THE HIGH COURT

2017 No. 201 JR

Between:

HELENA MERRIMAN, MICHAEL REDMOND, ADRIENNE MCDONNELL, PETER COLGAN, ELIZABETH MCDONNELL, TREVOR REDMOND, PATRICIA DEIGHEN, MARGARET THOMAS, NOEL REILLY, HELEN GILLIGAN, JAMES SCULLY, FERGUS RICE, NOEL DEEGAN, VALERIAN SALAGEAN, SIDNEY RYAN, GREG FARRELL, SHEELAGH MORRIS, JIMMY O'CONNELL, SILE HAND, DECLAN MCDONNELL, ELIZABETH ROONEY & DESMOND O'CONNOR

Applicants

– AND –

FINGAL COUNTY COUNCIL

First Respondent

– AND –

IRELAND AND THE ATTORNEY GENERAL

Second and Third Respondents

– AND –

DUBLIN AIRPORT AUTHORITY PLC

First Notice Party

– AND –

RYANAIR DAC

Second Notice Party

JUDGMENT of Mr Justice Max Barrett delivered on 14th February, 2018.

I

General

(i) Introduction.

1. Many of us come to love where we live. The applicants are no different from anyone else in this regard. However, the intended expansion of Dublin Airport means that their locality and community is about to be changed irrevocably. Some among the applicants will even be driven to leave their present homes. In its judgment of last November in *Merriman & ors v. Fingal County Council & ors* [2017] IEHC 695 ('the principal judgment'), the court was compelled as a matter of law, and not without considerable sympathy for the predicament in which the applicants now find themselves, to refuse them the various reliefs that they came seeking, following on a decision made by Fingal County Council, earlier in 2017, to grant an extension to a planning permission of 2007 pursuant to which Dublin Airport Authority has permission to construct a new runway and to do certain related works at Dublin Airport. As a consequence of s.50A(7) of the Planning and Development Act 2000, as amended ('PADA'), the applicants have now returned to court to seek a certificate from the court "*that its decision* [in the principal judgment] *involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken* [to the Court of Appeal]". In fact, though one such point of law would suffice, the applicants contend that no fewer than nine such points of law present. Leave to appeal the court's decision to the Court of Appeal can only be granted under s.50A(7) where such certificate issues; otherwise no appeal lies from the court's decision, save for the possibility of a direct appeal to the Supreme Court.

(ii) A Two-Prong Test.

2. Section 50A(7) clearly establishes, and has repeatedly been accepted by the courts as having established, a two-prong requirement before a certificate may issue: (i) there must be a point of law of exceptional public importance and (ii) it must be desirable in the public interest that an appeal should be taken. It is true, as counsel for the applicants touched upon by reference to *Ógalas Limited (trading as Homestore and More) v. An Bord Pleanála and ors* [2015] IEHC 205, that a point of law may be of such exceptional public importance that it follows inexorably that it is desirable in the public interest that an appeal should be taken; but even in that circumstance one is still applying a two-prong test. (It can also be, of course, that although a point of law of exceptional public importance is recognised as presenting, a court may conclude that it is not desirable that an appeal should be taken – as evidenced by the decision in *Arklow Holidays v. An Bord Pleanála* [2008] IEHC 2 in which Clarke J., as he then was, determined that even though one of the points raised before him was of exceptional public importance, it would not be in the public interest to grant leave to appeal because of the delay that would be caused to the construction of a needed waste-water treatment plant). But if there was ever any doubt that s.50A(7) establishes a two-prong test, and in truth there has never been doubt in this regard, this (non-) issue has been hit squarely on the head by the Supreme Court in its decision in *Grace & anor v. An Bord Pleanála & ors* [2017] IESC 10, para. 3.6, as referred to by Dunne J. in her judgment for the Supreme Court (handed down on the day the within application was heard) in *Rowan v. Kerry County Council* [2018] IESC 2, in which the Supreme Court actually emphasised in bold text the two-prong dimension of s.50A(7).

(iii) The Law Concerning Applications Pursuant to Section 50A(7).

a. *Glancré, et al*.

3. The law respecting applications such as that now presenting was the subject of consideration by the court in its decision last month in *North East Pylon Pressure Campaign Ltd & anor v. An Bord Pleanála & ors* [2018] IEHC 3, in which the court, *inter alia*, (i) respectfully adopted the principles identified by MacMenamin J. in *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250, 4-5, as the guiding principles that inform the adjudication of an application such as that now presenting, and (ii) added a few points that seemed to be of note in that application, though they also have a more general resonance. The court proceeds in this judgment by reference

to those principles and points and does not propose to revisit the applicable law afresh, beyond noting that although the decision in *Glancré*, as counsel for the applicants rightly noted in his oral submissions, is not "*a piece of legislation*", it is also not just, as he contended, "*the view of a judge in a particular case…*[to] *be read in the context of the issues before him in that case".* That, it seems to the court, with respect, is unduly to diminish the standing and reach of case-law in our legal system. Moreover, while the court accepts that the abundant words of case-law must never obfuscate the clear words of statute, the decision in *Glancré* does not do anything of the sort; rather, it offers a useful road-map by which to chart the unfamiliar legal terrain into which every judgment to some extent embarks, and it has repeatedly been recognised by the courts so to do.

b. *Altrip*

4. In *Glancré*, MacMenamin J., observed as follows of the leave to appeal regime now arising under s.50A(7) of PADA:

> *"It is clear that the statutory regime which has been devised by the legislature indicates an interest to ensure that the planning process is not to be hampered by a completely unrestricted access to the court which may cause harmful delays. I am satisfied that it is a restriction to be lifted only in exceptional cases."*

5. In their submissions, the applicants contend that the legislative intention referred to by MacMenamin J. "*can no longer be assumed in the light of Article 11 of the EIA Directive and the jurisprudence of the CJEU*", particular emphasis being placed in this regard on the following observations of the Court of Justice in its judgment in *Gemeinde Altrip and ors v. Land Rheinland-Pfalz* (Case C-72/12):

> *"27* [I]*f extending the right of action of the public concerned to challenge acts or omissions relating to such projects is likely to increase the risk that those projects will become the subject of contentious proceedings, that increase of a pre-existing risk cannot be regarded as affecting a situation already established.*
>
> *28. Although it is true that that extension may have the effect, in practice, of delaying the completion of the projects involved, a disadvantage of that kind is inherent in the review of the legality of decisions, acts or omissions falling within the scope of Directive 85/337* [the initial EIA Directive], *a review in which the legislature of the European Union has, in accordance with the objectives of the Århus Convention, sought to involve members of the public concerned having a sufficient interest in bringing proceedings or maintaining the impairment of a right, with a view to contributing to preserving, protecting and improving the quality of the environment and protecting human health."*

6. Two points fall to be made as regards the above-mentioned contentions:

(1) the applicants' contention in respect of Art.11 of the EIA Directive, as amended, in truth enjoys no basis when one looks to the text of that provision. Article 11, in its entirety, provides as follows:

> "*Article 11*
>
> *1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:*
>
> *(a) having a sufficient interest, or alternatively;*
>
> *(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition; have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.*
>
> *2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.*
>
> *3. What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To that end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) shall be deemed sufficient for the purpose of point (a) of paragraph 1 of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of point (b) of paragraph 1 of this Article.*
>
> *4. The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.*
>
> *Any such procedure shall be fair, equitable, timely and not prohibitively expensive.*
>
> *5. In order to further the effectiveness of the provisions of this Article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures."*

As can be seen from the just-quoted text, there is nothing in Art.11 which requires that a review procedure should involve a two-stage court process with a right of appeal to an appellate court. In fact, the directive does not require a right of appeal. Nor does it require that such review procedure as is undertaken even be undertaken by a court: some other "*independent and impartial body established by law"* will do just as well as a court (at least for the purposes of the EIA Directive; whether, for example, such an "*independent and impartial body*" would enjoy the public 'buy-in' that our court-administered system of justice enjoys is another issue, though, in truth, for another forum). As can also be seen from the just-quoted text, Art.11 does not stop European Union member states from imposing limitations on any such right of appeal as exists within their respective territories. These are matters left by Art.11 to the autonomy of individual member states; the decision of the Court of Justice in *Altrip* does not alter this legal reality.

(2) the reliance placed on *Altrip* by the applicants appears to the court, with respect, to be in any event misplaced. In *Altrip*, the Court of Justice was concerned with the temporal application of the review procedure arising under Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (O.J. L156, 25.06.2003, 17) (known generally as the 'Public Participation Directive'). Because of the absence of transitional provisions in that directive, the CJEU had to decide how 'pipeline' projects where the consent application was made prior to the implementation date fell

to be treated. What the CJEU decided was that the review procedure did apply to such projects but only where they resulted in the granting of development consent after the implementation date. In other words, what the CJEU decided was that where a consent application went in pre-implementation date, if the decision to grant consent issued post-implementation date, then a review procedure was available. And in para.28 of its judgment, quoted above, the Court of Justice took the view that if that answer yielded delay, then so be it. But there is nothing in that observation or in the decision in *Altrip* more generally which stands as authority for the proposition that there must be a second, appellate stage to the review procedure.

(iv) General Practice as Regards the Hearing of Applications Pursuant to Section 50A(7).

7. Before turning to the various purported points of law of exceptional public importance contended for by the applicants, the court re-emphasises the view it expressed, *inter alia*, at para.2 of its judgment in *North East Pylon*, concerning current general practice whereby the judge who hears a principal planning dispute also decides any later related s.50A application, a practice the optics of which, for the reasons identified by the court in its judgment in *Connolly v. An Bord Pleanála* [2016] IEHC 624, para.14, appear open to criticism and the practical necessity for which is open to question. That said, no objection was taken by any of the parties hereto in this regard and the hearing thus proceeded in line with the prevailing and historical practice pertaining to the conduct of such hearings.

II

The EIA Directive Points

8. The EIA Directive points are as follows:

> **(i) is the decision of the respondent to extend the duration of the permission for the second runway a development consent for the purposes of the EIA Directive?**
>
> **(ii) in extending the permission for the development which has been the subject of an EIA, is there an obligation to do a fresh assessment, or to consider whether or not a fresh assessment or an updating assessment is required? In the alternative, is the EIA (or any EIA) once done, valid indefinitely? Are the provisions of s.42 of PAFA consistent with EU law and the EIA Directive?**
>
> **(iii) does the decision to extend the duration of the planning permission engage the public participation provisions of the EIA Directive in this or any case?**

9. These points relate to the issue of whether a decision to grant an extension of duration under s.42 of PADA is a 'development consent' for the purposes of the EIA Directive. The court indicated in the principal judgment that it was not. It did so by reference to decisions of the Supreme Court and the Court of Justice (*Dunne v. Minister for the Environment (No 2)* [2007] 1 I.R. 194, *R. (Wells) v. Secretary of State for Transport, Local Government and the Regions* (Case C-201/02), *Križan v. Slovakia* (Case C-416/10) and *Pro-Baine ASBL and Ors v. Commune de Braine-le-Château* (Case C-121/11)); and it found, *inter alia*, no uncertainty in European Union law to present, such as would inform a decision to make a reference to the Court of Justice under Art. 267 TFEU. That there are applicable, clear, standing precedents of the Supreme Court and the Court of Justice which have not been overtaken, *e.g.*, by new law or later, divergent decisions, indicates most clearly that there is no legal uncertainty arising in this context. The application of such precedent to arrive at the conclusions reached was in no way innovative, notwithstanding that the conclusions reached as a consequence were doubtless disappointing to the applicants. If the applicants consider that the Supreme Court itself erred in Dunne, that is a matter which they can seek separately to appeal directly to the Supreme Court, and they do not need the leave of this court so to proceed.

10. For the reasons stated, the court finds that none of the EIA Directive points involves a point of law of exceptional public importance, a pre-requisite to the issuance of a certificate under s.50A(7).

III

The Habitats Directive Points

11. The Habitats Directive points are as follows:

> **(i) in circumstances where an appropriate assessment was required but not carried out, can the duration of the within (or any) planning permission be extended?**
>
> **(ii) is s.42 of PADA inconsistent with and/or contrary to the requirements of the Habitats Directive, in particular the obligations on member states identified by the CJEU in** *Grüne Liga Sachsen eV and Ors v. Freistaat Sachsen* **(Case C-399/14), in relation to Art.6(2) of the Habitats Directive and, in particular, the obligation in certain instances to carry out a subsequent review in accordance with Art.6(3) notwithstanding the fact that a valid planning consent has been granted and indeed that the project has been constructed and completed or that the plan has been implemented?**

12. The applicants to the within application are seeking in this regard to be granted leave to appeal on an issue for which, at trial, no evidential basis was laid by them and the legal argument which they now seek to make was never made (indeed the decision of the CJEU in *Grüne Liga Sachsen* never got a mention at trial by either the applicants to the within application or the 'Friends of the Irish Environment' in their application). [*Grüne Liga Sachsen* does not in any event assist the applicants for two reasons. First, there is a significant distinction of fact between that case and this. The bridge in *Grüne Liga Sachsen* was in a site of Community interest. The proposed new runway is not; there is (and was) a want of evidence before the court that any such site will be impacted by the new runway development (had there been such evidence that would have been most carefully considered); and there is no evidence of a change in site designations since the permission was granted. Second, the focus of *Grüne Liga Sachsen* is on Art.6(2) of the Habitats Directive; as touched upon in the main text above, to the extent that the applicants did make a Habitats Directive point, it was concerned with Art.6(3) of that directive.] To the extent that the applicants did make a Habitats Directive point, it was concerned with Art.6(3) of the Habitats Directive whereas what it is now sought to do is make an argument by reference to Art. 6(2). One gets to appeal the case that one fought, not a case that one might have fought but which was neither fought nor adjudicated upon,

which latter (non-) case does not and cannot involve or yield a decided point of law.

13. For the reasons stated, the court finds that none of the Habitats Directive points involves a point of law of exceptional public importance, a pre-requisite to the issuance of a certificate under s.50A(7).

IV

The 'Right to Make Submissions' Point

14. The 'right to make submissions point' is as follows:

> **(i) having regard to the applicants' properties and property rights and the effect thereon of the extension of duration of the within permission, did the applicants have a right to fair procedures and/or to make submissions in the context of the decision to extend the duration of the permission**?

15. By way of starter, it is perhaps worth recalling in this regard that the court found in its judgment that the applicants did not seek to make any meaningful representations to Fingal County Council. Reference was made by the court in this regard to the applicable, clear and standing precedent represented by *Lackagh Quarries Ltd v. Galway City Council* [2010] IEHC 479, *Coll v. Donegal County Council* [2005] IEHC 231 and *Collins v. Galway County Council* [2011] IEHC 3. As to *Dellway Investments v. NAMA* [2011] 4 IR 1, as the court noted at some length in its judgment there are very significant differences, legal and factual, between the position that presented in that case and the case at hand. Not least among these differences is that the duration of the permission was found by the court to be a matter on which the applicants could have made submission back in 2007 and simply did not. That is the obverse of the position which pertained in *Callaghan v. An Bord Pleanála* [2015] IEHC 357, a decision relied upon by the applicants to buttress their present application. As the court noted at para. 82 of the principal judgment,

> "[In *O'Callaghan*] *the applicant was held not to have a right to participate in a decision before the consent procedure had commenced (because his participation rights would be fully vindicated in the subsequent consent procedure). Here the opposite scenario presents*…[the applicants] *have no right to participate in a decision after the planning permission has issued (because they have already had their participatory rights vindicated through that consent procedure).*"

16. Viewed so, *Callaghan* offers no support as regards the within application for certification.

17. For the reasons stated, the court finds that the 'right to make submissions' point does not involve a point of law of exceptional public importance, a pre-requisite to the issuance of a certificate under s.50A(7).

V

The 'Vital Importance' Point

18. The 'vital importance' point is as follows:

> **(i) did the trial judge err in law and in fact in determining that a planning permission involving the runway with the characteristics referred to in paras. 6 and 7 of the judgment does not attract, without more, any special consideration, or any special separate immunity from scrutiny by reason of those interests and notwithstanding the interests of the applicants or individuals in the same category as the applicants in these proceedings**?

19. The point, as worded, is not perhaps optimally clear. To the extent that it is predicated on an alleged error of fact, an alleged error of fact cannot be certified as a point of law for the purposes of s.50A(7). Moreover, the point as worded suggests that the court arrived at determinations which it did not actually arrive at; and it rather ignores too the observation of the court, at para.8 of the principal judgment, into which paras. 6 and 7 patently feed, that "*The vital importance of the new runway to the national economy constitutes, to the court's mind, a relevant factor to which it may properly have regard in deciding whether to grant discretionary relief in the context of judicial review proceedings*". Two further difficulties present for the applicants when it comes to presenting the above issue as a point of law of exceptional public importance. First, with respect, the applicants completely lost the application to which the principal judgment relates. So no question as to the proper exercise of discretion arose in the within proceedings: the court found that the applicants were not entitled as a matter of law to any reliefs, so the question of its exercising a discretion to refuse a relief that might be granted just did not arise. As a consequence, the court's impugned observations in the principal judgment fall, in truth, to be read as *obiter*. Second, the notion that judicial review is a discretionary remedy and that an issue such as the public interest can inform whether or not to grant a discretionary relief is, with respect, trite law that is not the subject of any controversy.

20. For the reasons stated, the court finds that the 'vital importance' point does not involve a point of law of exceptional public importance, a pre-requisite to the issuance of a certificate under s.50A(7).

VI

The *McDowell* Point

21. The *McDowell* point is this:

> **(i) is the court bound by the decision in** *McDowell v. Roscommon County Council* **[2004] IEHC 396 where the criticism of the development sought to be extended is that it has not properly commenced in circumstances where 'commencement' is the relevant sub-provision of s.42 in issue?**

22. Notably this contended-for point of law of exceptional public importance rests on a factual premise – the notion that the development "*has not properly commenced*" – which is not supported by the principal judgment and was rejected by the court in related proceedings (*St Margaret's Concerned Residents Group & ors v. Dublin Airport Authority* [2017] IEHC 694). In any event, *McDowell* – a case which the court does not recall being the subject of any especial focus by the applicants at the hearing which preceded the principal judgment – is longstanding precedent that considered previous case-law and with which the later decision of

the High Court in *Lackagh Quarries* (also touched upon by the court in its judgment) is consistent.

23. Counsel for the applicants rightly notes that s.42 has changed since *McDowell* was decided, but there is nothing in such change which displaces the logic of *McDowell* that where there are two decision-making processes at play (one being extension of duration and the other concerning enforcement), those two processes cannot be intermingled. But even if the court is wrong in this (and it does not consider that it is), even if the world has moved on since *McDowell* (and the court respectfully considers *McDowell* both to have been and to remain a correct exposition of applicable principle), what of it? As the court noted in its decision in *North East Pylon* last month, *op. cit*., para.3, point (6):

> "[When it comes to applications under s.50A(7)] *the court is solely concerned with permitting the invocation of an appellate jurisdiction. It is not concerned with permitting a consultative case stated or an advisory opinion from the court on an issue of law that may or may not appear interesting, or which may or may not appear, in the abstract, to be significant. It follows that it is appropriate for the court to ask itself 'What difference will it make in the event that an appeal is permitted and the matter that is the subject of appeal is determined in a particular way?' Or, to put matters in a more colloquial style 'Does the issue raised have 'real world' consequence?'"*

24. What is the "'*real world' consequence*" in the hypothetical scenario where, for the purposes of argument, the court accepts that it was wrong in applying *McDowell* as it did and in viewing *McDowell* as not having been superseded by events? The unhappy answer for the applicants is that there is no "'*real world' consequence*". In its associated judgment in *St Margaret's*, the court noted among its conclusions, at para.86, that "*the breach of condition presenting in the case at hand was temporary and…the substance of what was required has been remedied so that the essential substance of what was required has been achieved*", and also that "*looked at in the overall context, the breach – notwithstanding the sincerity and depth of feeling on the part of the applicants – was not great in circumstances where,* inter alia*, the parameters of the waste management plan had been laid down in the environmental protection plan submitted to, and agreed with, Fingal County Council in October 2016."* The foregoing being so, and the court found it to be so, there is no basis on which a court could properly say, given the de minimis breach at play, that the developer (Dublin Airport Authority) should suffer the sanction of being refused an extension of duration. That simply would not happen in all the circumstances presenting. So, even taking the applicants' case at its best, and applying the law in a hypothetical scenario which the court does not consider to present, there is no "'*real world' consequence*" to the *McDowell* point.

25. For the reasons stated, the court finds that the *McDowell* point does not involve a point of law of exceptional public importance, a pre-requisite to the issuance of a certificate under s.50A(7).

VII

The *Cronin* Point

26. The *Cronin* point is this:

> **(i) is the court bound by the decision in** *Cronin (Inspector of Taxes) v. Cork and County Property Company* **[1986] IR 559, where the question is whether an earlier provision of national law reflects a failure to transpose in comparison with a later provision (un-commenced statute) which achieves a more appropriate alignment with the State's obligations under a European Union directive?**

27. The point raised in this regard harks back to the following assertion by the court, at para.162 of the principal judgment:

> *"The court has also been invited to identify an alleged failure to transpose the EIA Directive correctly into Irish law by reference to such changes as will fall to be made to s.42 of PADA upon the commencement at some future time of s.28(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended by s.1 of the Planning and Development (Amendment) Act 2017. The fact that s.28(1) of the Act of 2016 has not been commenced, in truth, is neither here nor there: what is being asked of the court in this regard, regardless of whether and when s.28(1) is commenced, is an entirely impermissible form of statutory interpretation. So, for example, if one looks to* Cronin (Inspector of Taxes) v. Cork and County Property Co. Ltd *[1986] I.R. 559, a case concerned with the interpretation of revenue legislation, Griffin J., in the Supreme Court, observes, inter alia, as follows, at 572:*
>
> > *'With regard to the submission of counsel for the company that the amendment of s. 18 by s. 29 of the Finance Act, 1981, was an implied acceptance by the Oireachtas of the construction of s. 18 for which they contended, the Court cannot in my view construe a statute in the light of amendments that may thereafter have been made to it. An amendment to a statute can, at best, only be neutral — it may have been made for any one of a variety of reasons. It is however for the courts to say what the true construction of a statute is, and that construction cannot be influenced by what the Oireachtas may subsequently have believed it to be.'"*

28. As counsel for Dublin Airport Authority rightly contended, this principle of statutory interpretation is so well-established that there simply is no uncertainty presenting in the law. (See in this regard, *e.g., Clinton v. An Bord Pleanála* [2007] 1 IR 272, *Revenue Commissioners v. Glenkerrin Homes* [2010] 1 IR 1, *Revenue Commissioners v. Droog* [2011] IEHC 142 and *Cassidy v. Commissioner of An Garda Síochána* [2014] IEHC 386). Nor is there anything in the case-law of the Court of Justice, let alone in the law of the European Union more generally, which suggests that a national court must dis-apply national rules of statutory interpretation in the European Union law context; even the principle of consistent interpretation comes subject to an 'insofar as possible' proviso; no *contra legem* interpretation is required. So, for example, in *Impact v. Minister for Agriculture and Food and ors* (Case C-268/06), the Court of Justice observed, at paras. 99-100:

> *"99 The requirement that national law be interpreted in conformity with Community law is inherent in the system of the EC Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of Community law when they determine the disputes before them….*
>
> *100 However, the obligation on a national court to refer to the content of a directive when interpreting and applying the relevant rules of domestic law is limited by general principles of law, particularly those of legal certainty and non-retroactivity, and that obligation cannot serve as the basis for an interpretation of national law contra legem….".*

29. For the reasons stated, the court finds that the *Cronin* point does not involve a point of law of exceptional public importance, a pre-requisite to the issuance of a certificate under s.50A(7).

VIII

Conclusion

30. As the court indicated in the principal judgment, para.272, and it meant it, *"The court respects the fighting-spirit of Ms Merriman and her fellow applicants and sympathises with her and them as regards the predicament in which they find themselves."* However, for the reasons stated in the preceding pages the court is driven, as a matter of logic and law, to the conclusion that there is not within any of the nine purported points of law of exceptional public importance, as contended for by the applicants, even a single *"point of law of exceptional public importance".* This being so, the first prong of the two-prong test established by s.50A(7) of PADA is not satisfied and the two prongs of that test cannot therefore be satisfied. It follows that no certificate of the type contemplated by s.50A(7) can issue, and thus no leave to appeal can be granted by the court.