Neutral Citation: [2017] IEHC 158

THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 222 JR]

BETWEEN

THOMAS MANSFIELD, GAVIN BOLLARD, PATRICK GABRIEL BRADLEY, ROBERT COOPER, WILLIAM DOYLE, JOSEPH FLOOD, ANTHONY GALLAGHER, DAIRE GARVEY, SEAMUS GRIFFIN, CIAN HARTE, MARK MAGUIRE, PAUL McGUINNESS, DANIEL NORTON, ANTHONY SMITH, COLM USHER, JOHN RYAN, GERARD CARROLL, ALAN CLARKE, PETER CRINNION, MAURICE CUNNINGHAM, WILLIAM DILLON, DAVID EAGER, NOEL McCOY, JOHN MURPHY, MICHAEL SECKINGTON, SEAN WALSH AND BRIAN DROMEY

APPLICANTS

AND

DISTRICT JUDGE TIMOTHY LUCEY, DISTRICT JUDGE DAVID KENNEDY, DISTRICT JUDGE GRAINNE MALONE, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

AND

CHIEF SUPERINTENDENT DECLAN COBURN, CHIEF SUPERINTENDENT THOMAS CONWAY, CHIEF SUPERINTENDENT CATHERINE KEHOE, CHIEF SUPERINTENDENT AIDAN GLACKEN, AND THE COMMISSIONER OF AN GARDA SÍOCHÁNA

NOTICE PARTIES

JUDGMENT of Ms. Justice Baker delivered on the 23rd day of February, 2017.

1. This case raises a single question of law, whether the District Court has jurisdiction to grant an order for costs to an appellant who has been successful in an appeal under the firearms legislation.

2. In the pleadings, the 27 applicants have for convenience been divided into four categories, each category defined by the name of the judge and/or District Court area in which the orders in their respective appeals were made. In each case the applicants had been refused a certificate to use and carry a designated firearm by the licensing authority, An Garda Síochána, the *persona delegata* with statutory power to issue a certificate to carry and use firearms under the Firearms Acts 1925 to 2009. An appeal lies to the District Court, which can on a successful appeal result in a direction to the Gardaí that the licence issue.

3. The named respondents are the District Court Judges who heard the relevant appeals, directed the Gardaí to issue the relevant licence, and in each case determined to refuse the application of the successful appellants for an order for costs on the grounds that the District Court has no jurisdiction to award costs to an appellant under the legislation.

4. The notice parties are the relevant superintendents of An Garda Síochána, vested with the power under statute to issue the certificates for the different geographical areas relevant to the individual applicants.

5. Hedigan J. granted leave to apply for judicial review on 7th April, 2014.

The pleadings

6. The applicants seek an order of *certiorari* to quash the decisions of the respective District Judges by which costs were refused, and a declaration that they erred in law in their respective interpretation of the law, and thereby fettered the discretion which the applicants argue exists to award costs in a suitable case.

7. The applicants argue by way of additional claim that if this court determines that the District Court has no jurisdiction to award costs, that the absence of jurisdiction is a denial of constitutional rights to fairness of procedure and of the State's obligations under the European Convention on Human Rights Act 2003 and results in an inequality of arms.

8. The named respondents did not take part in the hearing but the notice parties served a full notice of opposition. It is denied that the District Judges made an error of law, or that there has been any breach of constitutional and/or human rights law as the holding of a firearms licence is a privilege, not a right, and that a person may lawfully be required to bear their own costs in court proceedings seeking to uphold a claim to such privilege.

9. It is also argued that, as the question has definitively and recently been decided by Peart J. in the High Court in a consultative case stated in *Hayes v. Sheahan* [2013] IEHC 179, [2013] 2 I.R. 169, the determination in which was followed in each of the appeals, that the District Judges made no error amenable to review.

10. The claim that the applicants are barred by time has not been pursued as it appears the delay resulted from the fact that the first respondent had reserved his judgment and that resulted in an unavoidable delay.

Estoppel?

11. The notice parties by way of preliminary objection argue that the applicants are estopped from now seeking to maintain the arguments made, as they were not raised in the District Court.

12. No rule has been identified in proceedings seeking judicial review which of itself must prevent an applicant for review from raising arguments not previously raised in the law court or tribunal the decision of which is under challenge. The discretionary nature of the relief gives sufficient scope to a judge hearing an application for judicial review if he or she considers the grounds to be unmeritorious and ones which could have been, but were not for one or other reason, argued in the decision making forum under review.

13. The respondents rely on the decision of Clarke J. in *Maxol Limited v. An Bord Pleanála* [2011] IEHC 537, a decision in the planning sphere, where the question was whether the Board had sufficient evidence to come to its decision. Clarke J. held that Maxol had insufficient standing to seek judicial review in regard to a matter that it could have raised, but did not raise, before the Board. That decision was taken in the planning sphere where the test of standing is more stringent than that found in judicial review generally. It

is not authority for the broad proposition for which the notice parties contend.

14. In the present case, the High Court judgment which is argued to be relevant to the correct interpretation of the jurisdiction of the District Court was not available to the District Judges or to the applicants at the hearings, and accordingly, I consider that it would be invidious to refuse to entertain the application for judicial review on the grounds of failure to argue the point in the lower court.

The appeals
15. It is an offence to carry or use arms without a certificate entitling the holding or user of an identified arm. The licence is issued by the Chief Superintendent of An Garda Síochána. An appeal lies to the District Court from a refusal to grant a licence and the District Court's power is limited to making a direction to the Gardaí.

16. Evidence adduced by affidavit before me, and not contraverted, shows that the appeals process engaged by each of the applicants was neither formulaic nor legally straightforward, and that it was costly in time and knowledge. In each case the appeals were conducted by the solicitor who continues to act and not on a *pro bono* basis.

17. In the first category of applicant, numbers one to fifteen, judgment was reserved by Judge Lucey, who delivered a long and considered written judgment on 23rd January, 2014. During a two day hearing, detailed technical evidence was adduced and cross-examined, and submissions were made by counsel for the State and by the solicitor who then acted and continues to act for these applicants.

18. Judge Lucey in his judgment found as a matter of fact that the appeal process had been costly for the successful applicants and his refusal to award them costs arose because of his interpretation of the law and because he considered that he had no jurisdiction to award costs.

19. The appeals of the second category of appellant, numbers sixteen to twenty five, were heard by Judge David Kennedy, who allowed the appeals on 6th February, 2014 with one exception, that of the twenty third appellant, Noel McCoy. His appeal required the submission of additional documentation and was subsequently allowed on 13th March, 2014. Judge Kennedy also refused to award the appellants costs as he considered that he had no jurisdiction to do so.

20. The appeal of the twenty sixth applicant was also allowed by the first respondent, but in different circumstances to the first fifteen applicants.

21. The appeal of the twenty seventh applicant was heard by Judge Grainne Malone, who allowed it at the end of the hearing on 20th January, 2014.

The jurisdiction of the District Court
22. The District Court is a court of limited and local jurisdiction, and this characterisation is not in doubt.

23. The starting point for the District Court jurisdiction is s. 77 of the Courts of Justice Act 1924 as amended ("the Act of 1924"). By this provision there was carried forward to the Free State Courts all of the powers and jurisdictions which immediately before the 6th December 1922 was vested in Justices or a Justice of the Peace sitting at Petty Sessions.

24. The Act of 1924 was amended from time to time and the relevant amended provisions are found in s. 33 of the Courts (Supplemental Provisions) Act, 1961:

> "33.—(1) There shall be vested in and transferred to the District Court—
>
> (a) all jurisdiction which, by virtue of sections 77 and 78 of the Act of 1924, was, immediately before the operative date, vested in or capable of being exercised by the existing District Court,
>
> (b) all jurisdiction which, by virtue of any enactment which is applied by section 48 of this Act, was, immediately before the operative date, vested in or capable of being exercised by the existing District Court."

25. The appellate function of the District Court in regard to the granting of a certificate to hold a firearm was created by s. 1(4) of the Firearms Act 1920 (10 & 11 Geo.5. Ch. 43) as follows:

> "(4) Any person aggrieved by a refusal of the chief officer of police to grant him a firearm certificate, or to vary such a certificate, may appeal in accordance with rules made by the Lord Chancellor to a Court of summary jurisdiction acting for the petty sessional division in which the appellant resides."

26. The Firearms Act 1925, an Act of Saorstát Eireann, did not make provision for an appeal, and Part 5, s. 43 of the Criminal Justice Act 2006 inserted s. 15A into the Act of 1925 to provide for appeal to the District Court by any person aggrieved by a decision of the issuing person in relation to granting a firearms certificate. This jurisdiction under the Firearms Acts is now exercised by the District Court in the District Court Division in which the appellant resides.

27. The firearms legislation does not contain any express provision that the District Court may award costs, but recent jurisprudent suggest that this is not dispositive of the question whether the jurisdiction to award costs exists.

Existing authorities
28. The jurisdiction of the District Court to award costs was the subject matter of a number of recent judgments of the High Court, two delivered on dates very close to the other. O'Malley J. in *HSE v. O.A.* [2013] IEHC 172, [2013] 2 I.R. 287 held that the District Court did have jurisdiction to award costs to a respondent in child care proceedings under the Child Care Act 1991. Peart J. in *Hayes v. Sheahan*, delivered just two weeks later, held that the jurisdiction to award costs did not lie in appeals under the Firearms Acts.

29. Much of the argument before me related to the precedential value of these judgments, and counsel disagree as to which correctly represents the relevant law.

30. Counsel for the applicants argues that I should depart from the decision of Peart J. in *Hayes v. Sheahan* on the grounds that it did not reflect a consideration of the judgment of O'Malley J. in *HSE v. O.A.*, given only two weeks earlier. Courts Service records show that the judgment of O'Malley J. was published on the website on 7th May, 2013, a week after Peart J. gave his judgment in *Hayes v. Sheahan*. Further, *Hayes v. Sheahan* was heard in February, 2013 and thus pre-dated the delivery of her judgment by O'Malley J.

31. In *HSE v. O.A.*, O'Malley J. found the power to award costs derived from the Courts of Justice Act 1924, as extended by the Courts (Supplemental Provisions) Act 1961, and the District Court Rules 1997 by which was vested in the District Court the power to award costs in civil proceedings. Proceedings under the Child Care Act 1991 were classified as civil proceedings within the meaning of O.51, r.1 of the District Court Rules 1997, and therefore the power to award costs existed, albeit there was no express power in the primary legislation.

32. It is clear that the judgment of O'Malley J. was not opened to Peart J. who was hearing a case stated from the District Court, and where he held that no power to award costs exists in an appeal under the firearms legislation.

33. Peart J. left over the question of whether the Rules of the District Court could confer jurisdiction to award costs when primary legislation did not. That question was definitively answered by O'Malley J. in *HSE v. O.A* where she correctly located the source of the jurisdiction of the court in s. 34 of the Courts (Supplemental Provisions) Act 1961 by which was vested in the Rules Committee of the District Court power to make *inter alia* procedures and practice directions with regard to costs. She considered that proceedings under the Child Care Act were "civil" proceedings and that the jurisdiction to award costs derived from the Rules of the District Court.

34. The relevant District Court Rule which governs the exercise of the discretion by the District Court is O.51, r.1 of District Court Rules 1997:

> "Save as otherwise provided by statute or by Rules of Court, the granting or withholding of the costs of any party to civil proceedings in the Court shall be in the discretion of the Court."

35. O'Malley J. noted the clear distinction between civil and criminal proceedings and the sole distinction which operated in regard to the question before her as to how civil proceedings were to be characterised. She held that here was no intermediate class of proceedings which could be called public civil proceedings or private civil proceedings, so civil proceedings could be characterised in a broad way to include proceedings generally characterised as public or generally characterised as private.

36. At para. 36 of her judgment O'Malley J. said as follows:

> "… it seems to me that the only distinction made in the District Court Rules 1997 is between civil and criminal proceedings. There does not seem to be, for the purposes of the question of costs, a distinction between public and private civil proceedings."

37. The judgment of O'Malley J. was appealed to the Supreme Court, *CFA v. O.A.* [2015] IESC 52, but the appeal had a somewhat complex procedural history. The proceedings commenced as an appeal of the judgment of O'Malley J. in *HSE v. O.A.*, but the issues ultimately determined by the Supreme Court were quite different. The appellant, the *HSE/CFA* had withdrawn its appeal to the Supreme Court on the jurisdictional question of whether the District Court had power to award costs in child care proceedings, but the matter came before the Supreme Court on a case stated from Nolan J. in the Circuit Court who was hearing an appeal from the District Court determination on the costs question following the decision of O'Malley J. on the case stated.

38. Implicit in the approach of the State bodies involved in the appeal from the decision of O'Malley J. is that they recognised the correctness of the approach of O'Malley J. that the power to award costs can be found outside the primary legislation from which the District Court derives its jurisdiction to determine a substantive application.

39. It is argued that as the judgment of Peart J. in *Hayes v. Sheahan* did not consider precisely the source of the jurisdiction to award costs, the question raised in the present case must now be reformulated in the light of the judgment of O'Malley J. in HSE v. O.A.

Are there only two categories of proceedings?

40. The applicants argue that O'Malley J. found a binary distinction in the Rules, between civil and criminal matters, and that as the appeal under the Firearms Acts cannot be characterised as criminal, it must be classed as civil proceedings, in respect to which the power to award costs exists and is derived from the Rules of the District Court.

41. I propose now considering the argument of the applicants that jurisdiction to award costs derives from the correct characterisation of the appeal to the District Court as a "civil action" or "civil proceedings" within the meaning in the District Court Rules 1997.

42. It is accepted that the amendment made by S.I 17/2014 which came into operation on 3rd February, 2014 is not applicable, and therefore I do not propose considering the argument of the applicants that the 2014 Rules correctly reflect the legal position.

The District Court Rules

43. The power of the District Court to award costs in civil proceedings is found in O.51, r.1, and the absence of an express power to award costs in the substantive legislation in which proceedings are maintained does not preclude such jurisdiction arising.

44. "Civil proceedings" are defined as including:

> "… those suits or actions in law in which jurisdiction is conferred by any enactment upon the District Court in civil cases as described in s. 77A of the Courts of Justice Act 1924 and in any enactment extending or amending that section either expressly or by implication."

45. Thus, the appeals in respect of which this application is brought must be characterised as civil proceedings for jurisdiction to award costs to be found by reference to the reasoning of O'Malley J. in *HSE v. OA.*

46. However, an examination of the structure of s. 77A, as amended, shows that that Act identified the jurisdiction of the District Court in three categories of cases: Category A, civil cases; Category B, criminal cases; and Category C, licensing matters.

47. I quote the entire of this last category as the focus of the argument of the respondent was that the application by way of an appeal under s. 15A of the Act of 1925 as amended is one which comes within this category:

> "In granting certificates for spirit and other licences—all licensing jurisdiction heretofore exercised by Justices of the Peace at Petty Sessions or at Quarter Sessions or by Courts of Quarter Sessions or by Recorders or by Justices of the Peace out of Petty Sessions except the power of granting new licences conferred on the Circuit Court by Section 50 of

this Act."

48. The operative relevant part of the decision of Peart J. is para. 11, where he identified the three alphabetical divisions in s. 77A of the Act of 1924, a distinction he again referred to in para. 13:

> "11. Those three alphabetical divisions, A, B and C are important in my view given the above definition of "civil proceedings" and its reference to "civil cases". Order 51 DCR 1997 therefore, in as much as it deals only with "civil proceedings", and therefore only such cases as are set forth in s. 77A, as amended, of the Act of 1924 under the heading of "Civil Cases", makes provision only in relation to this category and not in relation to either B: criminal cases or C: the granting of spirit and other licences."

49. This approach is not possible to reconcile with the argument now made by the applicants that two and not three categories of jurisdiction existed.

50. Peart J. expressly considered whether the proceedings in the case before him were civil proceedings within the meaning of O.51, r.1. The greater part of his judgment, from paras. 9 to 17, deals with the evolution of the power to award costs in the District Court. In doing so, he goes back to the original Act of 1924 by which provision was made for three classes of case, A: Civil Cases; B: Criminal Cases and C: matters pertaining to certificates and licences. He traces this three-strand approach through the District Court Rules of 1926, 1948 and 1997, and reached the conclusion that the proceedings in that case fell within the licensing category, C.

51. The argument of the applicants is impossible for me to reconcile with the judgment of Peart J. in *Hayes v. Sheahan* insofar as he considers that the Rules of the District Court 1997 did indeed contemplate a third category of application, namely what I would call in general a licensing application. Peart J. considered that at least three separate categories or classes of action became vested in the District Court by s. 77A of the Act of 1924.

52. Peart J.'s decision is binding on me as it is a decision on the very issue before me. In *Worldport Ireland Limited (In liquidation)* [2005] IEHC 189 Clarke J. set out the basis on which a judge may reconsider and refuse to follow a decision of another judge of the same court. At p. 7 of the judgment he said the following:

> "Amongst the circumstances where it may be appropriate for a court to come to a different view would be where it was clear that the initial decision was not based upon a review of significant relevant authority, where there is a clear error in the judgment, or where the judgment sought to be revisited was delivered a sufficiently lengthy period in the past so that the jurisprudence of the court in the relevant area might be said to have advanced in the intervening period."

53. Whilst I agree with the analysis of O'Malley J. in *HSE v. O.A.*, for the reasons explained by me in my decision in *DPP v. Douglas* [2015] IEHC 461, [2015] 1 I.R. 315, I do not agree with the argument of the applicants that it is a relevant judgment to assist me in my determination in the present case. The relevant judgment is that of Peart J. in *Hayes v. Sheahan*, and the judgment of O'Malley J. is authority for the proposition that there does not exist a type of civil proceedings to which the discretion vested by the Rules in regard to costs is not applicable. The distinction she refused to draw was between private civil and public civil cases, and she was not making a distinction between civil cases and the category of cases contemplated by s. 77A, subcategory C of the Act of 1924, the jurisdiction relating to licences.

54. As a matter of constitutional law, and for reasons of *stare decisis*, I am bound by a recent authoritative and relevant decision of another judge of the High Court. I am not persuaded by the arguments of the applicants that Peart J. omitted to have regard to relevant case law in his decision. It is clear that the judgment of O'Malley J. in *HSE v. O.A.* is on point in respect of one matter only, namely, and insofar as Peart J. may have concluded otherwise, that the power to award costs may be derived either from an enabling statute, or from the Rules of the District Court. I am not persuaded that the applicants have raised any argument or opened any authority which would persuade me to depart from the judgment of Peart J., nor am I persuaded that he was incorrect in his characterisation of the application before him as falling within the category of cases identified in s. 77A, under heading "C", the granting of a certificate or licence. The fact that the judgment of O'Malley J. was not opened to him does not render his reasoning one from which I can depart, as her judgment was rooted in a different consideration, the nature of proceedings as "civil" proceedings.

55. The findings of Peart J. in *Hayes v. Sheahan*, are not inconsistent with the finding by O'Malley J. in *HSE v. O.A*.

56. For completeness, I reject the argument that the judgment of O'Malley J. has the effect that that all categories of cases identified in s. 77A must be characterised as "civil cases". She did not come to that view and was concerned with the types of civil cases and not with classes of cases which are not civil.

57. Therefore, I conclude that in the present case, the appeal to the District Court is to be considered a licensing matter and is outside the scope of O.51, r.1 of the District Court Rules 1997 in relation to the award of costs.

Was the District Court exercising a licensing jurisdiction?

58. Counsel for the applicants also argues that the decision of Peart J. is plainly wrong in that it fails to have regard to the nature of the power vested in the District Court under s. 15A(1)(b) and (d) of the Firearms Acts 1925 to 2009, as inserted by s. 43 of the Criminal Justice Act 2006. The District Court does not grant a firearms licence and the *persona designata* remains the Garda Superintendent and not the District Court. The District Court hearing an appeal may do three things:

> (a) confirm the decision of the Garda Superintendent;
>
> (b) adjourn the appeal and direct reconsideration by the Garda Superintendent of the application; or
>
> (c) allow the appeal.

59. In the case of an order by which an appeal is allowed, s. 15A(4) provides the issuing person (the Garda Superintendent) "shall give effect to the Court's decision".

60. Thus, it is argued that the District Court is not granting a licence and could not be described in any sense as having an original jurisdiction to do so, such as occurs where a spirit or liquor licence is granted by the District Court, where the District Court is the primary grantor of the licence, and the court grants a certificate directed to an Garda Síochána to issue the licence.

61. I accept the point made by counsel for the respondent, namely, that the distinction between licence and certificate is an artificial one, but the question of whether the court is engaged in a licensing or certifying jurisdiction is one that is less straightforward.

62. The source of the answer has to be the legislation itself and the words used are "in granting a licence". It is clear that the reference to a liquor licence is by way of example only, and other forms of licences may be included. The entire sentence must be read, and the jurisdiction is one not merely for the granting of liquor licences, but is a jurisdiction "relating to" the granting of licences, and the subsection goes on to refer to "all licensing jurisdiction" heretofore exercised. The power is defined by the inclusive reference to all jurisdiction previously exercised under the relevant statutory schemes. While the District Court does not grant the licence it has a role vested in it by s. 1(4) of the Act of 1920 by way of an appeal from a refusal of a decision of the granting authority. The role of the District Court is an intrinsic and integral part of the grant of what was called in that Act a "firearms certificate".

63. Thus, I cannot accept the argument that the judgment of Peart J. is manifestly incorrect in the way in which he interpreted the provisions of subcategory C.

Appeals
64. In case I am incorrect in this, I consider now the argument of the applicants that the District Court is exercising an appellate, and not a licensing jurisdiction. This is how the jurisdiction is defined in the Act of 1925 as amended where the express appellate jurisdiction is created.

65. All appeals are dealt with under Part IV of the District Court Rules comprising Orders 100 to 102 inclusive. Order 100 deals with appeals to the District Court. Order 100(2) provides for the mode of issue and service of notice of appeal in relation to any appeal from any notice or decision or direction in any matter where an appeal is authorised by statute to that court.

66. Order 100 makes no provision with regards to costs, nor does Part IV in general contain any such reference. The argument that the jurisdiction is appellate cannot therefore found a departure from the reasoning of Peart J. in *Hayes v. Sheahan,* as no express provision for the awarding of the costs on appeal is contained in the Rules.

The constitutional arguments/argument under European Convention on Human Rights
67. Counsel for the applicants argues that the so called "double construction rule" ought to guide my interpretation in this case. The rule comes into play only if there is an ambiguity in the legislation, and it cannot be used to fill a lacuna in the legislation. No difficulty of interpretation of the language of the legislation has been identified. The double construction rule is called in aid by the applicants to, in essence, plead that the absence of jurisdiction creates a constitutional frailty, and it seems to me that the rule may not be used in that way.

68. However, counsel also makes the broad constitutional argument that constitutional justice and the right of access to justice enshrined in particular in Article 40.3.1 of the Constitution and Article 6 of the European Convention on Human Rights ("ECHR") require that parties to litigation should at least be in a position to seek costs in a suitable case.

69. The applicants also rely on the principle of equality of arms and the right to fair trial guaranteed by Article 6 of the ECHR, and argue that if the District Court has no power to award costs, the result is fundamentally unfair to the applicants, and offends the guarantee of equality contained in Article 40.1 of the Constitution.

70. It is argued that the constitutional requirement of parity of treatment for all litigants is one that requires, in a suitable case, that the jurisdiction to award costs exists, albeit the discretion to grant those costs may be exercised in accordance with well-established principles. It is not argued that an applicant is entitled as a matter of constitutional fairness to be awarded costs, but that an applicant is entitled to at least be in a position where such an award is permissible.

71. I consider the applicants' submissions to be incorrect. The applicants enjoy a right of access to the District Court by way of appeal from the decision of the Garda Superintendent. No authority has been opened which might suggest that a constitutional right to costs in all classes of proceedings must exist in order to support and give concrete realisation to the right of the access to the courts. Hogan & Whyte in their authoritative text "*J.M. Kelly: the Irish Constitution*" (4th Ed.) at para. 7.3.150 make the following statement with which I agree:

> "Attempts to establish that the State has a positive constitutional duty to assist a civil litigant who is denied effective access to the Courts because of factors such as poverty, for which the State is not directly or immediately responsible, have almost invariably failed."

72. In *Magee v. Farrell & Ors.* [2009] IESC 60, [2009]4 I.R. 703 the plaintiff sought legal representation at an inquest into the death of her son in Garda custody, and had based her argument on the right of fair procedures and equal access to the courts. Finnegan J. held that the right was limited to criminal matters in which the liberty of the applicant was at issue:

> "There is a constitutional right to State funded legal aid when facing a criminal charge with serious consequences and certainly where there is the possibility of loss of liberty. The right has not extended to proceedings other than those in the criminal courts. Merely because a constitutional right is in issue and there is a right to be heard and to be legally represented it does not follow that there is an obligation on the State to fund legal representation." (para. 20)

73. That the possibility of obtaining an award for costs may be one aspect of the right of access to the courts is clear from a number of judgments relied on by the applicants, primarily the Judgment of Finlay P. in *Henehan v. Allied Irish Banks Limited* (Unreported, High Court, Finlay P., 19th October, 1984), where he said that it was "part of the ancillary machinery associated with the access of citizens to the Courts".

74. The decision of Finlay P. in *Henehan v. Allied Irish Banks Limited* is authority for the proposition that a litigant in person may be entitled to some categories of costs and expenses properly incurred for the purposes of presenting a case. This is not, in my view, authority for a general proposition that parties to all classes of litigation must be entitled to their costs, and his judgment relates to the measurement of costs in circumstances where the costs had been awarded in a manner within the jurisdiction of the High Court, and disallowed by the Taxing Master.

75. Reliance is placed on the jurisprudence of the European Court of Human Rights, including *Stankiewicz v. Poland* (2007) 44 EHRR 47, where the Court held that the provision of a domestic law which provided that the public prosecutor could not obtain costs or be ordered to pay the costs of civil proceedings was in breach of Article 6.1 but noted that the public prosecutor had sued the applicant

and had failed, thus identifying a clear absence of equality of arms. That judgment dealt with the reimbursement of litigation costs in circumstances where certain classes of costs were allowable, and relates, as does the judgment Finlay P. in *Henehan v. Allied Irish Banks Limited*, to the measure of costs or the class of costs recoverable, and does not amount to authority for a more general proposition that a right exists under the ECHR.

76. Equality of arms is achieved in the class of application such as the one in this case in that the District Court has no power to order the appellants to pay the costs of the Garda authorities in a case where an appeal is unsuccessful. There is nothing disproportionate from the perspective of European rights in a costs regime which does not permit the award of costs to either side in an appeal such as the one in contention in the present case.

77. It is fundamental to an analysis of the argument advanced by the applicants that no constitutional or other right to hold a firearms certificate is advanced. No right to hold a gun exists in Irish law: see Charleton J. in *McCarron v. Kearney* [2008] IEHC 195. The applicants cannot assert a right to a firearms certificate because they have as a matter of law no right to hold a gun. Thus, as stated by the ECtHR in *König v. Germany* (1978) 2 EHRR 170, no right under Article 6 is engaged:

> "All that is relevant under Article 6 (1) of the Convention is the fact that the object of the cases in question is the determination of rights of a private nature." (para. 94)

78. There was no right being asserted in the appeals before the District Court, and what was in play was the grant of a certificate, by way of a privilege, to bear arms when no such right exists as a matter of law.

79. For all of these reasons I refuse to grant the relief sought.