**THE HIGH COURT**

**[2017 No. 951 SS]**

**IN THE MATTER OF AN APPLICATION UNDER AND IN ACCORDANCE WITH ARTICLE 40.4.2° OF THE CONSTITUTION OF IRELAND**

**BETWEEN**

**B.L.**

**APPLICANT**

**AND**

**THE GOVERNOR OF CASTLEREA PRISON**

**RESPONDENT**

**(No. 2)**

**JUDGMENT of Mr. Justice Richard Humphreys delivered on the 21st day of November, 2017**

1. The applicant married Ms. C.L. in 2002. Unhappy differences arose and an order for maintenance was made against the applicant on 28th March, 2007. Ms. C.L.'s application for a decree of judicial separation was granted on 8th April, 2008. It is clear that the applicant is engaged in a protracted campaign of frustration of the legal process. His wife's solicitor has stated that *"he intends to go on forever until he breaks either my client or myself"* (transcript of the Circuit Court hearing, 25th July, 2017).

2. At one stage it was estimated that 44 Circuit Court orders had been made in the case. The applicant has been imprisoned a number of times by both the Circuit and High Courts.

3. It will be instructive to outline the multiple series of applications made to the High Court to give context to the conclusions I am reaching in the present application.

**The first appeal to the High Court**
4. The applicant served a notice of appeal to the High Court on the 28th January, 2009 against an order of His Honour Judge Nolan said to have been made on 19th January, 2009. He was represented at that time by Mullaneys Solicitors. The reference to an order of 19th January, 2009 appears to be intended to refer to an order of 10th January, 2009 refusing to facilitate an appeal against an earlier order and requiring the applicant to hand over cards for livestock and directing the sale of a herd. That appeal was not pursued.

**The second appeal to the High Court**
5. A notice of appeal dated 29th May, 2009 was filed by J.A. Shaw & Co. Solicitors on behalf of the applicant against an order of His Honour Judge Nolan of 18th May, 2009, directing lands to be sold to discharge monies due. That appeal came before McKechnie J. on 3rd November, 2009 who struck out the appeal with costs to Ms. L.

**The third appeal to the High Court**
6. His Honour Judge Anthony Kennedy made an order on the 23rd October, 2009 giving liberty to J.A. Shaw & Co. to come off record for the applicant, granting an injunction requiring the applicant's removal of cattle from lands, restraining the applicant from interfering with the sale of the lands and committing him for contempt. A notice of appeal dated 30th October, 2009 was filed and signed by Michael Monaghan Solicitors appealing that decision to the High Court. That appeal was dismissed by Harding Clark J. on 14th April, 2011 [2009 No. 48 CAF] who directed the applicant to remove all cattle from the lands within a week and remove all personal property within three weeks. Costs were reserved to the order but I am told that they were subsequently granted to Ms. L.

**The fourth appeal to the High Court**
7. On 29th July, 2010 a further notice of appeal was filed by Michael Monaghan Solicitors against an order of the July, 2010 of His Honour Judge Kennedy. Judge Kennedy had made two orders on that date holding that the applicant is in continuing contempt of the Circuit Court and recording his request to the High Court that the outstanding High Court Appeals be heard in conjunction with a judicial review brought by the applicant, to which I will refer shortly. The second order granted a well-charging order in favour of Ms. L. in separate proceedings brought by way of Equity Civil Bill [2010 No. E0014]. Harding Clark J. ultimately made an order dismissing the fourth High Court Appeal and restraining the applicant from entering on lands. Again costs were reserved and I am told that ultimately they were granted to Ms. L.

**First judicial review**
8. The applicant brought a judicial review application (*L. v. Kennedy* [2010 No. 781 J.R.]) against an order of His Honour Judge Kennedy but did not proceed with that application.

**The second judicial review**
9. The applicant then brought a further judicial review again challenging an order of Judge Kennedy requiring the lands to be sold (*L. v. Kennedy* [2010 No. 880 J.R.]). That application was struck out by Harding Clark J. in the same order referred to above in the 2009 No. 48 CAF proceedings.

**Ms. L's motion for directions**
10. Ms. L. brought a motion in the High Court seeking to re-enter proceedings and seeking a direction requiring the Registrar of Titles to register the purchaser of properties the subject matter of the proceedings as owner of the property and for the discharge of a judgment mortgage on the 21st November, 2010. That motion was granted by Harding Clark J. on the 7th December, 2010 and again costs were reserved.

**Contempt proceedings in the High Court**
11. There is a further order of Harding Clark J. of 15th February, 2013, releasing the applicant from custody on foot of his contempt of a previous order and accepting his apology. There is no reference in that order to costs.

**Second contempt proceedings in the High Court**
12. There is a further order of Abbott J. of 21st October, 2013 holding the applicant in contempt and admitting him to bail on the contempt issue on certain conditions. The order does not contain an order awarding costs as such other than by way of allowing costs under the legal aid scheme to Emer O'Sullivan Solicitors for the applicant.

**The fifth appeal to the High Court**
13. Her Honour Judge Flanagan made an order on 21st June, 2013, refusing to vary maintenance. That order was appealed by the applicant to the High Court. The appeal was dismissed by Peart J. on 22nd July, 2014. For clarity I should mention that the order that was drawn up has an incorrect date for the notice of appeal. Costs were awarded to Ms. L.

**The attempted sixth appeal to the High Court**
14. The applicant brought a motion [2015 No. 6 CAF] returnable for 6th March, 2014 seeking to extend time to appeal an order of the Circuit Court of 18th November, 2014. That order had adjourned a motion for attachment, gave liberty to Ms. L. to relist the matter in the event that certain cheques furnished did not clear, and gave liberty to the applicant's solicitors to come off record. The motion to extend time was struck out by the Master on 6th March, 2015 with costs to Ms. L.

**The third judicial review**
15. Ms. L. brought a further application in the Circuit Court for the attachment and committal of the applicant arising from his failure to comply with the order of 8th April, 2008 in relation to the payment of maintenance. That culminated in an order made by Her Honour Judge Flanagan on 18th February, 2016 directing that the applicant be attached and brought before the Court to show why he should not be committed to prison for that contempt. In *B.L. v. Flanagan* [2016] IEHC 412 I granted leave to the applicant to seek prohibition in relation to the contempt process ([2016 No. 336 J.R.]). The substantive hearing of that judicial review came before White J. who dismissed it (*B.L. v. C.L.* [2017] IEHC 328, 22nd May, 2017). White J. held that, essentially, the applicant had engaged in a campaign of obstruction of the family law proceedings and had not revealed that at the leave stage. That order has been appealed to the Court of Appeal [2017 No. 281] and is currently listed for directions on 14th December, 2017.

**The current Circuit Court order**
16. The contempt matter to which the judicial review related then came on before His Honour Judge Keenan Johnson in the Midland Circuit on 25th, 27th and 28th July, 2017 and the transcript has been made available to me in these proceedings. The applicant was not present on 25th and 27th of July and there was some discussion about how he could be brought before the Court, which ultimately happened in custody on 28th July, 2017. The transcript makes clear that the applicant had failed to pay maintenance and would have to pay a backlog of €41,700 if he wished to purge that contempt.

**The first Article 40 application**
17. In early August, 2017 the applicant's partner moved an Article 40 application before Moriarty J. He apparently advised her to get legal representation. It is not clear that any papers were actually filed or any record number assigned.

**The second Article 40 application**
18. The second Article 40 application ([2017 No. 929 S.S.]) was launched before Barrett J. on 22nd August, 2017, who ordered an inquiry. Binchy J. ultimately rejected that application on 24th August, 2017 (*B.L. v. Governor of Castlerea Prison (No. 1)* [2017] IEHC 569). It would seem from paras. 15 and 17 of that judgment that the issue of the applicant's lack of legal representation was not pursued in the Article 40 proceedings. The decision of Binchy J. was not appealed to the Court of Appeal. Mr. Alan Toal B.L. who appeared for the applicant initially said that it was not appealed because that would take away from the third Article 40. That does not make sense to me but whether he wants to appeal it or not is a matter for the applicant.

**The third Article 40 application**
19. I am now dealing with the third Article 40 application ([2017 No. 951 S.S.]). On 29th August, 2017 I ordered an inquiry under Article 40. On 30th August, 2017 the governor certified the legality of the detention. A substantive hearing was delayed due to unavailability of counsel for the applicant. I gave directions on 14th November, 2017, having heard the substance of the case. I then requested that Ms. L's solicitor, Ms. Anne Hickey would attend on 21st November, as well as the respondent's other deponent, Garda Fiach O'Toole. The applicant, through counsel, volunteered to put in an affidavit of means (to demonstrate the alleged inability to comply with the order) by close of business on 16th November, 2017 but has failed to do so. On 21st November, 2017 the applicant's solicitors, J.V. Geary Solicitors, applied to come off record on the grounds that on 20th November, 2017 they were advised by the applicant that he would be dealing with the matter himself, and I granted that application. The applicant then stated that he was looking to have the matter dealt with in a "*court of equity*", produced his birth certificate, an Act of the Irish Parliament of 1737 regarding the use of English as the language of court proceedings, and an apostolic letter describing itself as issued *motu proprio* by the Supreme Pontiff Francis entitled "On the Jurisdiction of Judicial Authorities of Vatican City State in Criminal Matters (11th July 2013)". The applicant states that he is not putting in an affidavit of means because he wants the matter to be heard in a "*court of equity*" and he did not want to cross-examine the respondent's witnesses in a "*court of law*", as he put it.

20. The 1737 Act (called the "Administration of Justice (Language) Act (Ireland) 1737" in the UK) has been repealed in the State by the Statute Law Revision (Pre-Union Irish Statutes) Act 1962. While at the hearing I was somewhat minded to fault the applicant for relying on a repealed Act, I now need to add that I have since come to appreciate that he cannot be criticised on that specific point. How is he to know it was repealed? For a century, the chronological tables of the statutes (subsequently put on line, and renamed the legislation directory) has been a publicly available guide in this regard. Recently however the directory has been removed from the Irish statute book website as a distinct resource. Insofar as information regarding repealed Acts is still available, it is expertly hidden under amendments to in force Acts from the same year. That idea must be the product of a very refined imagination indeed because it is equivalent to saying that if you want to look up the biography of a notable person, you need to find a totally different person born in the same year who is still alive and read their entry instead. And hard luck if you cannot find such a person. That is the situation here. There are no Acts remaining in force today that date from 1737, so there is simply no information available on the official statute book website regarding the Act on which the applicant seeks to rely. Even the fact that it ever existed has been airbrushed from history without trace, as effectively as the vaporization of an unperson in Orwell's Nineteen Eighty-Four. At the risk of understatement and euphemism, one would have to conclude that such an arrangement can only have resulted from a lack of understanding of the statute book and of the needs of its users (in which category I include litigants, their lawyers, and judges), and of pre-independence legislation in particular. If, as one might fervently hope, the applicant succeeds in indirectly drawing attention to this unacceptable state of affairs such that the legislation directory is reinstated as a result, he will have achieved a legacy for which the legal community should collectively be extremely grateful.

21. Prior to his dismissal, I heard submissions from Mr. Toal for the applicant and subsequently from the applicant himself. I also heard from Mr. Remy Farrell S.C. and Mr. John Gallagher B.L. (who also addressed the court) for the respondent.

22. The applicant declined to cross-examine Garda O'Toole so there was no necessity for him to be tendered. However, I did hear oral evidence from Ms. Anne Hickey, which, having seen and heard that evidence, I accept. She says that the applicant does have means, is a farmer with a number of animals and has had employment. The last vouched inquiry as to the extent of his herd indicated that he had 58 bovine animals registered with the Department and 19 that were not registered. She indicated that the applicant occupies his late father's lands but that it is unclear at the present moment how much of those lands he has actually inherited. Mr.

Toal had objected to Ms. Hickey's affidavit on the grounds that she did not have "*standing*" to put in the affidavit. However, that is a misunderstanding. Standing relates to capacity to bring proceedings not to the relevance or otherwise of evidence, and it seems to me that this is relevant evidence.

**Non-disclosure**
23. As with the judicial review proceedings it seems to me that there was massive non-disclosure of the history of the proceedings at the *ex parte* stage, although I hasten to add that I hold the applicant responsible for this and not his (former) legal advisers. White J. in the judicial review held that such non-disclosure justified the dismissal of those proceedings and it seems to me the same situation applies here.

24. Assuming I am wrong about that I will go on to deal with the other issues.

**Who is the appropriate respondent?**
25. In *Knowles v. Governor of Limerick Prison* [2016] IEHC 33 I dealt with the situation where the State is required to stand over the legality of a detention arising from contempt proceedings between private parties, and I indicated that the moving party in the substantive contempt proceedings should not be required to justify the detention or be a notice party for the purposes of justifying the detention (see para. 36). Rather, it fell to the State (through the relevant detainer) to satisfy the court in any given case that the detention of a citizen was lawful and constitutional. That does not of course preclude bringing in a party or their legal representatives to assist the court and that was done here to some advantage. Mr. Farrell submitted that there was an impossibility, or failing that a severe difficulty, in the governor fighting the case on the basis of what he called the "*cut and thrust of a separate case*" but it seems to me that any difficulties can be ameliorated by obtaining information from the parties in that separate case or by obtaining the DAR, both of which were done in this case.

26. The bottom line is that the State has to justify the validity of any detention and has to undertake whatever burdens are required in that regard and in the present case, as indeed in *Knowles*, it was demonstrated that is very far from an impossible burden and is practical and achievable, subject of course to the court being prepared to afford fair procedures to respondents as well as applicants and make whatever orders by way of disclosure, production, attendance of witnesses or otherwise as are required to progress the inquiry in that regard. There is no requirement that a respondent to an Article 40 must be put to an instant defence of the detention. The court is entitled, and, where fairness is at stake, required, to afford time for the defence to be prepared while keeping the general need for expedition in mind throughout.

**Is the complaint more appropriate to judicial review?**
27. Mr. Farrell sought to launch a related argument that because the State was having to get involved in "*someone else's dispute*" that the applicant's complaint was therefore more appropriate for judicial review rather than for the Article 40 procedure and I would reject that argument for the same reasons as the previous point.

**Complaint regarding *res judicata***
28. Mr. Farrell submitted that given that the applicant has already brought the second Article 40 to a conclusion, his points were covered by Binchy J.'s judgment with the possible exception of the point in relation to legal representation. It seems to me that objection is best considered under the specific headings of the arguments being advanced.

**Are the proceedings an abuse of process?**
29. The principle that drip-feeding of issues may constitute an abuse of process was discussed in *A.A. v. The Medical Council* [2003] 4 I.R. 302 [2004] 1 I.L.R.M. 37. The objection launched by Mr. Farrell under this heading is that when the applicant brought previous judicial review proceedings, which came before White J. in relation to adequate service of the motion seeking attachment and committal, there was nothing preventing him at that stage raising any complaint regarding a lack of legal representation. It was only when those proceedings had been dismissed and when the matter came before the Circuit Court and an adverse order was made that the applicant then, for the first time, raised a complaint regarding a lack of legal representation in Article 40 proceedings. It seems to me if the applicant had a point regarding access to legal representation he could have argued this point in the judicial review that came before White J. If the point being made relates to inadequate provision regarding legal aid, that point could have conveniently been made in those judicial review proceedings. To that extent the present case is analogous to the situation in A.A. where a judicial review was brought and then a point regarding legal aid was raised in a second judicial review. It seems to me the applicant waited until he was imprisoned to make this point so the present proceedings are, on the basis of *A.A.*, an abuse of process. If I am wrong about that as well, I will go on to consider the other points.

**Do criminal safeguards apply to civil contempt?**
30. It seems to me the answer to that question depends on what safeguards we are talking about. The European Court of Human Rights has held in *Hammerton v. U.K.* (Application no. 6287/10, European Court of Human Rights, 17 March 2016) that criminal safeguards do in certain circumstances apply to civil contempt. The issue of civil versus criminal in the present case has already been determined by Binchy J. in the second Article 40. Criminal contempt is "*to punish the offender for what he has done, and accordingly any term of imprisonment imposed must be of a definite duration*", para. 8. Whereas "*civil contempt, on the other hand, is concerned for the most part with bringing about compliance with an order of the court and in such matters the purpose of an order is coercive. It is absolutely clear from the authorities that in such circumstances the term of imprisonment should be indefinite, provided that once the default has been remedied the order for committal ceases to have effect*" para. 9, relying on *K.B. v. Judge Kennedy* [2015] IEHC 745.

31. Mr. Farrell submits that this point cannot be reopened in a third Article 40 but even if it could, I agree with those remarks of Binchy J.

32. A practice has developed in some cases whereby some orders of civil contempt have developed a punitive element. I think it is legitimate to observe that that has caused some considerable confusion in practice. If such a practice is to continue, which I am in some considerable doubt about, it is best conceptualised as saying that if that approach is taken two separate orders should be made. First of all a criminal contempt order providing for a specific, limited sanction referable to past breaches, to which the appropriate legal safeguards apply, and separately a coercive civil order which in principle is indefinite pending the purging of the contempt. Civil contempt properly so-called should not be conflated with criminal contempt.

**The alleged need for a definite period of imprisonment for civil contempt**
33. The complaint made is that due to a lack of means the applicant will be unable to comply with the requirement to purge his contempt by payment of the arrears in maintenance and therefore has been given a life sentence. It seems to me that does not arise in the facts because he has not proved an inability to comply with the court's order, nor did he file an affidavit of means, nor did he make that argument in the Circuit Court. Binchy J. in the second Article 40 held very clearly that the order was "*quite correctly*

*indefinite*" (para. 12). Again, I respectfully agree.

34. The Law Reform Commission *Issues Paper on Contempt of Court and Other Offences* (LRC IP 10 - 2016) questions whether imprisonment for civil contempt should be for a definite period. The Issues Paper (pp. 14-15) suggests an upper limit for criminal contempt and at pp. 21 to 26 raises the issue of an upper limit for civil contempt. However, the Commission's 1994 Report on *Contempt of Court* (LRC 47-1994) concluded that imprisonment for civil contempt should be open-ended and that fines should be possible as an alternative to, or in addition to, imprisonment (pp. 72-73). The Commission's 1991 *Consultation Paper on Contempt of Court* (July, 1991) noted the role of indefinite imprisonment in bending the will of a contemptuous applicant (p. 381) and indicated that a time limit would reduce the coercive aims of the remedy and would not protect the court's standing and authority (p. 384). It also suggested that a fixed term could be unfair on some applicants.

35. The present case illustrates very clearly why indefinite imprisonment is absolutely necessary in cases of civil contempt. A definite period would be totally inadequate to deal with an applicant who is determined to take every conceivable step to frustrate the legal process.

36. Binchy J. considered that the doctrine of fundamental flaw (see *Ryan v. Governor of Midlands Prison* [2014] IESC 54 and *O'Shea v. Governor of Mountjoy Prison* [2015] IECA 101) precluded review of the applicant's financial circumstances and capacity to comply with the underlying order within the Article 40 process (see para. 13). However, there are perhaps two separate issues involved. Firstly, whether the court below considered the applicant's capacity to comply with the order if an issue was made of this point, and where it could legitimately be disputed, and secondly, if so, whether its consideration is correct on the merits. One can readily envisage that a court in an Article 40 context might be reluctant to allow a *de facto* appeal by entering into the second issue so it is in that sense that I read Binchy J.'s comments to the effect that the question of the financial capacity of the applicant did not amount to a fundamental flaw. Binchy J. dealt with the matter without the benefit of the transcript of the contempt hearing and thus did not appear to be entering into the first issue. I now have the transcript and it is clear that the applicant did not make any real issue of that first point. His lawyers attempted to retrospectively make a point about his inability to pay but as I have noted that was not raised before the Circuit Court and he did not follow it up by way of either an affidavit of means or of cross-examining Garda O'Toole on his affidavit, at para. 9 of which he refers to the applicant as presenting as "*a relatively prosperous farmer who farms in various locations around the area and owned both cattle and sheep. He also grows root vegetables in a number of locations [...] He also works part time […] and while I am not privy to his personal finances, I say and believe that he would appear to have sufficient means to engage a solicitor in his on-going matrimonial litigation, if he were so disposed*". Given the absence of cross-examination, I accept that averment. I also accept Ms. Hickey's evidence regarding the applicant's means. So it seems to me this objection does not arise.

**Absence of legal representation**

37. The applicant submits he should have been granted legal aid for the Circuit Court hearing. Mr. Farrell informed me that the DAR for 12th February, 2016 had been listened to and it was not possible to identify any offer of legal assistance from that. In *Hammerton* at para. 142 the European Court of Human Rights held that: "*Where proceedings before a court fall within the criminal limb of Article 6 § 1 and within Article 6 § 3 (c) of the Convention, and a deprivation of liberty is at stake, the interests of justice in principle call for legal representation*" (citing *Benham v. the United Kingdom* (GC, 10 June, 1986 Reports of Judgments and Decisions 1996 – III *Lloyd and Others v. the United Kingdom* (Application nos. 29798/96 and ors., European Court of Human Rights, 1 March 2005).

38. On the facts of the present case the applicant has had a whole string of solicitors since 2007, of which at least 6 have been identified, and on other occasions has chosen to represent himself. His averments on the question of legal representation are highly evasive and it is very unclear what the complaint in fact is. He clearly was aware of his right to legal representation having had lawyers on many previous occasions. He was aware imprisonment was on the cards, being no stranger to contempt proceedings, or to attachment and committal in particular. He did not ask for time to seek legal representation. All he has going for him under this heading is the mere fact of not having been represented. However, the facts of *Hammerton* are quite different. At para. 12 it is noted that the applicant was unrepresented during the contempt proceedings but "*his position as regards legal aid was due to be reviewed shortly after the hearing. The judge made no inquiries into why the applicant was unrepresented or whether he wanted representation*". That was the case of an applicant who very actively was seeking legal aid, had applied for it (which this applicant has not) and had applied for a review of the decision refusing it. On that issue of what the procedure for legal aid is, Mr. Farrell submits that the Legal Aid Board is the source of legal aid for a person facing a contempt application. That seems to me a very cumbersome procedure given the nature of contempt proceedings. A much more flexible and immediate procedure would be for the State to extend the Custody Issues Scheme to apply to contempt matters. Section 4(iii) of the matters covered by the custody issue scheme only include judicial reviews where the liberty of the applicant is at issue, not other forms of civil proceeding where liberty is in issue. Furthermore, it only applies to the High Court upwards. It seems to me that the Minister for Justice and Equality should give serious consideration to the extension of the scheme to cover contempt proceedings. If that were done, problems such as the issue being raised in the present case simply would not arise. This is not the first case in which that issue has arisen. Indeed it may fall for decision in another case whether the inherent right of the court to deal with contempt, which is a key element of the judicial function and by virtue of the separation of powers must be available to the court in an effective way, is improperly burdened by such a potentially time-consuming procedure as having to direct applicants through the Legal Aid Board before the court can deal with matters, rather than allowing for a flexible and immediate procedure such as the scheme.

39. If an appropriate applicant came along who had difficulty with the Legal Aid Board, having applied to it, such a person possibly could make an argument that reliefs under Article 40 should be considered because the State had failed to make available effective access to legal representation. However, that is not this applicant. He is not indigent. He has not averred that he would qualify for legal aid. He certainly has not established that he would do so. The evidence clearly establishes that he has assets and also establishes that he has gone about frustrating the enforcement of court orders.

40. Further context in *Hammerton* is provided at paras. 18 and 19, noting that, had the judge in that case enquired about the applicant's circumstances "*he would have learnt that earlier legal representation had been withdrawn by the Legal Services Commission after he received a sum of money on his divorce ... That was the subject matter of a review panel which was due to sit two weeks later."* The European Court of Human Rights went on to note at para. 19 that the English Court of Appeal (Moses L.J.) "*considered that once the judge had learnt that the issue of legal aid was the subject of an imminent review panel, there was no reason why the committal hearing should not have been adjourned until the issue of legal representation had been resolved. He was of the view that the judge had been obliged to ask appropriate questions and to consider, at the very outset of the hearing, whether there should be an adjournment so as to enable the defendant to be represented. In the absence of evidence of intransigence on the part of the applicant, and he noted that there was none, there was no reason why the applicant should not be represented."*

41. It is clear that *Hammerton* was decided on its own facts. It is not to be generalised and certainly not to an applicant who is intransigent, as the present applicant is. It is not to be generalised to a contention that a contempt order is void if an applicant is not

afforded legal representation or not made expressly aware of their rights by the court. The extent of the entitlement depends on the context. It is certainly good practice to automatically inform an applicant of their entitlement to legal aid. But that failure to do so does not vitiate an order where an applicant is already aware of his or her rights.

42. *Cahill v. Judge Reilly* [1994] 3 I.R. 547 (p. 551, per Denham J. as she then was) refers only to an indigent accused who does not know of his right to legal aid. It recites that the applicant avers in that case that "*he would have wished to have a solicitor*". In this case the applicant has not established indigency or that he does not know his legal rights, and it seems to me on the evidence that he is not indigent and he is fully aware of his legal rights. He does not aver that he wanted legal representation, he does not say that he is unaware of his rights, and he does not say he could not get such representation. Any case based on such a vacuum of evidence on fundamental matters is of no merit. There is no question of the applicant being taken by surprise; the contempt application was hanging over the applicant for a lengthy period having been held up by the judicial review. Ultimately, the case is similar to *Knowles* where, at paras. 48 to 55, I held that there was an inference that there was no genuine intention to be legally represented and that the applicant was on notice of the risk to her liberty. If I were in any doubt about the matter, which I am not, it is put beyond question by the applicant's subsequent conduct dismissing his legal team in the course of the present Article 40 and represented himself by making nonsense points. Insofar as the allegation of breach of the ECHR in the course of making the contempt order arises, even if that were established, which it has not been, that does not give rise to an illegality. The courts are not organs of the State within the definition of s.1 of the European Convention on Human Rights Act 2003 and the appropriate remedy is an action for damages under s. 3A of the 2003 Act, inserted by s. 54 of the Irish Human Rights and Equality Commission Act 2014. It might be otherwise if the point turned on the interpretation of a statute or rule of law which should have been construed in a Convention-compatible manner, which could amount to an error of law for the purposes of the domestic law of judicial review. That is not the case here but, as I say, no breach of the ECHR has been established in any event.

**Alleged lack of specificity in the underlying order**
43. Having had the benefit of the DAR it is clear, especially taken in conjunction with the spoken order, that the applicant could have been under no doubt as to what was required of him, and Judge Johnson was at pains to explain this to him.

**Complaint that the Circuit Court did not have jurisdiction**
44. Reliance was placed on the Law Reform Commission Issues Paper at p. 14 to the effect that the jurisdiction of the District and Circuit Courts regarding civil contempt was not made explicit, as recommended in the Consultation Paper of 1991, so it is alleged that there is still uncertainty in this regard. It seems to me there is no uncertainty in that it is clear that the District Court and Circuit Court have jurisdiction in relation to any form of civil contempt. Presumably the anomaly is in the lack of an upper limit in that regard. However, historically it is well established in law and reflected in the judgment of Binchy J. that all courts have such jurisdiction and may order indefinite imprisonment in cases of civil contempt. In my view that does not turn the District Court and Circuit Court into courts of non-limited jurisdiction primarily because an end can be brought to the situation at any time by the applicant himself or herself.

**Alleged misconduct of the proceedings by Judge Johnson**
45. Complaint is made that Judge Johnson entered into a discussion of where the applicant could be arrested when he did not turn up. It seems to me that such a discussion was totally reasonable and legitimate and was for the purpose of preventing court processes being thwarted. It does not lie in the mouth of a person who is seeking to subvert the legal process to complain if a court attempts to ensure that the process is allowed to work. There is no impropriety whatsoever in the way in which Judge Johnson dealt with the matter.

**Order**
46. For the foregoing reasons I will order that the application be dismissed.