectfully refused.