

THE HIGH COURT

[2012 No. 8876 P]

BETWEEN/

D.F. (SUING BY HIS TESTAMENTARY GUARDIAN AND

NEXT FRIEND, K.M.)

AND

PLAINTIFF

GARDA COMMISSIONER, MINISTER FOR JUSTICE, EQUALITY AND

DEFENCE, ATTORNEY GENERAL AND IRELAND (No.3)

DEFENDANTS

JUDGMENT of Mr. Justice Hogan delivered on the 11th day of April, 2014

1. The plaintiff in these proceedings is a 28 year old man who, it is acknowledged, is severely autistic. As the proceedings are presently constituted the plaintiff claims damages in respect of the nominate torts of false imprisonment and assault and battery. Damages are also sought for negligence and breach of duty. The plaintiff further claims for damages for breaches of constitutional rights and for damages for breach of his rights under the European Convention of Human Rights Act 2003 ("the 2003 Act"). The plaintiff also claim damages for breaches of his rights under the Charter of Fundamental Rights of the European Union and under the United Nations Convention on the Rights of Persons with Disabilities 2006 ("the 2006 UN Convention"). The plaintiff additionally seeks declaratory relief in relation to the illegality of the arrest.

2. The defendants now contend that some of these claims should be struck as either unsustainable in their own right or as otherwise merely replicating claims for damages in respect of nominate torts of assault and false imprisonment. To this end they have applied by motion to have the claims based on breach of constitutional rights, breach of the 2003 Act, the Charter and the UN Convention struck out in a summary basis. They also contend that it is inappropriate for a court to grant declaratory relief in aid of these common law and other remedies. I will presently consider these claims in due course, but it is first necessary to sketch out the background facts of the case.

The background facts

3. The incident which gave arise to these proceedings occurred on 24th September, 2010. The plaintiff's testamentary guardian, Ms. M., contends that on that afternoon Mr. F. had taken up his habitual position outside his grandparents' house when he was unlawfully arrested by members of An Garda Síochána at about 5pm in the evening and brought to a local Garda station. It is contended that no effort was made by the Gardaí to speak with either his mother or father, both of whom lived close by. I should pause here to say that the plaintiff's mother sadly died in January, 2012. While she was not living with the plaintiff's father at the time of her death, both parents were actively involved in caring for him.

4. According to Ms. M., the arrest of Mr. F. and his detention in unusual surroundings caused him acute and unusual distress. The custody records show that the plaintiff had been detained for just under an hour and that he had been arrested under s. 12 of the Mental Health Act 2001. He was released when his father – a registered medical practitioner – attended (along with the plaintiff's mother) at the Garda station and explained that he suffered from severe autism.

5. The defence filed by the State defendants does not dispute a good deal of this. It is contended, however, that a member of the public saw the plaintiff chase two women with a large stick or a branch of a tree in the general vicinity of the plaintiff's grandparent's house, although neither woman was actually struck. The Gardaí were then alerted and, on their arrival, following a minor altercation, the plaintiff was then identified as the individual who had given chase to the two women. When one of the Gardaí involved, a Garda Fallon, attempted to speak to Mr. F., he realised that he was suffering from a mental condition, as he was unable to get Mr. F.'s name or any other pertinent details. Garda Fallon arrested Mr. F. pursuant to s. 12 of the Mental Health Act 2001. Mr. F. was then placed in handcuffs and conveyed by the patrol car to the local Garda Station.

6. Upon arrival at the Garda station at around 5.10 p.m., the Gardaí endeavoured to contact some local general practitioners, but to no avail. Recorded messages in both cases suggested that the general practitioners in question would come on duty again at 6 p.m. It appears, however, that another member attached to the station recognised the plaintiff, although he could not immediately recall his name. This member then made appropriate inquiries and, having satisfied himself as to the plaintiff's identity, drove to the plaintiff's house where he spoke with the plaintiff's mother and informed her of the arrest.

7. The plaintiff's mother then arrived at the station shortly after 5.30 p.m. and comforted her son. The member in charge, a Sergeant Galvin, was informed by her that her son suffered from severe autism. The plaintiff's father then arrived about twenty minutes later. On being informed that the plaintiff's father was a registered medical practitioner who could confirm that the plaintiff did indeed suffer from severe autism, he was released by Sergeant Galvin at about 6.05 p.m.

8. The plaintiff contends that he was subjected to inhuman and degrading treatment by being subjected to "unjustified use of restraints designed to and which did "in fact cause [him] additional and unnecessary suffering." This, however, is expressly denied by the defendants.

9. This is the general factual background to the proceedings. I have already delivered two judgments dealing with diverse aspects of this case. In *DF v. Garda Commissioner (No.1)* [2013] IEHC 5 I held that the plaintiff was entitled to jury trial in respect of these claims, with the proviso that all issues bearing on the legality of the arrest were to be determined by the trial judge alone. In *DF v. Garda Commissioner (No.2)* [2013] IEHC 312 I ruled that the proceedings were to be heard in open court, without any restrictions

identifying the plaintiff. A stay was subsequently granted by the Supreme Court in respect of this latter order and it follows that the name of the plaintiff in the present judgment is given in redacted form.

The scope of the pleadings

10. Before determining questions as to whether these claims are sustainable or purely duplicative of subsisting common law claims, is first necessary to examine the ambit of the plaintiff's pleadings. The relief sought in the plaintiff's general endorsement of claim takes the form of claims for declaratory relief and damages. The first two declarations sought are pleas, in effect, that the plaintiff's arrest and detention were both unlawful.

11. So far as the damages claim is concerned, the major claims are for damages in respect of the nominate torts of false imprisonment and assault and battery. Damages are also sought for negligence and breach of duty, but there are also claims for damages for specific breaches of constitutional rights – liberty, bodily integrity and privacy, along with “the personal constitutional rights of the plaintiff which they were bound to protect.” For ease of reference I will treat these compendiously in this judgment as rights deriving from Article 40.3.1, Article 40.3.2 and Article 40.4.1 – essentially, the rights to bodily integrity, person and liberty – even if they are not always quite pleaded in this form.

12. There are also claims for damages for breach of the plaintiff's rights under the European Convention of Human Rights Act 2003 (“the 2003 Act”); for breaches of the plaintiff's rights under the Charter of Fundamental Rights of the European Union and under the United Nations Convention on the Rights of Persons with Disabilities 2006 (“the 2006 UN Convention”).

13. A further consideration is that in the light of my judgment in *DF (No.1)* the present action will be tried by a jury, subject to the proviso that I have ruled that it is trial judge alone who must rule on all aspects of the legality of the arrest. This makes it all the more desirable that the issues raised in the pleadings are determined in an orderly fashion: see, e.g., the comments of Smyth J. in *Hanly v. News Group Newspapers Ltd.* [2004] 1 I.R. 475 and those of McGovern J. in *Doherty v. Minister for Justice* [2009] IEHC 246. In this particular context, therefore, it is all the more important that the potential for confusion arising from overlapping and duplicative claims should, where possible, be avoided.

14. I accordingly propose to examine the gist of the individual claims. If the claims simply duplicate or cannot add anything to the well established nominate torts of false imprisonment, assault and battery or if they present no justiciable issue, I propose to strike them out pursuant to the courts' inherent jurisdiction at this preliminary stage.

15. It is nevertheless important to recall that, as I pointed out in my judgment in *Beausang v. Irish Life and Permanent plc* [2014] IEHC 1 that:

“...the summary strike out jurisdiction is not well adapted to cases raising novel and difficult issues, whether of fact or law. As Cozens-Hardy M.R. observed in *Dyson v. Attorney General* [1911] 1 K.B. 410, 414, the summary strike-out jurisdiction should not be applied ‘to an action involving serious investigation of ancient law and questions of general importance.’”

16. I then noted that this latter passage was quoted with approval by Keane J. in *Irish Permanent Building Society v. Caldwell (No.1)* [1979] I.L.R.M. 273, 276. In that case the defendants contended that the plaintiff building society had no *locus standi* to challenge the registration by the Registrar of Building Societies of one of the defendants as a building society. To this end the defendant brought a motion seeking to strike out the proceedings on the ground that they were unsustainable by reason of the fact that the plaintiff lacked standing to maintain them.

17. Keane J. refused to take this step, saying that ([1979] I.L.R.M. 273, 276-277) he was not satisfied that:

“On an application of this nature the High Court should finally determine the difficult and complex question of law involved. I think that the plaintiffs are entitled to a full and unhurried consideration of the questions they have posed for a resolution by the High Court and that this cannot, in a practical manner, be achieved within the limitations of a motion such as the present.”

18. While making appropriate allowances for this principle, if, nevertheless, the claim is manifestly duplicative of an established cause of action or, alternatively, it is unsustainable in law, it should nevertheless be struck out at this preliminary stage.

19. These individual claims can now be considered separately.

The constitutional claims

20. It may be here convenient to break down the individual claims and to assess the claims based on specific nominate torts by reference to the individual constitutional guarantees. The governing question in essence is identical in all of these particular cases: can it be said that the nominate tort provides an adequate or complete mechanism for the vindication of individual rights?

The tort of false imprisonment and the claim for damages for breach of constitutional right to liberty

21. The tort of false imprisonment has been summarised thus by Fawsitt J. in *Dullaghan v. Hillen* (1957) Ir.Jur.Rep. 10, 15:

“False imprisonment is the unlawful and total restraint of the personal liberty of another, whether by constraining him to go to a particular place or confining him in a prison or police station or private place or by detaining him against his will in a public place. The essential element of the offence is the unlawful detention of the person or the unlawful restraint on his liberty. The fact that a person is not actually aware that he is being imprisoned does not amount to evidence that he is not imprisoned, it being possible for a person to be imprisoned in law, without being conscious of the fact and appreciating the position in which he is placed, laying hands upon the person of the party imprisoned not being essential. There may be an effectual imprisonment without walls of any kind. The detainer must be such as to limit the party's freedom of motion in all directions. In effect, imprisonment is a total restraint of the liberty of the person. The offence is committed by mere detention without violence.”

22. As McMahon and Binchy observe in their magisterial textbook, *The Irish Law of Torts* (Dublin, 2013) (at 911) these comments of Fawsitt J. represent “an admirably succinct statement of the principal features of the tort.” It is clear from this exposition of the parameters of the tort of false imprisonment that it may accordingly be regarded as a complete and full vindication of the guarantee of personal liberty in Article 40.4.1. Liability for false imprisonment is strict and is not based on notions of fault or negligence. By providing a mechanism for the protection of individual liberty in this fashion the common law may thus be said to give full effect to this particular constitutional guarantee.

23. The claim for damages for breach of the constitutional right to liberty accordingly adds nothing to the common law action for false imprisonment. Adapting the language of Baker J. in *PR v. KC* [2014] IEHC 126, it may be said that the claim for damages of the constitutional right to liberty "is no more than an ancillary claim or another way...of seeking the same relief."

24. In these circumstances, with a view to bringing regularity to the proceedings and avoiding unnecessary duplication – especially in a case which will be tried with a jury – the defendants are accordingly entitled to say that this claim for damages for breach of constitutional right to liberty entirely replicates the action for false imprisonment and adds nothing to it. In these circumstances, I will therefore strike out the claim for damages for breach of constitutional right to liberty as it is simply another way of claiming the same relief.

The claims in assault and battery and the actions for damages for breach of constitutional rights to the person, bodily integrity and privacy

25. The tort of battery is summarised thus by McMahon and Binchy (at 898) as "the direct application of physical contact upon the person of another without his consent, express or implied." The tort of assault is described by them (at 903) as consisting of "an act which places another person in reasonable apprehension of an immediate battery being committed upon that person."

26. Dealing with the nature of these torts in her judgment in *PR Baker J.* first quoted with approval from the following passage from the judgment of Fawsitt J. in *Dullaghan v. Hillen* [1957] Ir. Jr. Rep. 10 at 13, where the court stated the rationale of the tort of assault as follows:-

"Security for the person is among the first conditions of civilized life. The law, therefore, protects us, not only against actual hurt and violence, but against every kind of bodily interference and restraint not justified or excused by allowed cause, and against the present (immediate) apprehension of any of these things."

27. Baker J. then added that in this respect "the common law may be regarded as a realisation of the constitutional command in Article 40.3.2 that the State must protect and vindicate the person." The real question, however, in the present case is not whether these nominate torts serve to realise this constitutional commitment – since this much is not in dispute – but rather whether these common law torts can be regarded as providing a complete and full mechanism for vindicating the substance of the relevant constitutional guarantees in all circumstances.

28. As I observed in *Kinsella v. Governor of Mountjoy Prison* [2011] IEHC 235, [2012] 1 I.R. 467, 471. Article 40.3.2 protects "not simply the integrity of the human body, but also the integrity of the human mind and personality." In addition, the constitutional protection of the person must also be understood by reference to the Preamble's objective that the dignity and freedom of the individual may be protected: see here *Connolly v. Governor of Wheatfield Prison* [2013] IEHC 334.

29. If Baker J. was surely correct to say in *PR* that the nominate torts of assault and battery may generally be regarded as a realisation of the constitutional command in Article 40.3.2 to protect the person, then the question which arises here is whether there are *any* circumstances *at all* in which these constitutional guarantees can be called in aid in order to supplement these torts. Here it must be recalled that the tort of assault requires a prior apprehension of a battery before it actually takes place and that absent this apprehension, no tort of assault is committed: see McMahon and Binchy at 903.

30. This specific limitation might be particularly relevant in the present case given that with the plaintiff's mental condition it might ultimately transpire at the trial of the action that he lacked the cognitive capacity to have had any understanding of the conduct of the Gardai in seeking to restrain and arrest him, so that the question of any assault would simply not arise. In these circumstances and in view of this particular limitation on the scope of the tort, the plaintiff might be able to show at the full trial of the action that this nominate tort was, in the words of Henchy J. in *Hanrahan v. Merck, Sharp & Dohme Ltd.* [1988] I.L.R.M. 626, 636 "basically ineffective" to protect his constitutional rights to the protection of the person and bodily integrity.

31. Naturally, it must be stressed that the Gardai maintain that at all times they acted lawfully in arresting the plaintiff and that there was no tortious or other unlawful conduct on their part. That, however, is not the precise question which I have to consider, as my task for the purposes of this particular motion is to consider whether there are any circumstances in which the plaintiff *might* be able to invoke a constitutional remedy to supplement or augment his reliance on the nominate torts of assault and battery.

32. In view of the fact that such circumstances can readily be identified – at least so far this particular plaintiff is concerned – I will not strike out on a summary basis the claims based on the constitutional rights to the person and the cognate and overlapping rights such as bodily integrity and privacy. This is because it is just possible that the plaintiff will be able to demonstrate at the full hearing of the action that these nominate torts of assault and battery will insufficiently vindicate these constitutional rights to the integrity of the person so far as the manner of his arrest by members of the Gardaí are concerned.

33. In view of these possible uncertainties regarding the interaction of both these nominate torts and the relevant constitutional provisions relied upon by the plaintiff, it is appropriate to have regard to the principles articulated by Keane J. in *Irish Permanent* regard the summary disposal of complex legal question. This in itself is sufficient to demonstrate that it would be inappropriate to strike out these particular claims.

The claims under the European Convention of Human Rights Act 2003

34. The plaintiff claims damages for breaches of specific provisions of the Convention, including Article 3 (inhuman and degrading treatment) and Article 5 (personal liberty). The inclusion of these claims, however, invites a number of observations.

35. First, the claims under the 2003 Act proceed on the implied premise that the provisions of the European Convention of Human Rights have direct effect in Irish law, the objective breach of which sounds in damages. The Supreme Court has, however, confirmed that the ECHR does not have direct effect in Irish law in this sense: see, e.g., *McD v. L* [2009] IESC 71, [2010] 2 I.R. 199, and *MD v. Ireland* [2012] IESC 10, [2012] 2 I.L.R.M. 305. In fact, strictly speaking, damages can only be claimed under s. 3(2) of the 2003 Act insofar as it is alleged that the plaintiff has suffered loss by reason of a failure of an organ of the State to "perform its functions in a manner compatible with the State's obligations under the Convention provisions."

36. Second, s. 3(2) of the 2003 Act makes it plain that any claim for damages under the 2003 Act can only be claimed "if no other remedy in damages is available". But it is plain that many other claims for damages are available in this State to a person who claims that they have been unlawfully arrested and detained: these remedies not only include the nominate torts of false imprisonment and assault and battery, but also the action for damages for breaches of constitutional rights. If the plaintiff was, in fact, subjected to inhuman and degrading treatment – a claim which, in fairness, I should again point out is emphatically denied by the defendants – then, insofar as this claim would not be adequately vindicated on the facts of his case by the nominate torts of assault and battery,

he could sue for damages for breach of his constitutional right to the protection of the person in Article 40.3.2. The express constitutional protection of the person necessarily precludes inhuman and degrading treatment of this kind: cf. by analogy my own judgment in *Kinsella v. Governor of Mountjoy Prison* [2011] IEHC 353, [2012] 1 I.R. 467.

37. As was pointed out in *Kinsella*, the protection of the person in Article 40.3.2 (including the overlapping right to bodily integrity derived from Article 40.3.1) entails the protection of the integrity of both the mind and the body. Given that the parameters of this constitutional guarantee must also be understood by the Preamble's commitment to safeguarding the dignity of the individual, it is plain that Article 40.3.2 clearly prohibits all forms of torture and inhuman and degrading treatment, as this would necessarily be inconsistent with the constitutional protection of the integrity of the human mind and body.

38. This is far from a new idea or insight. As Finlay P. observed in *The State (C.) v. Frawley* [1976] I.R. 365, 374 in the context of the relationship between unenumerated rights under Article 40.3.1 and Article 3 ECHR:

"If the unspecified personal rights guaranteed by Article 40 follow in part or in whole from the Christian and democratic nature of the State, it is surely beyond argument that they include freedom from torture, and from inhuman and degrading treatment and punishment. Such a conclusion would appear to me to be inescapable even if there had never been a European Convention on Human Rights, or if Ireland had never been a party to it."

39. It has not been suggested that the remedies available under the common law and, where appropriate, the Constitution are in some way inadequate or that they cannot otherwise adequately vindicate the plaintiff's rights under the ECHR. In this respect, by analogy with the approach already taken with regard to the claim for damages for breach of constitutional right to liberty, the claim based on the personal liberty provisions of Article 5 ECHR adds nothing to the existing claim in respect of the nominate tort of false imprisonment, even if one overlooks the altogether important point that a claim *as expressed in that fashion* is not, as such, justiciable having regard to the provisions of s. 3 of the 2003 Act.

40. Returning, therefore, to the language of Baker J. in *PR* it can be said likewise that this claim adds nothing to the nominate tort of false imprisonment. It follows, therefore, that with a view to avoiding duplication and potential confusion, I will therefore strike out this claim as well.

41. Much the same can be said of the claim based on Article 3 ECHR. Insofar as the common law torts of assault and battery offered inadequate protection to the plaintiff's rights in the present case, every protection in respect of the guarantee against torture and inhuman and degrading treatment is necessarily and by definition subsumed in the concomitant protection of the person in Article 40.3.2 and the protections of bodily integrity in Article 40.3.1. I will accordingly strike out the claim based on Article 3 ECHR as well as adding nothing to the existing claims for damages for assault and battery as well as to the those for breach of constitutional rights which have not themselves been struck out.

The claims based on the EU Charter of Fundamental Rights

42. The plaintiff claims damages for breach of the guarantees contained in Article 3 (physical and mental integrity), Article 4 (prohibition of inhuman and degrading treatment), Article 6 (liberty) and Article 7 (family life) of the EU Charter of Fundamental Rights. It is thus claimed, for example, that the plaintiff's rights under Article 3 of the Charter were infringed in that he was subjected to "a search of his person in the absence of a medical practitioner and without his parents' knowledge, authority or consent."

43. Insofar as the Charter of Fundamental Rights is concerned, it must be recalled that the rights protected by the Charter are engaged so far as Member States are concerned *only* when the Member State in question is "implementing" Union law within the meaning of Article 51(2) of the Charter. Even taken the broadest possible view of the meaning of the phrase "implementing" Union law, it is well nigh impossible to see how the Charter could come into play in relation to events which are wholly internal to this State and in respect of which Union law plays no role or part.

44. All of this is illustrated by the recent decision of the Court of Justice in Case C-617/10 *Åkerberg Fransson* [2013] E.C.R. I-000. Here the question was whether the *ne bis in idem* provisions of Article 50 of the Charter applied to a tax penalty imposed for VAT purposes. The taxpayer in this case had previously paid administrative tax penalties and the issue of whether this precluded the application of further penalties in later proceedings accordingly arose. The critical question which had been raised by the Swedish referring court whether it could be said that Sweden was "implementing" Union law for the purposes of Article 51(1) of the Charter in the course of taking a subsequent criminal prosecution for VAT evasion.

45. A Grand Chamber of the Court of Justice held in essence that the Charter bound Member States "when they act in the scope of Union law" and that this is what the phrase "implementing" Union law in Article 51(1) really means. The Court of Justice then held that Sweden was "implementing" Union law in the present case because "the tax penalties and criminal proceedings to which Mr Åkerberg Fransson has been or is subject are connected in part to breaches of his obligations to declare VAT."

46. The Court then pointed to specific anti-evasion provisions of the consolidated VAT Directive 2006/112/EC which ensured that Member State are under an obligation to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on its territory and for preventing evasion. Given further that VAT revenue formed part of the Union's own resources it followed that:

"...there is thus a direct link between the collection of VAT revenue in compliance with the European Union law applicable and the availability to the European Union budget of the corresponding VAT resources, since any lacuna in the collection of the first potentially causes a reduction in the second....It follows that tax penalties and criminal proceedings for tax evasion, such as those to which the defendant in the main proceedings has been or is subject because the information concerning VAT that was provided was false, constitute implementation of Articles 2, 250(1) and 273 of Directive 2006/112 (previously Articles 2 and 22 of the Sixth Directive) and of Article 325 TFEU and, therefore, of European Union law, for the purposes of Article 51(1) of the Charter."

47. While it is probably fair to say that *Åkerberg Fransson* represents the outer limits of the "implementing Union law" principle, yet even in that case there was, however, a link between the domestic prosecution in respect of the VAT fraud and the application of European Union law. In the present case there is simply no such link, since under no possible circumstances could it be said that the arrest of the plaintiff pursuant to a purely domestic statute was within the scope of European Union law.

48. For the reasons stated, therefore, it is plain that the claim based on the alleged operation of the Charter is doomed to fail, since under no possible circumstances could it be said that Ireland was "implementing" Union law within the meaning of Article 51(1) – a mandatory pre-condition to the very application of the Charter – by effecting the arrest of the plaintiff pursuant to s. 12 of the 2001

Act.

49. It follows, therefore, that this aspect of the claim is entirely unsustainable and must be struck out pursuant to the inherent jurisdiction of this Court.

The claims based on the 2006 UN Convention

50. So far as the claims based on the 2006 UN Convention are concerned, it must be stressed that the Convention itself has not been made part of the domestic law of the State by a law enacted for this purpose by the Oireachtas in the manner required by Article 29.6 of the Constitution. Given the dualist nature of the Constitution, it is absolutely clear that an international agreement cannot prevail over domestic law, save to the extent that such agreements have been made part of our domestic law: see *In re O Laighléis* [1960] IR 93. In these circumstances, the 2006 Convention cannot of itself give rise to any justiciable legal rights or controversies.

51. It is true that the situation is different at EU level where the monist tradition prevails. Thus, by virtue of Article 216(2) TFEU where international agreement are concluded by the European Union they are binding on the institutions of the Union and they prevail over inconsistent legislative acts of the Union: see, e.g., Case C-366/10 *Air Transport Association of America* [2011] E.C.R. I-000. It is equally clear that such union legislation must be interpreted, so far as possible, in a manner consistent with the international agreement in question.

52. The EU has itself by virtue of Decision 2010/48 approved the UN Convention, so that the Convention is thus part of the European Union legal order. The Court of Justice has further confirmed that Directives dealing with employment rights and non-discrimination (such as the Equal Treatment Directive 2000/78/EC) must be interpreted in the light of that Convention: see Case C-335/11 *HK Danmark/Ring* [2013] 2 CMLR 21.

53. Yet insofar as the Convention is justiciable at all in an Irish court in the absence of legislation giving effect to that Convention as part of the domestic law of the State, it can be only so insofar as the matter raised is within the scope of application of European Union law. That would be the case if, for example, an Irish court was, for instance, called upon in an appropriate case to interpret the Equal Treatment Directive.

54. The circumstances of the present case are, however, some distance from those governed by the Equal Treatment Directive. As I have already pointed out, the present case involves the application of a domestic statute to a set of facts which are wholly internal to this State. No question of the application of European Union law arises.

55. As this case is accordingly governed entirely by Irish law, the 2006 Convention could only be justiciable in the event that there was a domestic law which gave effect to its provisions. Since the Oireachtas has not enacted such legislation, it follows, therefore, that the claim based on the 2006 Convention is doomed to fail and must be struck out pursuant to the inherent jurisdiction of the Court.

Whether the plaintiffs are entitled to declaratory relief

56. The defendants also seek to have the plaintiff's claims to declaratory relief in respect of the legality of the arrest of struck out. It is true that it has never hitherto been the practice of the courts to grant declaratory relief in aid of claims in tort of this kind at common law. This is doubtless because any award of damages – which will generally be awarded by a jury – is regarded as a sufficient vindication of the wrong done. Furthermore, the premise of any award of damages for, say, false imprisonment is that the plaintiff was falsely detained.

57. To some extent, however, the fact that such relief is never sought in aid of these claims may be an historical accident, reflecting the traditional distinction between the common law remedies (damages) and other equitable remedies (such as a declaration). But for one complication – which I shall address in a moment – there would seem to be no reason in principle why the courts should not now exercise the declaratory jurisdiction in aid of legal rights derived from the common law. It has never been suggested, for example, that a court should not be able to award a declaration in respect of a breach of contract claim, even if damages are also awarded to the wronged party as well.

58. The complication, however, derives from the fact that this trial will also be with a jury, even if by reason of my earlier judgment in *DF (No.1)*, vital parts of the case will fall to be determined by the trial judge. The jury have, however, been given no jurisdiction to award a declaration in respect of claims of this kind. Indeed, it may be noted that in the admittedly special case of defamation, s. 28 of the Defamation Act 2009 now enables a plaintiff to apply to the Circuit Court *sitting without a jury* for a declaration in respect of the defamatory material in question. Yet no such powers were conferred by the Oireachtas on the High Court when hearing defamation actions with a jury.

59. While this example of statute is not dispositive, it is nonetheless a recent implicit recognition by the Oireachtas of the impracticability of declaratory awards in jury cases. Perhaps another way of looking at this matter is to say that where the plaintiff elects for jury trial in respect of a claim of this kind, he must normally accept the traditional boundaries and limitations of that procedure. It cannot be said that the possibility of a jury award of damages alone is an ineffective remedy for the protection and vindication of the constitutional rights to liberty and the person for the purposes of Article 40.3.2, since, as I have already noted, any such award is premised on the illegality of the arrest or other tortious conduct complained of so that in that sense the grant of any further declaratory relief in respect of the illegal conduct in question might seem superfluous.

60. Given that this action will be set down for trial with a jury, it follows that the claims for declaratory relief in aid of these common law claims is inappropriate and potentially confusing. The existence of such a claim might suggest to the jury that they have a particular function over and above the determination of the specific issues of fact which they are required to try and to make the ultimate decision – subject to the appropriate rulings of the trial judge on issues touching on the legality of the arrest – as to whether they should award damages.

61. In these circumstances, I will accordingly strike out the claims for declaratory relief.

Conclusions

62. It remains only to summarise my conclusions.

63. First, given the multiplicity of claims brought by the plaintiff, it is appropriate that this court should ensure that the pleadings are presented in a regular and orderly way. This is especially so given that the trial will be conducted before a jury.

64. Second, in view of the fact that the plaintiff is suing for damages for false imprisonment, I will strike out the claim for damages

based on Article 40.4.1. The tort of false imprisonment provides a full and complete protection for the constitutional right of personal liberty and the claim based on breach of constitutional rights adds nothing to that claim.

65. Third, it is otherwise in the case of the claims based on a breach of Article 40.3.2 in respect of the protection of the person and allied overlapping claims in respect of the unenumerated bodily integrity under Article 40.3.1 which I will not strike out at this preliminary stage. This is because it is just possible that the plaintiff will be able to demonstrate at the full hearing of the action that these nominate torts of assault and battery will insufficiently vindicate these constitutional rights to the integrity of the person so far as the manner of his arrest by members of the Gardaí are concerned, particularly having regard to the requirement that the tort of assault requires a prior apprehension of a battery before it actually takes place, which, having regard to the plaintiff's mental condition, he might not be able to satisfy.

66. Fourth, as it has not been established that the remedies available under the common law torts of false imprisonment and assault and battery and, where appropriate, in respect of the remaining constitutional claims are in some way inadequate or that they cannot otherwise adequately vindicate the plaintiff's rights under the ECHR, I will strike out these claims relying on the ECHR Act 2003 in their entirety. Given the breadth of the protections available in respect both of these common law claims and the remaining constitutional claims, it has not been shown that the claims resting on the 2003 Act can add anything, at least so far as the parameters of the present case is concerned.

67. Fifth, it is plain that the claim based on the alleged operation of the Charter is doomed to fail, since under no circumstances could it be said that Ireland was "implementing" Union law within the meaning of Article 51(1) – a mandatory pre-condition to the very application of the Charter – by effecting the arrest of the plaintiff pursuant to s. 12 of the 2001 Act. It follows, therefore, that this aspect of the claim is entirely unsustainable and must be struck out pursuant to the inherent jurisdiction of this Court.

68. Sixth, the Oireachtas has not made the UN Convention on the Rights of Persons with Disabilities part of the domestic law of the State in accordance with Article 29.6 of the Constitution. It follows that the claims which rely on the 2006 Convention must be struck out as not presenting any justiciable controversy.

69. Seventh, given that the present proceedings will be tried with a jury, it would be inappropriate and confusing to include a claim for declaratory relief, since the jury have no role or function in relation to this remedy. If the plaintiff's underlying claims are well founded, he will be adequately vindicated by an award of damages. I will accordingly strike out the claims for declaratory relief.