



Part I

The information contained in this part will be published. It is the respondent'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. Title of the Proceedings:

High Court Record No. 2018/476 JR
Court of Appeal Record No. 2018/380

R. S

Applicant

-v-

The Chief International Protection Officer
and
The Minister for Justice and Equality

Respondents

and

The International Protection Appeal Tribunal

Notice Party

2. Name of Respondent: R. S

3. Application to extend time:

Yes

No

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

Not applicable

4. Do you oppose the Applicant's application to extend time:

Yes No

If an application by the applicant to extend time is being opposed please set out concisely the grounds on which it is being opposed.

Not applicable

5. Do you oppose the Applicant's application for leave to appeal:

Yes No

6. Matter of general public importance:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is contended, that the matter does not involve a matter of general public importance. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that the matter involves a matter of general public importance.

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

1. The legal test for injunctive relief has been recently and comprehensively codified by this Court: *Okunade v. Minister for Justice* [2012] 3 IR 152; *CC [Charles] v. Minister for Justice* [2016] 2 IR 680. The application of these principles to individual cases is not a matter of public importance.
2. The importance of the High Court's *HTK* case not being the subject of specific comment by the Court of Appeal is overstated. *Obiter* comments from the bench cannot, as a basic matter of law, displace a power to adjourn provided for by a legislative enactment. Each Member of the Notice Party Tribunal is clearly conferred with jurisdiction to adjourn any given appeal where it is in

the interests of justice. It is clear that the interests of justice may include awaiting the determination of parallel judicial review proceedings in respect of the very same appealed-against recommendation. That is a matter within the Tribunal Member's lawful discretion. To impose a blanket rule whereby the Tribunal is deemed to be powerless to grant an adjournment unless the High Court so permits, is to manifestly fetter such discretion.

3. The Applicant's attempt to draw an analogy with other administrative schemes is misplaced. In no other area of Irish administrative law has it been suggested that an appellate body is prohibited, in the absence of a court order, from adjourning an appeal whilst judicial review of a first-instance decision takes its course. The Respondent made the point to the Court of Appeal that a person aggrieved with a District Court conviction is not required, as a matter of unyielding law, to obtain injunctive relief against the Circuit Court dealing with his appeal when he, or another, brings a judicial review challenge. The Applicant appears to suggest, or canvas the possibility to this Court, that the *dictum* identified in *HTK* could lead to such a result.
4. Judgment in the *HTK* case was delivered three years ago and has never been cited by the Superior Courts, let alone relied upon, in a non-asylum context insofar as can be ascertained. There is no evidence that the case has any significance beyond the protection system.
5. The Applicant has not argued in the Courts below that the *dictum* contained *HTK* and the subject of the present application did not reflect the true legal position (although the Respondent did indeed make such submission). For the Applicant in such circumstances to seek in effect an advisory judgment is inappropriate. The *obiter dictum* in *HTK* was not relied upon by the Court of Appeal.
6. It cannot be an error of law for the Court of Appeal to fail to address an *obiter dictum* of a High Court Judge.

7. Interests of Justice:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is alleged, that the interests of justice do not require an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended, that the interests of justice require an appeal.

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

Not applicable

8. Exceptional Circumstances Article 34.5.4:

Where it is sought to apply for leave to appeal direct from a decision of the High Court pursuant to Article 34.5.4, please set out concisely, in numbered paragraphs, the grounds upon which it is contended that there are no exceptional circumstances justifying such an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that there are exceptional circumstances justifying such an appeal.

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

Not applicable

9. Respondent's grounds for opposing an appeal if leave to appeal is granted:

Please set out in the Appendix attached hereto the Respondent's grounds of opposition to the Grounds of Appeal set out in the Appellant's Notice of Appeal.

10. Cross Application for Leave:

If it is intended to make a cross application for leave to appeal please set out here precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance or the interests of justice justifying a cross appeal to the Supreme Court.

If it is sought to make a cross application for leave to appeal direct from a decision of the High Court, please also 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 500 words and the word count should appear at the end of the text.

Not applicable

11. Additional Grounds on which the decision should be affirmed and Grounds of Cross Appeal

Please set out in the Appendix attached hereto any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court and / or the grounds of cross appeal that would be relied upon if leave to appeal were to be granted.

12. Priority Hearing:

Yes No

If a priority hearing is sought please set out concisely the grounds upon which it is alleged that such a hearing is necessary.

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

Not applicable

13. Reference to CJEU:

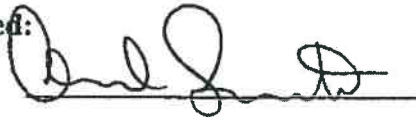
If it is contended that it is necessary to refer matters to the Court of Justice of the European Union, please identify the matter, and set out the question or questions which it is alleged it is necessary to refer.

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

Not applicable

Part II

Signed:



**Ms Carol Sinnott
Sinnott Solicitors
Solicitor for the Respondent
10 Church Avenue
Rathmines
Dublin 6**

Date:

5/7/19

To be served on:

**Maria Browne
Chief State Solicitor
Solicitor for the Applicant
Osmond House
Little Ship Street
Dublin 8**

Please file your completed Notice in:

**The Office of the Registrar of the Supreme Court
The Four Courts
Inns Quay
Dublin 7**

Appendix
Grounds of Opposition

1. Title of the Proceedings:

High Court Record No. 2018/476 JR
Court of Appeal Record No. 2018/380

R S

Applicant

-v-

The Chief International Protection Officer
and
The Minister for Justice and Equality

Respondents

and

The International Protection Appeal Tribunal

Notice Party

2. Respondent's grounds for opposing an appeal if leave to appeal is granted:

Please list concisely in numbered paragraphs, the Respondent's ground(s) of opposition to the grounds of appeal set out in the Appellant's Notice of Appeal.

1. The Applicant wishes to plead a ground on appeal in the Supreme Court that was not raised by him in the Court of Appeal which complains about the Respondent raising an argument in the Court of Appeal which he did not canvass in the High Court. Without prejudice to the foregoing, the necessity for the Respondent to have raised specific arguments about the constitutional right of access to the courts was diminished by the neutral position adopted by the Applicant in the High Court. Without prejudice to the foregoing, the Respondent could not have been properly precluded from relying upon the constitutional right of access to the courts in the Court of Appeal.
2. The balancing exercise conducted by the Court of Appeal is not erroneous because the Applicant lost. As the Court below held, it is not always possible to arrive at a decision that is satisfactory for each party. The Court of Appeal

recognised that the smooth and efficient continuation a decision-making structure put in place by statute is a factor worthy of being accorded significant weight in this balancing exercise. "Winning" the litigation for the Respondent would mean that the adverse recommendation made on his application for subsidiary protection is unlawful thus entitling him to a fresh determination of same in accordance with law. No error of law or fact is committed by according due weight to such a factor.

3. The balancing exercise conducted by the Court of Appeal discloses no error of law and the Respondent will rely upon the balancing of interests conducted in the Court below as an appropriate exercise of the Court's discretion.
4. It is trite law that the *obiter* comments of the High Court (Mac Eochaidh J) in the *HTK* case cannot supersede the power to adjourn provided for in SI No. 116/2017. Insofar as the *obiter* comments in the *HTK* case formed part of the *ratio* in the High Court (Humphreys J) judgment in the *NA* case, the latter judgment has been overturned by the judgment now under appeal herein.

3. Additional grounds on which the decision should be affirmed:

Please set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court.

Not applicable

4. Cross Appeal:

Please set out in numbered paragraphs the Grounds of Cross Appeal relied upon if leave to cross appeal were to be granted.

Not applicable

5. Order(s) sought:

Please set out in numbered paragraphs the order(s) sought if the Cross Appeal were to be successful.

Not applicable