

**THE HIGH COURT**

**2006 No. 3785P**

Friday the 27<sup>th</sup> day of January 2012

BEFORE MR JUSTICE MC KECHNIE

**Between**

**DIGITAL RIGHTS IRELAND LIMITED**

**Plaintiff**

And

**THE MINISTER FOR COMMUNICATIONS, MARINE AND NATURAL  
RESOURCES, THE MINISTER FOR JUSTICE, EQUALITY AND LAW  
REFORM, THE COMMISSIONER FOR THE GARDA SIOCHANA,  
IRELAND AND THE ATTORNEY GENERAL**

**Defendants**

And

**THE HUMAN RIGHTS COMMISSION**

**Notice Party**

The Motion on behalf of the Defendants challenging the locus standi of the Plaintiff, and seeking that security for costs be granted against the Plaintiff, coming on for hearing on the 1<sup>st</sup> day of July 2008 in the presence of Counsel for the Plaintiff, Counsel for the Defendants and Counsel for the Notice Party.

The Motion on behalf of the Plaintiff pursuant to the Notice of Motion herein dated 6<sup>th</sup> day of February 2008 seeking, inter alia, directions in relating to trial of the action, coming on for hearing on the 1<sup>st</sup> day of July 2008 in the presence of Counsel for the Plaintiff, Counsel for the Defendants and Counsel for the Notice Party.

And having read the said Notice of Motion, the Affidavit of T. J. McIntyre filed on the 6<sup>th</sup> day of February 2008 grounding the said Notice of Motion and the documents and exhibits referred to in the said Affidavit of T. J. McIntyre.

And having heard Counsel for the Plaintiff and the Defendants and the Notice Party.

The Court reserved judgment

And the matter coming on for Judgment on the 5<sup>th</sup> day of May 2010 in the

presence of Counsel.

AND UPON finding that the plaintiff has *locus standi* to bring an *actio popularis* in respect of whether the impugned provisions violate citizens' rights to privacy and communications, but not with regards to family and marital privacy or travel;

AND UPON refusing the Defendant's motion for security for costs:

AND UPON finding that it is necessary to enable the court to give judgment in this case to resolve several questions concerning the interpretation of the treaty establishing the European Union and the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union and that it is appropriate to request the Court of Justice of the European Union to give a preliminary ruling thereupon.

IT IS ORDERED by this Honourable Court that:

There be no order in the application save as stated below;

- a. Liberty to apply on all aspects of this matter to all parties
- b. Costs to be reserved to the trial of the action

AND IT IS ORDERED by this Honourable Court:

That the following questions shall be referred to the Court of Justice of the European Union for a preliminary ruling in accordance with Article 267 of the Treaty on the Functioning of the European Union (**ex Article 234 TEC**):

1. Is the restriction on the rights of the Plaintiff in respect of its use of mobile telephony arising from the requirements of Articles 3, 4, and 6 of Directive 2006/24/EC incompatible with Article 5.4 TEU in that it is disproportionate and unnecessary or inappropriate to achieve the legitimate aims of:
  - (a) Ensuring that certain data are available for the purposes of investigation, detection and prosecution of serious crime?and/or
  - (b) Ensuring the proper functioning of the internal market of the European Union?
2. Specifically,
  - (i) Is Directive 2006/24/EC compatible with the right of citizens to move and reside freely within the territory of Member States laid down in Article 21 TFEU?

- (ii) Is Directive 2006/24/EC compatible with the right to privacy laid down in Article 7 of the Charter and Article 8 ECHR?
  - (iii) Is Directive 2006/24/EC compatible with the right to the protection of personal data laid down in Article 8 of the Charter?
  - (iv) Is Directive 2006/24/EC compatible with the right to freedom of expression laid down in Article 11 of the Charter and Article 10 ECHR?
  - (v) Is Directive 2006/24/EC compatible with the right to Good Administration laid down in Article 41 of the Charter?
3. To what extent do the Treaties – and specifically the principle of loyal cooperation laid down in Article 4.3 of the Treaty on European Union –require a national court to inquire into, and assess, the compatibility of the national implementing measures for Directive 2006/24/EC with the protections afforded by the Charter of Fundamental Rights, including Article 7 thereof (as informed by Article 8 of the ECHR)?

AND IT IS ORDERED That until the Court of Justice has given its ruling on the said questions or further order all further proceedings herein be stayed.

KEVIN O'NEILL

REGISTRAR

31<sup>ST</sup> MAY 2012

McGarr Solicitors  
 Solicitors for the Plaintiff  
 Chief State Solicitor  
 Solicitors for the Defendants

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 FOR REGISTRAR