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Catherine Donnelly SC



Year of call: **2003**
Appointed to silk: **2020**
Degree: **LLB (Trinity College, Dublin); BCL (Oxon); LLM (Harvard); DPhil (Oxon)**
Languages: **French (working knowledge), Irish (working knowledge)**

Catherine specialises in a number of Chambers' practice areas, including EU Law, Public Law, Human Rights and Commercial Law and appears before both the national courts and tribunals and the Court of Justice of the European Union.

Catherine combines her practice with a number of appointments and with her academic position as Associate Professor and Fellow of Trinity College, Dublin and her position as Chair of the Irish Society for European Law and Member of the Incorporated Council of Law Reporting for Ireland. She was recently granted the title of Senior Counsel in Ireland.

EXPERIENCE

EU Law

Catherine has appeared in a number of cases involving EU law before the Court of Justice of the European Union, the courts of England and Wales and the High Court, Court of Appeal and Supreme Court of Ireland.

Cases before the Court of Justice include:

- Case C-613/14 James Elliott Construction Limited v Irish Asphalt Limited (Advocate General Opinion, 28 January 2016).
- C-398/11 Hogan v Minister for Social and Family Affairs (25 April 2013).
- Case C-370/12 Pringle v Ireland (23 November 2012) (challenge to the European Stability Mechanism before the Grand Chamber of Justice of the European Union).

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Catherine has also advised and acted for a variety of public authorities and private clients on EU law matters, including the Office of Communications Regulation in Ireland, the Office of Corporate Enforcement, the Medical Council of Ireland, the Commission for Communications Regulation, the Information Commissioner, the Health Information and Quality Authority, the Data Protection Commissioner, the Office of the Revenue Commissioners, the Irish Aviation Authority, IDA Ireland, An Post, Ireland West Airport Knock, Irish Waterways, An Taisce, various local authorities and the National Bus and Railworkers' Union.

Cases

Data Protection Commissioner v Facebook Ireland and Schrems

Case C-311/18

The Court of Justice of the European Union has ruled on a range of questions raised by the Irish High Court in relation to EU-US data transfers. Catherine acted for the Data Protection Commissioner.

Competition

Catherine acts in cases involving public procurement law, competition law, state aid law, data protection, access to environmental information and planning in accordance with the requirements of EU law.

Catherine has represented clients in a number of matters in the Competition List in Dublin, including, in particular, proceedings involving a claim of refusal to supply (Heatons v ASICS UK Limited (Cooke J) 1 November 2013).

Cases

Ireland v Commission

Catherine is acting for Ireland in its challenge to the Apple State aid decision.

Procurement

Catherine has been listed in the International Who's Who of Public Procurement lawyers in 2012-2015. She also advises both potential claimants and contracting authorities in this field and has advised a number of contracting authorities on the conduct of their procurement processes. Recent cases have included:

- Student Transport Limited v Minister for Education and Skills (Court of Appeal Judgment Pending)
- RPS Consulting Engineers Limited v Kildare County Council (15 February 2016)
- Powerteam Electrical Services Limited Trading as Omexom v Electricity Supply Board (12 February 2016)

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- BAM PPP PGGM Infrastructure Cooperatie UA v National Treasury Management Agency & anor [2015] IEHC 756
- BAM PPP PGGM Infrastructure Cooperatie UA v National Treasury Management Agency & anor [2015] IECA 246
- Word Perfect Translation Services Limited v Commissioner of An Garda Síochána [2015] IEHC 668
- BAM PPP PGGM Infrastructure Cooperatie UA v National Treasury Management Agency & anor [2015] IEHC 370
- Student Transport Limited v Minister for Education and Skills [2015] IECA 303
- OCS One Complete Solution Ltd v Dublin Airport Authority PLC [2014] IESC 51
- OCS One Complete Solution Ltd v Dublin Airport Authority PLC [2014] IEHC 306
- Gaswise Limited v Dublin City Council [2014] IEHC 56
- Baxter Healthcare Limited v Health and Safety Executive [2013] IEHC 413
- O'Kelly Brothers Civil Engineering Company Limited v Cork City Council [2013] IEHC 159
- Student Transport Limited v Minister for Education and Skills [2012] IEHC 425

State Aid

In the state aid context, as well as advising frequently in this area, Catherine appeared in the case of Dellway v National Asset Management Agency [2010] IEHC 364; [2011] 4 IR 1, which involved a challenge to the acquisition by Ireland's National Asset Management Agency of certain loans; the case raised a range of public law and EU law questions, including a number of state aid issues.

Telecommunications

Catherine has acted in and worked on telecommunications cases (e.g. R (on the application of ICO Satellite Ltd) v Ofcom [2011] EWCA Civ 1121) and CAT appeals. She is also currently representing a consortium in its challenge to alleged corruption and breach of national and Union law in the award of a mobile phone licence in Ireland, Comcast International Holdings v The Minister of Public Enterprise [2014] IEHC 18. She has also acted for the Commission for Communications Regulation in a number of matters.

Data Protection, Freedom of Information & Privacy

Catherine frequently provides advice on data protection questions, to both public and private sector clients.

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Cases

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Nowak v Data Protection Commissioner

[2020] IECA 174 & [2020] IECA 175

On 1 July 2020, the Irish Court of Appeal delivered two judgments on data protection.

In the first, Nowak v Data Protection Commissioner [2020] IECA 174, the Court concluded that the response of a regulated entity to a regulator was not personal data of the original complainant, in circumstances in which the response did not make any reference to the original complainant and there was no evidence that it assessed the complainant's work.

In the second, Nowak v Data Protection Commissioner [2020] IECA 175, the Court concluded that, in the absence of special circumstances, and in particular without any evidence of manipulation or re-engineering of an original exam script, an exam candidate was not entitled to inspect their original exam script under the data protection regime.

Catherine Donnelly acted for the Irish Data Protection Commissioner.

Commercial

Catherine is currently acting in a series of actions involving assertions of mis-selling of products, misrepresentation, breach of contract, and professional negligence. She has represented clients in a large number of cases in the Commercial Court in Ireland, and many of the procurement cases listed above were conducted in the Commercial Court.

Catherine acted for the claimant in a 104-day trial in the Commercial Court in a negligence and nuisance claim against the Electricity Supply Board for flooding of Cork City in 2009: University College Cork v Electricity Supply Board [2014] IEHC 135 and [2015] IEHC 598. She is also acting in a number of shareholder dispute cases and currently represents PriceWaterhouseCoopers in an auditor negligence claim: Quinn Insurance Limited (Under Administration) v PriceWaterhouseCoopers [2015] IEHC 303.

Catherine has acted in intellectual property claims, including urgent injunction applications in the context of passing off (e.g. Dublin Bus v Citibus).

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Cases

University College Cork v Electricity Supply Board

On 8 July 2020, the Irish Supreme Court delivered a major judgment on liability in negligence, arising from flooding of Cork City in 2009.

At issue was whether the Electricity Supply Board had been negligent in its operation of two dams upstream of Cork City during a flood in November 2009. The case ran for 112 days in the High Court, and was a test case on liability, with over 300 other cases stayed pending the outcome.

The Supreme Court concluded that an approach which analyses liability on the basis of a "do no harm" approach, is to be preferred to the more traditional consideration which differentiated between acts of commission or acts of omission. The Court also identified that there can be exceptions to the"do no harm" rule such that a duty of care may arise, in certain limited circumstances, to confer a benefit. Such an exception arises where a party is in a special position of control enabling them to prevent harm being caused by a danger independently arising. That control must be substantial, and there must be a reasonable relationship between any burden which would arise from imposing such a duty of care and the potential benefits to those who may be saved from the danger in question. It must also be necessary to define the duty of care with a sufficient, but not absolute, level of precision to avoid imposing a burden which is impermissibly vague and imprecise.

Applying these principles, the Court found that a duty of care arose and that the Electricity Supply Board had acted in breach of that duty.

Catherine Donnelly acted for University College Cork.

Public & Regulatory

Since commencing practice, Catherine has experienced a broad range of public law work, in both the regulatory and telecommunications field and in judicial review cases involving human rights.

She has represented both claimants and defendants in judicial review and human rights proceedings before the Courts of England and Wales, including in the Court of Appeal, before the Courts of Ireland, the European Court of Human Rights (including Donohue v Ireland, 12 December 2013) and in cases before the European Social Committee.

She has acted for the General Medical Council, the Office of Communications Regulation in Ireland, the Information Commissioner (Westwood Club v Information Commissioner [2014] IEHC 375), the Health Information and Quality Authority, the Office of Revenue Commissioners, the Irish Aviation Authority (including in McMahon v Irish Aviation Authority [2014] IEHC 431), IDA Ireland and various local authorities.

She is currently acting for the Public Accounts Committee of the Irish Parliament in judicial review proceedings raising issues of legality, fair procedure and misfeasance in public office: Kerins v McGuinness [2015] IEHC 293 and [2015] IECA 267.

She also represented the Irish Referendum Commission in its resistance to a challenge to the 2015 Marriage Equality Referendum in Ireland (Walshe v Ireland, The Attorney General, The Referendum Returning Officer and The Referendum Commission [2015] IESCDET 37).

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She has represented Ireland in a number of cases (including: Donohue v Ireland; Pringle v Ireland (High Court and Supreme Court); Byas v County Registrar for the County of Dublin Ireland and Attorney General; O'Driscoll and McCarthy v Limerick City Council, Ireland and Attorney General [2012] IEHC 594; Fitzsimons v County Registrar for the County of Meath, Ireland and the Attorney General; and Heffernan v County Registrar for the County of Dublin, Ireland and the Attorney General).

On the claimant side, Catherine appeared in the High Court and Supreme Court in a case involving a constitutional challenge to a referendum held in Ireland on the basis that the Government had breached constitutional requirements not to expend public moneys advocating a particular outcome in the referendum and relying on the Venice Commission Code for Good Practice on Referendums: Jordan v Minister for Children and Youth Affairs [2013] IEHC 458, [2013] IEHC 625, [2014] IEHC 327, and [2014] IESC 33. She also appeared in Barlow v Minister for Agriculture, Food and the Marine [2014] IEHC 471 (Supreme Court ruling pending), involving a constitutional challenge to management of mussel seed resource.

She has acted for the Northern Ireland Human Rights Commission, including advising the Commission on its recommendations for a Bill of Rights for Northern Ireland in 2008. The work involved advising on all areas of European and international human rights law, administrative law and constitutional law relating to both the content and the implementation of the Commission's recommendations, and drafting those sections of the Commission's final advice. The work also entailed advising on precise formulations and wordings of the particular rights.

More generally, Catherine advises and represents both public and private sector clients, including NGOs – such as the National Secular Society, the Transgender Equality Network Ireland, Free Legal Advice Centre, the Committee on the Administration of Justice, An Taisce, and the Northern Ireland Council of Ethnic Minorities, the Irish Human Rights and Equality Commission – on a variety of public law and human rights issues, including the Charter of Fundamental Rights of the European Union, the ECHR, the Irish Constitution, the public sector equality duty, and the Hong Kong Bill of Rights.

Catherine is also one of the editors of De Smith's Judicial Review (2007, 2009, 2013, 2014 and 2015).

Cases

Data Protection Commissioner v Facebook Ireland and Schrems

Case C-311/18

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Public International Law

A large part of the advisory work Catherine does in Northern Ireland involves international law, and she has advised on the interpretation of various conventions and treaties, and most particularly, international human rights instruments. In 2007-2008, Catherine was appointed to advise the Northern Ireland Bill of Rights Forum, (to which she was a Legal Advisor from September 2007 to March 2008) on matters of international law. She also regularly advises the Northern Ireland Human Rights Commission and NGOs in Northern Ireland on difficult questions of interpretation of the Good Friday/Belfast Agreement and other Anglo-Irish Agreements and treaties. Catherine also acted in the case of Barlow v Minister for Agriculture, Food and the Marine, which involved questions of the Law of the Sea.

Employment

Catherine has experienced a number of trials in the Employment Tribunal, as well as before Equality Officers and the Labour Court in Ireland. She has appeared in cases involving constructive dismissal, unfair dismissal, wrongful dismissal, discrimination on grounds of sex and race, TUPE, and whistleblowing. She has also advised on domestic and European employment law obligations. She has also appeared in the High Court of Ireland in cases involving urgent injunctions in the employment context for both claimants and defendants.

ACHIEVEMENTS

Education

LLB (Trinity College, Dublin); BCL (Oxon); LLM (Harvard); DPhil (Oxon)

Appointments

- Jan 2007 - date, Associate Professor and Fellow, Trinity College Dublin Courses: Advanced European Union Law, Comparative Public Law, Human Rights Law, Public Procurement Law.
- Apr - Dec 2008 Northern Ireland Human Rights Commission
- Principal Legal Adviser to the Northern Ireland Human Rights Commission on the drafting of a new Bill of Rights for Northern Ireland. The work involved ensuring that the rights proposed by the Commission in its advice were “supplementary” to the ECHR and in accordance with relevant international human rights standards. Advice also given on the implementation and enforceability of the proposed rights. Drafted those sections of the Commission’s Advice which explained the supplementary nature of the recommended rights and their compliance with international human rights standards. The Advice was published on 10 December 2009.

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- Sep 2007 - Mar 2008 Northern Ireland Bill of Rights ForumAdviser to the Bill of Rights Forum on the drafting of, and legal issues arising from, a new Bill of Rights for Northern Ireland. Advice given on defining a “public authority”, devolution, drafting a preamble, human rights, implementation, interpretation, justiciability of socio-economic rights, mainstreaming human rights, remedies, and standing.
- Oct 2005 – 2007 CUF Lecturer in Law (University) and Fellow of Wadham College, Oxford Courses: Administrative Law, Constitutional Law, European Community Law (constitutional and substantive) (undergraduate and postgraduate students).Lecture Series: Administrative Law in Context; Constitutionalism in the EU; The Multi-Layered Constitution.
- 2003 - 2004 Corpus Christi College, OxfordCollege Lecturer. Taught Administrative Law to undergraduate students from Corpus Christi College and St. John’s College.
- Sep 1999 - Sep 2001 Davis Polk & Wardwell, Attorneys-at-Law, New YorkLitigation Attorney (Associate)Areas of Practice: Administrative Law, Antitrust, Asylum Law, Commercial Arbitration, Constitutional Law, Criminal Law, Fraud, Regulation, Securities, White Collar Crime.

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