



THE SUPREME COURT

[Appeal No: 314/11 & 482/11]

**Clarke C.J.
O'Donnell J.
Dunne J.**

BETWEEN/

VOLKMAR KLOHN

APPELLANT

AND

AN BORD PLEANÁLA

RESPONDENT

AND

**THE GENERAL COUNCIL OF THE BAR OF IRELAND,
THE LAW SOCIETY OF IRELAND AND THE ATTORNEY GENERAL**

NOTICE PARTIES

Ruling of the Court delivered on 23rd April, 2021.

1. These proceedings generally have a very long and complex history. However, this ruling is concerned with one net issue. The more general background to the proceedings can be found in a range of judgments of both Irish courts and of the Court of Justice of the European Union ("the CJEU"), and it unnecessary to set same out in any detail here.
2. In brief, certain questions were originally referred by this Court to the CJEU in the context of the appeal which remains under consideration by the Court. The reasons for this original referral to the CJEU were set out in a judgment of this Court dated 24th February, 2017 (see, *Klohn v. An Bórd Pleanála & Ors.* [2017] IESC 11). The referral itself was received at the CJEU on April 3rd, 2017. By judgment dated October 17th, 2018 (see, *Klohn v. An Bord Pleanála* (Case C-167/17) (ECLI:EU:C:2018:833)), the CJEU gave answers to the questions raised. In the ordinary course of events, the matter came back before this Court to finally determine the appeal in light of that judgment of the CJEU. At that stage, the appellant ("Mr. Klohn"), who had represented himself when the appeal was initially before this Court, but who had been represented by a German lawyer, a Ms. Ohlig, for the purposes of the reference before the CJEU, sought to now be represented by Ms. Ohlig for the purposes of dealing with the remaining matters which remained outstanding in respect of the appeal.
3. Ms. Ohlig had previously practised in Ireland under the European Communities (Lawyers' Establishment) Regulations 2003, as amended, which transposed into Irish law Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained ("the Lawyers' Establishment Directive"). However, she no longer retained that status and it was sought that she should represent Mr. Klohn in her capacity as someone entitled to practise in Germany. The question which then arose was as to whether she was entitled to appear in these proceedings without being accompanied by a lawyer qualified to appear before this Court in the

ordinary way. That question arose in the context of the European Communities (Freedom to Provide Services) (Lawyers) Regulations 1979, as amended, which transposed in to Irish law Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, as amended.

4. Ms. Ohlig submitted to the Court that, by reference to certain case law of the CJEU, she was nonetheless entitled to represent Mr. Klohn without being accompanied by an Irish qualified lawyer.
5. In light of the important issues raised, the Court requested submissions on that point from the General Council of the Bar of Ireland, the Law Society of Ireland and the Attorney General. A hearing ensued, as a result of which this Court determined that it would be appropriate, for the reasons set out in a judgment (see, *Klohn v. An Bord Pleanála & Anor.* [2019] IESC 66), to refer to the CJEU certain questions concerning Ms. Ohlig's entitlement to appear.
6. The CJEU has now delivered its decision on that second reference in a judgment dated March 10th, 2021 (see, *VK v. An Bord Pleanála* (Case C-739/10) (ECLI:EU:C:2021:185)). In essence the CJEU has concluded:-
 - (i) That, in principle, the Irish regulation is not in breach of European Union law;
 - (ii) That, however, the application of the requirement to appear in court accompanied by an Irish qualified lawyer in all cases and without exception, would be in breach of European Union law such that the requirement in question must be disapplied in cases where it goes beyond what is necessary in order to attain the objective of the proper administration of justice, specifically in cases where the visiting lawyer, by virtue of his or her professional experience, is capable of representing the litigant in the same way as a lawyer who practises habitually before the Irish courts.
 - (iii) That it is a matter for the national court concerned (in this case, for this Court) to make an assessment as to whether the circumstances of the case in question are such that the national measure must be disapplied on that basis.
7. In light of that judgment of the CJEU, the matter was put in for further consideration before this Court on Monday 19 April, 2021. Ms. Ohlig set out the reasons why she considered that, in light of the judgment of the CJEU, this Court should determine that she was entitled to represent Mr. Klohn without being accompanied by an Irish qualified lawyer. Each of the other parties who had been represented at the hearing concerning this issue adopted a neutral position on the question.
8. In the course of the hearing, the Court asked Ms. Ohlig to supply a brief account in writing of her experience in advising on and conducting proceedings in Ireland during the period when she was entitled to practise in Ireland on foot of the Lawyers' Establishment Directive. She duly supplied those details.

9. On the facts it is clear, therefore, that Ms. Ohlig has advised clients in Ireland in environmental law and related fields, and has represented such clients before the Irish courts. That experience might well not be sufficient to enable this Court to be satisfied that she would be capable of representing a litigant in the same way as a lawyer who practises habitually in the Irish courts, where the litigation in question was not narrowly confined to the field of environmental law.
10. However, importantly in the Court's view, particular regard must be had to one of the points made by Ms. Ohlig. She correctly drew attention to the very specific and narrow issue which now remains for decision by this Court, being the consequences for Mr. Klohn's appeal of the judgment of the CJEU in the original reference made by this Court. Ms. Ohlig actually represented Mr. Klohn in the proceedings before the CJEU in that very matter. Thus, if she were to represent Mr. Klohn in the continuation of his appeal before this Court, she would be appearing in relation to a matter where the only real question of substance would involve the application of a judgment of the CJEU to the circumstances of Mr. Klohn's appeal in circumstances where she had herself represented Mr. Klohn in the proceedings before the CJEU which gave rise to that very judgment.
11. The Court has, as it is required to do, taken into account all of the matters advanced by Ms. Ohlig, but believes that very significant weight must attach to this latter aspect of the case. In those circumstances, it is the Court's assessment that it is appropriate that Ms. Ohlig be permitted to represent Mr. Klohn without the need to be accompanied by an Irish qualified lawyer. The only issues which remain for hearing before this Court are the issues which require to be determined in Mr. Klohn's appeal in light of the judgment of the CJEU in this case. As pointed out earlier, Ms. Ohlig appeared before the CJEU in the proceedings leading to that judgment and it must, in those circumstances, be concluded that she would be in a position, in respect of this particular matter, to represent Mr. Klohn in the same way as a lawyer who habitually practises before the Irish courts.
12. It only remains for this Court to put in place appropriate arrangements to ensure that the final issues which need to be determined to dispose of this substantive appeal are put in place. In that context, the Court will direct that Ms. Ohlig should, within three weeks of today's date, file written submissions as to the orders which it is urged this Court should make on the appeal, together with the reasons why it is said that it is appropriate to make the orders concerned. The respondent ("the Board") should file replying submissions within a further period of three weeks. Obviously the various notice parties have no further direct involvement in this appeal in that they have no interest in the specific issues which remain for decision by this Court. The appeal will, therefore, continue as and between Mr. Klohn and the Board only.
13. When submissions have been filed, the matter will then be listed for hearing, possibly on June 17th of this year. The parties should, in conjunction with the filing of submissions, agree on the materials (whether evidential or legal) which require to be placed before the Court to allow for an orderly conduct of the remainder of this appeal and should arrange for the filing of such agreed documentation in good time. Should there be any difficulty in

relation to any of these preliminary matters, the Court will arrange for a further case management hearing but does not consider that such a hearing is necessary unless such difficulties are encountered.