Note: This judgment was delivered in Gaeilge

AN ARD-CHÚIRT

ATHBHREITHNIÚ BREITHIÚNACH

2007 45 JR

IDIR

TOMÁS Ó GRÍOFÁIN

IARRATASÓIR

AGUS

ÉIRE, AN tARD- AIGHNE, AN tAIRE DLÍ AGUS CIRT, COMHIONANNAIS AGUS ATHCHÓIRITHE DLÍ

AGUS

AN STIÚRTHÓIR IONCHÚISEAMH POIBLÍ

FREAGRÓIRÍ

JUDGMENT of Mr. Justice Charleton delivered the 23rd April, 2009.

1. The applicant seeks to prevent a drunken driving prosecution by asserting language rights. In particular he objects that the machine which produced an automatic read out of the alcohol level in his body did not print that form, which he was required to sign by way of acknowledgement, in Irish.

CLAIM
2. These are the orders that are sought:

> "1. Dearbhú go bhfuil dualgas bunreachtúil ar an gcéad ar an dara agus ar an triú freagróir tiontú oifigiúil sa Phríomhtheanga oifigiúil ar na hIonstraimí Reachtúla atá leagtha amach sa sceideal leis seo arb iad Na Rialacha Cúirte Dúiche reatha iad a bhaineann le hábhar sa chás seo a chur amach agus a chur ar fáil don phobal trí chéile ar a n-áirítear an tIarratasóir ar théamaí nach lú a mbuntáiste ná na tearmaí faoinar cuireadh amach agus faoina gcuirtear ar fail an leagan oifigiúil Béarla.
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> 2. Dearbhú go bhfuil dualgas bunreachtúil ar an gcéad ar an dara agus ar an triú freagróir tiontú oifigiúil sa Phríomhtheanga oifigiúil ar Na Rialacha Cúirte Cuarda 2001 (I.R. 510/2001) maille lena leasuithe a chur amach agus a chur ar fáil don phobal trí chéile ar a n-áirítear an tIarratasóir ar théamaí nach lú a mbuntaiste ná na téarmaí faoinar cuireadh amach agus faoina gcuirtear ar fáil an leagan oifigiúil Béarla ó tharla go bhfuil ceart uathoibríoch ann acomharc a dhéanamh ón gCuirt Dúiche chuig an gCúirt Chuarda mar athéisteacht de novo i gcás coiriúil.
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> 3. Dearbhú go bhfuil an saoránach lena n-áirítear an t-iarratasóir i dteideal leagain Ghaeilge/dátheangach (Gaeilge/Béarla) den deimhniú anailíse anála a eisíonn gaireas anála dá dtagraítear in alt 17 den Acht um Thráacht ar Bhóithre 1994 ar an ócáid agus ag an am a leagtar amach in alt 17 den Acht um Thrácht ar Bhóithre 1994.
>
> 4. Dearbhú go bhfuil an saoránach lena n-áirítear an t-iarratasóir i dteideal leagain Gaeilge/dátheangach (Gaeilge/Béarla) den deimhniú anailíse anála a eisíonn gaireas anála dá dtagraítear in alt 17 den Acht um Thrácht ar Bhóithre 1994 sa chás go lorgaíonn sé leagan oifigiúil Gaeilge/dátheangach (Gaeilge/Béarla) de agus go bhfuil an saoránach sin inniúil amhlaidh sa Ghaeilge.
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> 5. Dearbhú nach féidir iallach a chur ar an saoránach leagan Béarla den deimhniú anailíse anála a eisíonn gaireas anála dá dtagraítear in alt 17 den Acht um Thrácht ar Bhóithre 1994 a shíniú sa chás go lorgaíonn sé leagan oifigiúil Gaeilge/dátheangach (Gaeilge/Béarla) de agus go bhfuil an saoránach sin inniúil amhlaidh sa Ghaeilge.
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> 6. Ordú Mandamus ag tabhairt ar an gcéad ar an dara agus/nó ar an triú freagróir tiontú oifigiúil sa Phríomhtheanga oifigiúil ar na hionstraimí reachtúla atá leagtha amach sa sceideal réamhráite leis seo arb iad Na Rialacha Cúirte Dúiche reatha iad a bhaineann le hábhar sa chás seo a chur amach agus a chur ar fáil don phobal trí chéile ar a n-áirítear an tIarratasóir ar théarmaí nach lú a mbuntáiste ná na téarmaí faoinar cuireadh amach agus faoina gcuirtear ar fáil an leagan oifigiúil Béarla.
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> 7. Ordú Mandamus ag tabhairt ar an gcéad ar an dara agus ar an tríú freagróir tiontú oifigiúil sa Phríomhtheanga oifigiúil ar Na Rialacha Cúirte Cuarda 2001 (I.R. 510/2001) maille lena leasuithe a chur amach agus a chur ar fáil don phobal trí chéile ar a n-áirítear an tIarratasóir ar théarmaí nach lú a mbuntaiste ná na téarmaí faoinar cuireadh amach agus faoina gcuirtear ar fáil an leagan oifigiúil Béarla.
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> 8. Ordú Toirmisc ag cosc ar an gceathrú freagróir a chuid seirbhíseach agus gníomhairí ó dhul ar aghaidh leis an ionchúiseamh sna cásanna uimhir R2134/580575 agus R3116G/580575 go dtí go mbeidh tiontu oifigiúil sa Phríomhtheanga oifigiúil ar na hionstraimí reachtúla uile atá leagtha amach sa sceideal réamhráite leis seo ar fáil don Iarratasóir.
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> 9. Ordú Toirmisc ag cosc ar an gceathrú freagróir a chuid seirbhíseach agus gníomhairí ó dhul ar aghaidh leis an ionchúiseamh sna cásanna uimhir R2134/580575 agus R3116G/580575 go dtí go mbeidh tiontu oifigiúil sa Phríomhtheanga oifigiúil ar Na Rialacha Cúirte Cuarda 2001 (I.R. 510/2001) maille lena leasuithe ar fail don Iarratasóir.
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> 10. Urghaire ag cosc ar an gceathrú freagróir a gcuid seirbhíseach agus gníomhairí ó dhul ar aghaidh leis an ionchúiseamh sna cásanna uimhir R2134/580575 agus R3116G/580575 go dtí go n-éistear agus go dtugtar an bhreith dheiridh san

Athnhreithniú Breithiúnach seo.

11. Aon ordú cuí eile

12. Costais na nImeachtaí seo."

FACTS

3. On 4th March, 2006 Garda James Downey flagged down the applicant who was driving his motor car, registration 06 0Y 1428, near Whitehall, Tullamore, in the county of Offaly. A conversation took place in English because the applicant used that tongue. It concerned requirements under s. 12 of the Road Traffic Act, 1994 for testing drivers for alcohol consumption and that kind of thing. Following the relevant procedure, Garda Downey came to the conclusion that he should arrest the applicant on suspicion of drunken driving. He was conveyed to Tullamore Garda Station where he was handed a notice of rights in English. He did not object. The conversation continued over the next short while because procedure requires a waiting time before a breath machine is used to test whether someone is over the relevant limit for drunken driving. This machine is called the Intoxilyser. When the applicant was asked to provide two breath samples he began to speak in Irish. Garda Downey treated him with the utmost courtesy. From Mill Street Garda Station in Galway, a station which conducts all its official business, including internal memos, in Irish, he obtained a standard script for dealing with the public in those circumstances. This he used to conduct further dealings in Irish. He proceeded to ask the applicant to provide samples of his breath. This was done. The machine produced a print out. This statement showed an excess of alcohol. It was put before the applicant and he was asked to sign an acknowledgment under s. 17 of the Road Traffic Act, 1994. He then refused to sign it as the machine had produced the relevant form in English.

4. The machine claims that the applicant was driving with an excess of alcohol in his body, as determined by the relevant legislation. The applicant says in his affidavit that he is innocent of this charge. I make no comment on this, because that is a matter for the trial court.

5. This encounter between the Garda, the applicant and the machine was followed by summonses, written in Irish, setting a date for trial before the District Court on two charges. There were, firstly, drunken driving based on his breath sample and, secondly, failing, when required, to sign the statement of acknowledgement of the alcohol reading spat out by the machine. In addition, about a year after these events, the statement by the machine translated into Irish was sent to the applicant.

6. The response of the applicant to these summonses was to engage in correspondence seeking a number of statutory instruments from the State translated into Irish. These include the District Court Rules and the Circuit Court Rules and a large number of other statutory instruments concerning fees in the District Court, the entry into of recognizance and even European Union regulations. There was nothing in the letter from his solicitor which indicated how they might be relevant to an ordinary prosecution, which this is. Without such engagement, there is a basic flaw in any argument claiming language rights; *MacCárthaigh v. Éire*, [2008] I.E.H.C. 158. All of these were, however, available in Irish, with the exception of the Rules of the Circuit Court. However, the applicant is not being tried in the Circuit Court. He is being tried in District Court. He has a right to appeal to the Circuit Court, should he be convicted, but he indicates that he innocent of the charge. It is to be hoped that justice will be done and this court is confidently entitled to expect that. According to the affidavit of Mícheál Úi Chearúil, an eminent scholar and a trustworthy deponent, the Circuit Rules are well on the way to being translated. I am told that an official version of them will be published next month. Just a few of these rules are relevant to appeals from the District Court. Anyway, any competent lawyer will already be familiar with these.

Language Rights

7. I am satisfied that there is a determination on the part of the respondents to afford to the applicant his full entitlement under the Constitution to present his defence in Irish. There is nothing in any of the papers which leads me to even a hint of a suspicion that the applicant is in any way being treated in an abusive or discriminatory fashion by reason of the assertion of those rights.

8. In the *State (MacFhearraigh) v. MacGamhnia*, [1980-1998] I.R. Special Reports 30 a judicial review was taken because the Employment Appeals Tribunal required the cross-examination of a witness before it to be conducted in English and not in Irish, the language of the applicant for redress before it. After a lengthy review of the relevant authorities, Ó hAnluain Brmh. ruled that this was not a correct approach. He held that it was the right of each party before a court to put its side of the case in the Irish language or, it follows, the English language. Once such a request was made, a tribunal or court was not to make an enquiry as to the means of knowledge of any party of either language. At the end of his judgment, which is reported at p. 36, he set out the following principles:-

> "1. Nuair a bhíonn cúis le plé os comhair na gcúirteanna, nó os comhair aon bhínse go bhfuil comhacht aige do réir dlí, ordaithe a dhéanamh a théann i bhfeidhm ar chearta phearsanta no ar chearta maoine na bpáirtithe a thagann os a chomhair, tá sé de cheart ag gach párti a thagann os chomhair na cúirte nó os comhair an bhínse, a thaobh féin den chás do phlé as Gaeilge, má's mian leis, agus fianaise tré Ghaeilge do chur i láthair na chúirte nó an bhínse. Má tharlaíonn nach mbíonn eolas sách maith ag an bpáirtí eile an méid sin do thuiscint, dlitear ateangaire do cheapadh d'fhonn aistriúchán a dhéanamh ar an mhéid a deirtear, nó scríobhtar as Gaeilge.
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> 2. Níl feidhm ag an gcúirt, no ag an mbínse fiafraí an bhfuil eolas ar an mBéarla ag an t-é gur mian leis úsáid a bhaint as an nGaeilge - tá ceart aige fén mBunreacht rogha a dhéanamh den phríomh-theanga oifigiúil má's áil leis, go dtí go leagtar sios a mhalairt do réir dlí i leith gnótha nó gnóthaí oifigiúla áirithe ar fuaid an Stáit nó in aon chuid de. Fágann san go bhfuil an ceart céanna ag an t-é go bhfuil an Béarla go líofa aige, agus atá ag an t-é a rugadh agus a tógadh san nGaeltacht agus nach bhfuil eolas ar bith aige, nó nach bhfuil ach eolas neamh-chruinn aige, ar an mBéarla. Go minic, tharlódh go gcuirfí moill ar imeachta na cúirte nó an bhínse má eilítear go ndéanfaí an chúis nó cuid di do phlé tré mheán na Gaeilge, agus cuirfeadh seo le costas na nimeachta má's gá ateangaire do cheapadh, ach ní fuláir cur suas leis na fadhbanna san d'fhonn beart do dheanamh do réir an Bhunreachta. Cead ag an Oireachtas a mhalairt de shocrú a dhéanamh do réir dlí, má's áil leis sin do dhéanamh, i dtaca le gnóthaí oifigiúla ar bith ar fuaid an Stáit nó in aon chuid de.
>
> 3. Aon uair gur mian le páirtí ar bith a thaobh feín den scéal do bhrú ar an gcuirt nó ar an bhinse, pé'cu tré aighncacht, tré fianaise do thabhairt, tré finnéithe do cheistiú nó do chros-cheistiu, táim den bharúil go bhfuil sé de cheart aige fén Bhunreacht an tiomlán do dhéanamh tré mheán na Gaeilge, má's toil leis".

9. The applicant is not satisfied with this. In effect what the applicant seeks is that every scrap of paper relevant to the case, that every piece of statutory law or law by regulation upon which he might rely and that every transaction affecting him in the disposal of the case should be in Irish. It may that the applicant would say that this an exaggeration of his submissions. It hardly is. If he can

argue that a machine producing the result of a breath sample should do so in Irish, it follows that it is no extension of his argument that every aspect of the criminal process to which he was subjected should be in the same language. I make this observation because the applicant has seriously cited as the basis for his claim the case of *Beaulac v. The Queen and the Attorney General of Canada* [1999] 1 S.C.R. 768. As is well known, some areas of Canada have French or Inuit as official languages. British Columbia, however, does not. It is an English speaking province. The applicant was arrested in that province for murder and he was tried and found guilty. He appealed to the Supreme Court of Canada and argued that he had an entitlement under s. 530 of the Criminal Code of Canada to a French speaking judge and jury. What, one might wonder, did this have to do with whether the prosecution had proved beyond reasonable doubt that he had killed some unfortunate person? The Supreme Court overturned his conviction, based on aspects of the Canadian charter of fundamental rights and freedoms, which do not have a parallel, in my view, in our constitution, and ordered that he should be retried before a jury which spoke French and a French speaking judge. The Supreme Court held at p. 791 of their judgment that language rights must be interpreted purposively in order to preserve and develop the official language communities in Canada. They rejected any argument that a liberal interpretation of language rights might involve provinces being repelled from positive action in favour of minority languages within their territory. Rather, Bastarache J. held that the assertion of these rights was a fundamental tool for the preservation and protection of language communities. He held that language rights were, what he called, a particular kind of right distinct from the principles of fundamental justice.

10. I do not accept that. Justice is the aim of every legal proceeding. Truth is the object of every judicial exercise. The principle of true social order attendant on the purpose of our Constitution, and as declared in the Preamble, must place the disposal of criminal business as being a value of particular importance in the maintenance of a cohesive society. Were the argument of the applicant to succeed, then any person stopped in his and her vehicle and suspected of drunken driving would only have to greet the Garda in Irish for the entire process to be made to grind to a halt, unless the Garda happened to be highly competent in Irish. Rights are a vital component of the Constitution. The exercise of a right is not an academic exercise that occurs divorced from a factual matrix. There is a right to privacy, to be let alone. It is not enough, as a matter of law, simply to assert that right. A court must look at the circumstances in which it is argued to operate and the rights, legal entitlements and obligations such exercise is claimed to be superior to. For instance, no one can reveal the contents of a telephone conversation without the permission of at least one party to the call; see the analysis of the Court of Criminal Appeal in *The People (DPP) v Geasley* [2009] I.E.C.C.A. 22. In telephoning someone, in addition to statutory rights, one is normally asserting a constitutional right to privacy; an exception might be phoning a radio programme for public broadcast. If a journalist were to take the phone of a citizen in order to pretend an identity and record a call with a public figure with a view to a public report, as has happened in other countries, the right to privacy could clearly be asserted. A police officer in possession of a suspected drug dealer's phone who might engage in an exercise of deception in order to make an arrest would be in a different category. Could it be asserted the constitutional right to privacy extends to organizing a crime in private? I would doubt that. Finally, in some circumstances the motive for exercising a right may be part of the required legal analysis. A citizen has the right to sell his property. But if his purpose is to make himself judgment-proof and so cheat his creditors, the constitutional rights attendant on private property may conflict and be resolved in favour of what is fair according to the standards of decent people.

11. Furthermore, even if I am incorrect in that contention, the decided case law establishes no entitlement to have any official documents emanating from the State to be in either English or Irish.

12. In *Attorney General v. Coyne and Wallace*, (1967) 101 I.L.T.R. 17 a notice of intention to prosecute under the Road Traffic Act was served on an English speaking person living in a Gaeltacht region. The summons was entirely in Irish. The Garda, in serving the notice, explained the nature of that summons. The defendants spoke only English. The Supreme Court held that this was a sufficient vindication of any right the defendant had to using English as an official language. Of course, it might be expected that the District Court would ultimately try their case in English. In the noise of argument concerning language rights, the principles set out in this case appear to have been obscured. They are, however, binding on me. The State is not required to produce any particular class of documents that concern a criminal process in either Irish or English. The State can choose one language or the other. This is not an abuse of anyone's rights. An illiterate person can get a document read, an English–speaking person can get someone to explain an Irish document to him and so can an Irish–speaking person an English document; see Ó Dálaigh Brmh. at p. 8. This is somewhat beside the point as the applicant is fluent in both languages. The fundamental requirement under the Constitution is to have reasonable notice of what is alleged in a prosecution. That entitlement exists so that a person may prepare a defence. In the presentation of that case one may use Irish or English. The entitlement to use one language or the other has been clearly declared by *Ó hAnluain Brmh. in An Stát (MacFhearraigh) v. MacGamhnia*. Those rights are in no way undermined by any particular document coming from the State being in either English or Irish.

Entitlement to Justice

13. *Ó Beoláin v. Fahy*, [2001] 2 I.R. 279 concerned, essentially, a claim under Article 25.4.4 of the Constitution to have available to the public every Act of the Oireachtas in both official languages. The Supreme Court also held that no person should be put at a disadvantage in conducting a trial in Irish and that there was an entitlement to a copy in Irish of the Rules of the District Court. As regards the rights involved, however, it is made clear by McGuinness Brmh. that preventing a trial depends upon the identification of some fundamental unfairness which would result in the trial not being one in due course of law as guaranteed under the Constitution. At the end of the judgment at p. 295 – 296 she said the following:-

> "Tá an t-iarratasóir ag lorg ordaithe a stopfadh aon leanúnachas dá thriail sa Chúirt Dúiche nó go mbeidh an t-aistriúchán riachtanach de Rialacha na Cúirte Dúiche ar fáil. Deir an t-abhcóide thar ceann na bhfreagróirí gur ceist í maidir le tosaíocht a thabhairt do cheart an phobail coireanna a ionchúiseamh ar cheart an iarratasóra leagan Gaeilge de Rialacha na Cúirte Dúiche a bheith ar fáil dó. Tá ceist cheart tosaíochta an phobail chun coireanna a ionchúiseamh meáite ag Denham Brmh. i sliocht ina breithiúnas i D. v. Director of Public Prosecutions [1994] 2 I.R. 465 ag lch. 474, ar a mbíonn trácht go minic:-
>
> "The applicant's right to a fair trial is one of the most fundamental constitutional rights afforded to persons. On a hierarchy of constitutional rights it is a superior right.
>
> A court must give some consideration to the community's right to have this alleged crime prosecuted in the usual way. However, on the hierarchy of constitutional rights there is no doubt that the applicant's right to fair procedures is superior to the community's right to prosecute.
>
> If there was a real risk that the accused would not receive a fair trial then there would be no question of the accused's right to a fair trial being balanced detrimentally against the community's right to have alleged crimes prosecuted.'
>
> I sliocht roimhe sin ar lch 473 deir an Breitheamh léannta:-

> 'I agree with the Chief Justice and Egan J. that the test is whether there is a real risk that the Applicant … could not obtain a fair trial.'
>
> Dá mba rud é, mar sin, sa chás seo go raibh contúirt i ndáiríre ann nach bhfaighfeadh an t-iarratasóir triail chothrom, bheadh tosaíocht ag a cheart chun triail chothrom ar cheart an phobail coireanna a ionchúiseamh. Mar sin féin, is ceart tábhachtach é ceart an phobail coireanna a ionchúiseamh. Ba chóir don chúirt seo machnamh cúramach a dhéanamh sula ndéanfaí aon chinneadh arbh é a thoradh ní hamháin toirmeasc a chur ar ionchúiseamh na gcoireanna atá curtha i leith an iarratasóra, ach, b'fhéidir, aeráid a chruthú ina mbainfí leas as ceart cinnte tábhachtach, fáil a bheith ar cháipéisí ins an teanga Ghaeilge, le toirmeasc ollmhór a chur ar ionchúiseamh coireanna.
>
> Tá sé soiléir gur sa teanga Ghaeilge a bhí na cáipéisíéagsúla a seirbheáladh ar an iarratasóir go dtí seo ins an Chúirt Dúiche. Ní léir gur cuireadh aon bhac air ná go raibh aon deacracht aige ag plé leis na baill chuí den Ghárda Síochána i nGaeilge. Tá na reachtanna cuí i nGaeilge curtha ar fáil dó anois agus is cosúil go bhfuiltear lena chinntiú gur cainteoir Gaeilge a bheas ins an bhreitheamh a thrialfaidh é. Má bhíonn sé sin de dhíth uair ar bith, beidh sé de cheart aige teangaire a bheith ar fáil don triail. In ainneoin go bhféadfadh easpa Rialacha na Cúirte Dúiche roinnt deacrachta a chur ina bhealach féin agus i mbealach a chomhairleoirí dlí, ní hé mo bharúil go mbeadh sé sin chomh mór le 'a real risk that the applicant will not get a fair trial' mar a bhí i gceist ag Denham Brmh.
>
> Dá bhrí sin, dhiúltóinn an faoiseamh a hiarradh in alt (b) de fhógra foriarratais an iarratasóra. Níl gá a thuilleadh leis an bhfaoiseamh a hiarradh in alt (a)."

14. Hardiman Brmh. made a similar point in concluding his judgment. Geoghegan Brmh. agreed with that point. This point is the fundamental point in this case and it is one that cannot be avoided.

15. I am bound by these pronouncements. I can find no possibility that a real risk of an unfair trial has been established by the applicant merely because a machine has produced a statement which he fully understands in a language that he would, on occasion, prefer not to use.

16. As to the claim on the Circuit Court Rules, I cannot, in the light of the lack of overall merit in this claim, make any order. Also, no one has told me how these Rules help the applicant, or what bit of them he might wish to engage with. Anyway, there is no risk of an unfair appeal proven.

Result
17. In the result I dismiss the application.