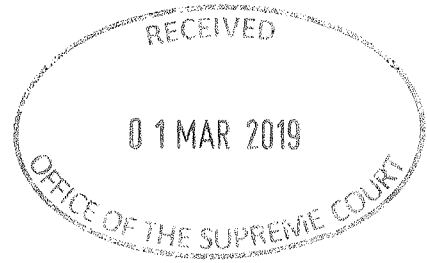


No. 1

O. 58, r. 15



**SUPREME COURT**

Record No:

**Application for Leave to Appeal**

**Part I**

*The information contained in this part will be published. It is the applicant's responsibility to also provide electronically to the Office a redacted version of this part if it contains information the publication of which is prohibited by any enactment or rule of law or order of the Court*

- 1. **Date of Filing:**
- 2. **Title of the Proceedings: [As in the Court of first instance]**

FROM TULLI QUITE IN NOTICE 5/24/19  
 STAFF OFFICE COURT FEE INCOMES  
 Transaction: 100279  
 Fee Code : 015  
 Fee : 220.00  
 Operator : ANONIA  
 Dated : 01/07/2019 12:04:07  
 Payment No:

**CATALIN PETECEL**  
**(SUING THROUGH HIS LEGAL GUARDIAN MARIA PETECEL)**

**APPELLANTS/APPLICANTS**

**-v-**

**MINISTER FOR SOCIAL PROTECTION,  
IRELAND AND THE ATTORNEY GENERAL**

**RESPONDENTS/RESPONDENTS**

3. Name of Applicant: CATALIN PETECEL (SUING THROUGH HIS LEGAL GUARDIAN MARIA PETECEL)

What was the applicant's role in the original case: *[Plaintiff, Defendant, Applicant, respondent etc]*

**Applicant/Appellant**

4. Decision of Court of Appeal (where applicable):

*Record No:* 2018 421

*Date of Order:* 20<sup>th</sup> of February 2019 *Perfection Date:* 21<sup>st</sup> of February 2019

*Date of Judgment:* 6 February 2019

*Names of Judges:* Whelan J., Costello J., Kennedy J.

5. Decision of the High Court:

*Record No:* 2017 No. 582 JR

*Date of Order:* 9<sup>th</sup> of October 2018 *Perfection Date:* 22<sup>nd</sup> of October 2018

*Date of Judgment:* 4 May 2018

*Names of Judge(s):* Barrett J.

*Where this application seeks leave to appeal directly from an Order of the High Court has an appeal also been filed in the Court of Appeal in respect of that Order?*

Yes  No

6. Extension of Time: Yes  No

*If an application is being made to extend time for the bringing of this application, please set out concisely the grounds upon which it is contended time should be extended.*

**7. Matter of general public importance:**

*If it is contended that an appeal should be permitted on the basis of matter(s) of general public importance please set out precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance justifying appeal to the Supreme Court.*

*This section should contain no more than 500 words and the word count should appear at the end of the text.*

- (1) Social Welfare Law has given rise to a half-century of tension between Member States and the EU (accounting, previously, for 20% of all Preliminary References). The Superior Courts in this jurisdiction, have endeavoured, admirably, to grapple with complex, controversial and difficult legal questions in this area – giving rise to Preliminary References which have resulted in landmark judgments (see *Gusa*, Case C-442/16, *Bogatu*, Case C-322/17. And AG’s Opinion in *Tarola*, Case C-483/17 – judgment awaited).
- (2) The importance of social welfare, to vulnerable, seriously ill, unemployed migrant workers and their families (presently/previously resident in Ireland) cannot be over-stated and nor can the necessity for Preliminary References in these complex cases. The Applicant/Appellant, who only ever worked in one Member State, Ireland, is comatose, requiring 24-hour care from his mother), with a limited, albeit unknown, life-expectancy.
- (3) This case raises two complex questions: categorisation of Disability Allowance by this State, in Annex X Regulation 883/2004 (not exportable) and the right of residence and habitual residence of the Applicant/Appellant in this State (though resident outside the State). The CoJEU has recategorized similar payments as sickness benefits, thus exportable (*Commission v Parliament and Council*, Case C-299/05, *Hughes*, Case C-78/91 and *Callemeyn* Case 187/73). In a reverse situation (to that of the Applicant/Appellant), an Irish gentleman forced through ill-health to remain in another Member State, was found not to have transferred his habitual residence to that Member State (see *I v HSE*, Case C-255/13).
- (4) Matters concerning substantive TFEU rights such as free movement (Art. 45), citizenship, and social welfare entitlements (Art. 48) and Reg. 883/2004, Dir. 2004/38 and Reg. 492/2011 are matters of general public importance.
- (5) It is very respectfully submitted that the High Court (case heard over two days) and Court of Appeal, lost sight of the important legal points raised in the within proceedings; both Courts declining relief on the basis of failure to exhaust alternative remedies.

(6) The Court of Appeal also erred in law.

(7) While Respondents routinely assert that Applicants/Appellants should exhaust alternative remedies (Social Welfare Appeals Office); the Superior Courts have, generally, accepted that such complex cases are appropriately before the Court.

(8) The judgments of the High Court and Court of Appeal constitute a radical departure from extant precedent and raise fundamental and important issues pertaining to the inter-relationship of the exercise of a Court's discretion and effectiveness or otherwise of remedies within Part 10 of the Social Welfare Consolidation Act 2005.

(9) Is a seriously ill claimant, raising complex issues, requiring urgent determination and almost certainly requiring a Preliminary Reference, really expected to go through an appeal process where *inter alia*:

The Chief Appeals Officer refuses to make preliminary references (subject of litigation, *Dinu v Chief Appeals Officer*);

There are delays (no prioritisation);

The Appeals Officer patently lacks jurisdiction to address the issues and;

The jurisdiction of a Court in a statutory appeal on a question of law to address such matters is questionable (see *Meagher v Minister for Social Protection* [2015] 2 IR 633).

Word count - 499

#### **8. Interests of Justice:**

*If it is contended that an appeal should be permitted on the basis of the interests of justice, please set out precisely and concisely, in numbered paragraphs, the matters relied upon.*

*This section should contain no more than 300 words and the word count should appear at the end of the text.*

1. Fundamental to the question of Treaty and secondary law rights is the question of compliance by Member States. Membership of the Union places significant demands upon all Member States. There are important principles at play – *equality*, *sincere co-operation* and *solidarity* – which may be regarded as the foundation stones of the Union.
2. Can it be said that this State, have abided by these principles? Is it just, that a former worker, heretofore lawfully and habitually resident in this State, latterly forced to remain outside the State by virtue of being struck down with a serious illness, is denied his entitlement to have his case determined, solely by an overly restrictive procedural impediment? Is the case not difficult enough already? Does it truly matter how a case is brought to Court, if such a course of action is self-evidently inevitable? Should *all parties and the Courts* be searching for the answers to the difficult questions posed, rather than trying to avoid them? It is noted that there has, in the Supreme Court, in recent years, been a move away from overly restrictive procedural rules being used to defeat applicants/appellants (see by analogy *Keegan v. Garda Síochána Ombudsman Commission* [2012] 2 I.R. 570 and *Copymoore Limited and Ors v. Commissioners of Public Works of Ireland (No. 2)* [2014] IESC 63).
3. It appears from the judgment of the Court of Appeal that the learned judges did not consider that they could exercise their own discretion in the case and there is no consideration of this in the judgment – which is solely concerned with whether or not the High Court judge correctly exercised his discretion.

Word count – 264

**9. Exceptional Circumstances: Article 34.5.4:**

*Where it is sought to apply for leave to appeal direct from a decision of the High Court, please set out precisely and concisely, in numbered paragraphs, the exceptional circumstances upon which it is contended that such a course is necessary.*

*This section should contain no more than 300 words and the word count should appear at the end of the text.*

Word count -

**10. Grounds of Appeal**

*Please set out in the Appendix attached hereto the grounds of appeal that would be relied upon if leave to appeal were to be granted.*

**11. Priority Hearing:** Yes  No

*If the applicant seeks a priority hearing please set out concisely the grounds upon which such priority is sought.*

*This section should contain no more than 100 words and the word count should appear at the end of the text.*

The Applicant/Appellant requires 24-hour care, he is PEJ-fed (via a tube), his quality of life, such as it is, is dependent upon the support and care of his mother, a lady in her late 60's. The issues raised almost certainly require a reference to the CoJEU. The determination of his entitlement (or otherwise) to Disability Allowance is a matter of some urgency.

Word count - **62**

**12. Reference to CJEU:**

*If it is contended that it is necessary to refer matters to the Court of Justice of the European Union please identify the matter and set out the question or questions which it is alleged it is necessary to refer.*

(i) Is Disability Allowance correctly categorised in Annex X of Regulation 883/2004 as a special non-contributory cash benefit and thus not exportable or is Disability Allowance a Sickness Benefit for the purpose

of Article 3(1)(a) of Regulation 883/2004 or, alternatively, an invalidity benefit for the purpose of Article 3(1)(b) of Regulation 883/2004 and thus exportable?;

- (ii) Alternatively, in circumstances where the claimant in the within proceedings was lawfully resident as a worker (for the purpose of Art. 45 TFEU and Directive 2004/38) and thus enjoyed a presumption of habitual residence for the purpose of Regulation 883/2004 and national law and left Ireland (the only Member State in which he was ever employed) for a period he understood to be temporary for medical treatment in Romania (where he never worked) and was so ill (and remains so) that he was unable to return to Ireland, does he retain his habitual residence in Ireland and does he retain a legal right of residence in Ireland on any basis?