

Reviewing the law of discovery

(1) The law of discovery as regards DATA has been illegally corrupted by the Freedom of Information Act which has restrictions that are not compatible with the restrictions limits in Directive 95/46/EU

from which it is supposed to be transposed and in the process is denying Irish Citizens rights that have been conferred on us by the EU. Article 46 of the FOI Act 1997 has extra restrictions that are not lawful (Directives have direct effect) according to the limitations in Article 13 of Directive 95/46/EC. Those extra restrictions include the Courts, the Ombudsman and the Data Protection Commissioner are illegal restrictions as there is no entitlement in Articles 6(1), 10, 11(1), 12 and 21 of the Directive to constitute a necessary measures to safeguard:

- (a) national security;
- (b) defence;
- (c) public security;
- (d) the prevention, investigation, detection and prosecution of criminal offences, or of breaches of
 - ethics for regulated professions;
- (e) an important economic or financial interest of a Member State or of the European Union,
 - including monetary, budgetary and taxation matters;
- (f) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority in cases referred to in (c) (d) and (e);
- (g) the protection of the data subject or the rights and freedoms of others.

The following relates to my experiences with data requests from The Courts, The Ombudsman and The Data Protection Commissioner:

2/8/2016 The Ombudsman will only give data according to to the F.O.I. Act Section 6 (z) ignoring my

request to deal with it under Directive 95/46/EC Article 13 and advising reference to the Data

Protection Commissioner. The response from the Data Protection Commissioner on 24/11/2016

21:53 "Please note that S.I. No. 81 of 1989 – Data Protection Acts 1988 (Restriction of Section 4) Regulations 1989 has not been revoked and is therefore EXTANT")

[REDACTED]

14/4/2017 I made an application to Courts Service requesting all the personal data both digital

audio and written relating to me in the following cases: [REDACTED]

21/4/2017 I received a reply (Ref FOI 47/17) refusing my application and citing "Access to court records under the Freedom of Information Act 2014 has therefore been refused in accordance with Section 42 (a) (i) of the Act".

9/5/2017 I made an application to Courts Service for data in accordance with Directive 95/46/EC Article 13 and not the FOI Act.

15/5/2017 I received a reply from Courts Service citing "The records which you request pertain to the business of the court and therefore fall within the control of the judge concerned". Advice apply to the Court of Appeal Office.

23/5/2017 I made an application to the Court of Appeal Office in the form of an email. See copy below:

FOR THE ATTENTION OF THE JUDGES WHO ADJUDICATED ON THE FOLLOWING CASES:

[REDACTED]
[REDACTED]

Dear Justices,

I have been advised by the FOI officer for the Courts Service [REDACTED] that [REDACTED] has no function in relation to my request for access to my personal data both Digital Audio and Written relating to me in the following Court of Appeal cases; [REDACTED]

[REDACTED]

[REDACTED] Advised me that I must write directly to the Court of Appeal office to have my application for court records pertaining to my cases and held on the court file, put before the judges for decision

There is no provision for allowing judges decisions to block or hinder personal data of mine in the cases listed above according to Directive 95/46/EU.

I am hereby applying to the trial judges in the above mentioned cases for my personal data in those cases to be supplied to me under Directive 95/46/EU

Attached please find the correspondence between myself and Miriam O' Flanagan to explain my grounds of entitlement under Directive 95/46/EU

None of the above cases breach or warrant restriction under Article 17 (Right of Access) of Decision 2008/977/JHA

I look forward to your prompt reply,

Kind Regards

Paddy Fitzgerald, [REDACTED]

24/5/2017 I received a reply from the Office of the Court of Appeal to email dated 23/5/2017.

See copy below:

Dear Mr. Fitzgerald,

I acknowledge receipt of your email.

Your email has been referred to the Registrar for attention and a reply will issue shortly.

Regards

[REDACTED]

Office of the Court of Appeal

I got no reply as promised to my email dated 23/5/2017

[REDACTED]

16/1/2018 I applied by email to the Registrar referred to in the response I got from

[REDACTED]

asking for an explanation as to what happened to my request dated 23/5/2017.

A big step in Reviewing the Law of Discovery would be to give me the Rights conferred on me by

Europe according to Directive 95/46/EC and Decision 2088/977/JHA.

The Judges involved in those cases were

Court of Appeal Case [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

This Case refers to An Appeal of Judicial Review Request from [REDACTED] on the application of the Late Payment Directive. My contention was that contract concluded meant contract ended.

[REDACTED] maintained that contract concluded meant contract entered into which was upheld by the Court of Appeal. [REDACTED] gave a very detailed reason quoting ECJ Case law in support. I cannot comment on the ruling as it was quite a lengthy statement and I do not have a copy as I was not furnished with one.

Court of Appeal Case No. [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

This case is an appeal against a Judicial Review Ruling of [REDACTED] on the refusal of the Minister for Agriculture to accept a pension declaration from me witnessed by a bus driver. My wife who was a retired School Teacher got the same bus driver to witness her pension declaration which was acceptable and her pension was paid while my pension was withheld. Anybody on the Electors list was acceptable for Public Servants.

The Department of Agriculture insist that my Pension Declaration (Health Cert) should be witnessed by a Medical Doctor, Solicitor, Bank Manager, Clergyman or a member of the Garda Siochana not below the rank of Sergeant. The reason given by the Department was that the use of trustworthy persons was a necessary precaution against fraud.

In my Affidavit I quoted ECJ Case C-110/03 Paragraph 71:- "It must be pointed out that, according to settled case law, the principle of equal treatment and non discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified"

In his ruling Mr [REDACTED] stated "The Applicant appears in person. Back in 2001 he made an application for admission to the Scheme for Early Retirement from Farming to the respondent by completing the necessary application form". The pension declaration had nothing to do with an application form for admission to the Scheme for Early Retirement from Farming. I was already in the scheme in 1994; 7 years earlier. If he had read the Affidavit or given me the opportunity to speak on the issue he would have been able to make an informed decision.

[REDACTED] also stated in his ruling that "The applicant objected to the list of acceptable witnesses being so limited, and has claimed ever since that this requirement

amounts to a discrimination against him”

I was not interested in the length of the list of trustworthy persons. I was interested in equality.

██████████ also stated “Having heard the applicant, I concluded first of all that he was too far out of time to be permitted to raise the issue now by way of Judicial Review. He did not put forward any grounds for consideration in relation to any extension of time”. At the hearing ██████████ also made reference to the length of time, to which I responded that there is no time limit for an application to the European Court of Justice. He did not ask me why I didn't look for an extension of time. He did not explain what the time limit was or where he got his authority from to put a time limit in place.

I appealed ██████████ decision to the Court of Appeal

In the Court of Appeal ██████████ was insistent that we had to have time limits but he didn't say where the authority existed. The other two judges supported him. I maintained that there was no time limit in the Constitution. I was also not furnished with a copy of the hearing.

Court of Appeal Case ██████████ ██████████ ██████████
██████████
██████████

This case is an appeal against a Judicial Review Ruling of ██████████ It concerns the dilution of my shares in Dairygold Co-op and the denial of my right to vote and in the case of Cork Co-operative Marts diluting of my shareholding. The Dairygold Board of Directors made a proposal to change the rules of the Society:

(1) A new age limit of 60 for nomination for election for Regional Committees. (Age discrimination)

(2) The status of active versus in-active members:

Active includes Milk Suppliers, trading members, and qualifying young farmers (under 35 years).

Under the proposals, key voting rights will be exercised by A1 members. They can vote at all meetings on all resolutions.

A2 will cover interim, or intermediate members, in transition from A1 classification to the new A3 classification. A2 members can vote at AGMs and elections

11/4/2005 Dairygold AGM. I asked the Auditor by how much ordinary shares had been devalued by the issue of bonus shares; he replied that the bonus shares had increased the shares by 2.5% . I asked if that meant that ordinary shares were devalued by 2.5% and he replied yes.

A3 will cover inactive members.

Letter April 25th 2006 TO EACH A1 SHAREHOLDER Re Dairygold Restructuring .
“Members should note that only A1 Members are entitled to receive notice of, attend and vote on the matters to be put before this forthcoming Special General Meeting of the society”.

I relied on the following case law in support of my claim that the dilution of my shares had been illegal

ECHR Case No. 48553/99 Sovtransavto V Ukraine paragraph 90 to 93 and 94 to 98

ECHR Case: Wilson & the NUJ and Others V the UK Paragraph 48

Article 54 of the Lisbon Treaty “Companies and firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this chapter, be treated in the same way as natural persons who are nationals of Member States.

Companies or firms means companies or firms constituted under civil or commercial law, including Co-operative Societies, and other legal persons governed by public or private law, save for those which are non profit-making.

Directive 2001/34/EC Article 65

1 The company shall ensure equal treatment for all shareholders who are in the same position.

2 The company must ensure, at least in each Member State in which its shares are listed, that all the necessary facilities and information are available to enable shareholders to exercise their rights.

In particular, it must:

(a) inform shareholders of the holding of meetings and enable them to exercise their right to vote

(b) Publish notices or distribute circulars concerning the allocation and payment of dividends, the issue of new shares including allotment, subscription, renunciation and conversion arrangements

██████████ in his Ruling completely ignored the fact that the dilution of shares and the denial of the right to vote were both illegal and putting a time limit “within 3 months of the matter you are complaining of” means that the matter that I am complaining of would no longer be illegal and without stating where his authority came from to put such a time limit

despite EU law stating there is no time limit in cases of discrimination and no time limit in looking for an ECJ Preliminary ruling.

██████████ said "I can't refer anything to Europe" without explaining why.

██████████ said "I'm here to deal with judicial review applications. Mr. Fitzgerald so I'm afraid I'll have to refuse your application". My application was for a Judicial Review.

The three Court of Appeal Judges upheld that ruling in full which I claim to be corrupt on the part of all four Judges. When I look for a Judicial Review hearing I would expect to be told whether or not my Fundamental Rights were violated particularly when the root cause of looking for a Judicial Review related to the corrupt behaviour of both Dairygold and Cork Co-operative Marts in the dilution of my shareholding and the denial by Dairygold of my right to vote.

A4 will cover those who are either deceased or untraceable.

High Court Judicial Review ██████████

On 19 April 2007 I was using topsoil from a developing building site to cover an outcrop of rock to make part of my land arable. I was prevented by a South Tipperary Council official who claimed that the topsoil was a waste material even though Planning Exemptions Leaflet PBL 6 Agriculture and Farm. (3) The following is exempted development "maintenance for agricultural purposes".

I sent a complaint to the Equality Tribunal under the Equal Status Acts 2000-2004. (4) Certain types of other activities are exempted development for the purpose of the Regulations including "land reclamation (including field drainage, removal of fences, improving existing fences, improvement of hill grazing or reclamation of estuarine marsh land or callows)

I made a complaint to the Equality Tribunal under the Equal Status Act stating that I was treated unlawfully through discrimination and victimisation.

The Equality Tribunal wrote to me stating that "In processing your complaint, however a query has arisen which the Tribunal requires to be clarified: [x] Please indicate the grounds under which you are claiming discrimination (gender, marital status, family status, religion, age, disability, sexual orientation, race or membership of the Traveller Community). As none of these options related to me, I was forced to squeeze myself into one of these categories. As such I replied claiming discrimination on race grounds, claiming myself, a member of the farming community as an ethnic group.

██████████ The Equality Tribunal. 8 January 2009 dismissed my complaint "In my view the claim does not fall within the protected grounds and accordingly Tribunal has

no jurisdiction to investigate this claim. As Mr Fitzgerald's complaints of discrimination are not based on grounds covered by the Acts, they have no basis in law and therefore have no prospect of success”.

14 April 2010. Appeal of the [REDACTED] before Circuit Court [REDACTED]
I showed the Judge a communication from the Commission to the European Parliament dated
30/10/2006 COM (2006) 643 Final.

Paragraph (3.2) Equality Bodies (all grounds of discrimination) but he insisted that the Farming Community was not an ethnic group. I then asked for a Preliminary Ruling from the European Court of Justice under Article 267/ 1 to 6 of the 5/12/2009 on Preliminary Ruling but he refused saying that it was obvious that the Farming Community was not an ethnic group. I then asked for a ruling in writing and I was refused but he said that [REDACTED] Solicitor would supply me with a record.

5/5/2011 High Court Appeal of [REDACTED] before [REDACTED]
[REDACTED]

Ruling Paragraph 18 “At the hearing before me, Mr. Fitzgerald placed great emphasis on the fact that Article 3 applies to all persons. So it does. But this does not mean that either Article 3 in particular or the Directive in general prohibits all differentiation or even discrimination between all categories of persons for all purposes. Rather, Article 2 prohibits discrimination on racial or ethnic grounds and Article 3 identifies the scope of the prohibition by providing for example , that there can be no discrimination on racial or ethnic grounds in matters such as housing and education. The Directive simply does not apply to any other form of discrimination other than race or ethnic grounds.

Paragraph 19 In this respect, therefore, There is absolutely no ambiguity regarding either the concept of discrimination or its scope of application, at least so far as the present case is concerned. Nor is

there anything to suggest that the 2004 Act does not adequately transpose the Directive .

Paragraph 20 In these circumstances, the present case is so plainly acte clar that it obviously falls within the CILFIT exception. Any reference to the Court of Justice would be a pointless and redundant exercise. For these reasons I do not consider it appropriate to make the reference sought.

Conclusions

Paragraph 21 It follows, therefore, that for the reasons I stated I must affirm the decision of [REDACTED]

Conflict of interest

Michael McDowell who was Minister for Justice from 2002 to 2007 and was the Minister responsible for the transposition of Directive 2000/43/EC into the Equality Act 2004 .

Michael McDowell appointed [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Above Paragraphs 18 to 21 are a small part of that ruling.

The Name "Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial origin" means that its rights are not limited to persons of racial or ethnic origin. EU Charter of Fundamental Rights Article 20 Everyone is equal before the law

Official Journal No. 52006DC0643. 30/10/2006. Communication from the Commission to the Council and the European Parliament. The application of Directive 2000/43/EC Paragraph 3.2 Equality Bodies.

"Although a number of Member States already had bodies for the promotion of equal treatment, most of them either created a new body or increased the powers of the existing one. Some Member States (Belgium, Cyprus, Sweden, IRELAND and the Netherlands have gone beyond the requirements of Directive 2000/43/EC in setting equality bodies that deal with ALL the grounds of discrimination covered by EU anti-discrimination law and/or more general human rights instruments. The Directive requires, as a minimum, that the body be able to give independent assistance to victims of discrimination, conduct independent surveys concerning discrimination, publish independent reports and make recommendations on discrimination issues".

Only 5 countries in all of the EU are lucky enough to have such a superior Equality body. I believe that the body designated to go "beyond the requirements of Directive 2000/46/EC" is the Equality Tribunal which denied me the protection on "all the grounds of discrimination" I attempted to appeal Judge [REDACTED] Ruling to the Supreme Court; but when I went to the Supreme Court office I was told by the attendant there that I couldn't appeal to the Supreme Court as there was another party involved. I asked her to write down what she was telling me and sign it. She refused. I believe that some pressure was applied to that person to deny me access to the Supreme Court.

Improving procedures and practices and removal of obsolete, unnecessary or over complex rules of procedure.

(1) Let the litigant decide whether or not he needs a solicitor or a barrister to represent him and please do not ride roughshod over the wishes of the litigant forcing more legal representation than he requires.

(2) When an applicant asks for a judicial review. *The judge dealing with the lay litigant should give a reasonable opportunity for said litigant to discuss the contents of his submission and explain any misunderstandings. The judge should not merely take the written submission before he breaks for lunch and return after lunch with a result, clearly showing insufficient time was allocated to study the submission. This discriminates against the right of lay litigants **to be heard**, ignores the contents of the submissions and dismisses the questions, particularly where a submission relates to active corruption. There is no point in a lay litigant knowing his rights if they are going to be blatantly ignored by judges.*

(3) When a lay litigant asks for an ex parte judicial review, this should not be dismissed. A judicial review is meant to establish a point of law and dismissing the question is not answering the question.

*The whole point in asking for an ex-parte judicial review is to know my rights and then be able to exercise them. ECJ Case C-475/07 Paragraph 41:- **"In that connection, it should be borne in mind that the Court has consistently held that transposition of a Directive does not necessarily require legislative action in each Member State. In particular the existence of general principles of constitutional or administrative law may render superfluous transposition by specific legislative or regulatory measures, provided however, that those principles actually ensure the full application of the Directive by the national authorities and that, where the relevant provision of the Directive seeks to create rights for individuals, the legal situation arising from those principles is sufficiently precise and clear and that the persons concerned are put in a position to know the full extent of their rights and, where appropriate, to be able rely on them before the national courts"**.*

(4) According to **"Convention drawn up on the basis of Article K3(2) (c) of the Treaty on the European Union on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union.**

Article 1(c) " 'national official' shall be understood by reference to the definition of 'official' or 'public officer' in the national law of the Member State in which the person in question performs that function for the purposes of application of criminal law of that Member State".

It cannot be described as a fair hearing and is corrupt particularly when the applicant is advised by the Judge to seek to litigate rather than giving a judicial review.

The right to a fair trial is recognised internationally as a Fundamental Human Right. The right

to have the Judicial Review referred to the CJEU for a Preliminary Ruling is a constituent part of the Right to a Fair Trial.

