Neutral Citation [2013] IEHC 319

THE HIGH COURT

[2002 No. 9652P]

BETWEEN

LOUIS BLEHEIN

PLAINTIFF

AND

THE MINISTER FOR HEALTH AND CHILDREN, IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

Judgment of Ms. Justice Laffoy delivered on 26th day of June, 2013.

The 2010 judgment

1. In my judgment (under neutral citation [2010] IEHC 329) in this matter delivered on 24th August, 2010 (the 2010 judgment), I outlined the nature and procedural history of the proceedings and the issue then before the Court. In summary, in a judgment delivered on 7th December, 2004 in the High Court by Carroll J. (which is reported at [2004] 3 I.R. 610), the Court had found that s. 260 of the Mental Treatment Act 1945 (the Act of 1945) was unconstitutional having regard to Article 6 and Article 34 of the Constitution. On appeal by the defendants against that order, the Supreme Court, in a judgment dated 10th July, 2008 (reported at [2009] 1 I.R. 275), dismissed the appeal and affirmed the order of the High Court. The proceedings were subsequently re-entered in the High Court with the consent of the defendants. The issue which this Court addressed in the 2010 judgment was what relief or remedy (if any), as a matter of law, flowed from the decision of the Supreme Court, that is to say, whether or not, and to what extent, the declaration as to the invalidity of s. 260 gave rise to any further remedy and, if so, the nature of the remedy. In reality, the focus of the issue was whether the plaintiff is entitled to damages against the defendants in addition to the declaration of invalidity in these proceedings.

2. The outcome of the consideration of that issue by this Court in the 2010 judgment was inconclusive. The source of the inconclusivity primarily was concerns raised by a passage in the judgment of Henchy J. in *Murphy v. Attorney General* [1982] I.R. 241 (at p. 314), which is quoted in para. 6.3 of the 2010 judgment, and which was emphasised by counsel for the defendants. Henchy J. stated that it is not a universal rule that what is being done in pursuance of a law which has being held to be invalid for constitutional or other reasons will necessarily give a good cause of action. He stated that the law has to recognise that there may be "transcendent considerations" which make it "undesirable, impractical, or impossible" to correct "prejudice suffered at the hands of those who act without legal justification, where legal justification is required". While I concluded that it would be neither impractical nor impossible to determine whether the plaintiff had a good cause of action for damages, I concluded that it would be undesirable to embark on a determination of the fundamental issue as to whether there were other "transcendent considerations" which militated against a determination that the plaintiff had a good cause of action for damages at that stage of the proceedings because, in effect, the Court would have been doing so in the abstract and, in any event, there might be factors which rendered such a determination unnecessary. One of those factors was the defendants' reliance on the Statute of Limitations as a defence to the plaintiff's claim for damages in the proceedings. The concerns of the Court were bolstered by the recent observations of Murray C.J. in *D.K. v Crowley* (now reported at [2011] 1 ILRM 309) quoted in para. 9.6 of the 2010 judgment.

3. Accordingly, the decision recorded at the end of the 2010 judgment (at para. 12.12) was to postpone a finding on the issue before the Court until issues, such as the defendants' reliance on the Statute of Limitations 1957 (the Act of 1957), as amended, had been considered by reference to relevant evidence because, having regard to the observations of Murray C.J. in *D.K. v. Crowley* [2011] 1 ILRM 309, if the Court had to assess damages, the legal basis for liability of the State would have to be determined by the Court with regard to each head of damages.

4. The matter was before the Court for mention on at least four occasions subsequent to the 2010 judgment and prior to 4th February, 2011. During that period there had been correspondence between the Chief State Solicitor, on behalf of the defendants, and the plaintiff, who is a personal litigant, in relation to how the matters raised by the Court in the 2010 judgment should be addressed. When the matter came before the Court on 4th February, 2011 it became apparent that there was a misunderstanding as to what was to happen on that day. The matter was adjourned until 18th March, 2011. However, the Court gave directions as to what was to happen on 18th March, 2011, having regard to submissions which had been made by both the plaintiff and counsel for the defendants. The Court acceded to a suggestion made by counsel on behalf of the defendants that on 18th March, 2013 the plaintiff should personally give evidence to the Court as to the factual matters underlying his claim for damages in these proceedings and should not be inhibited in that regard, but that as regards cross-examination of the plaintiff by counsel for the defendants, the cross-examination should be limited to effectively two discrete issues: first, the implications of the existence of proceedings initiated by the plaintiff in 1993, details of which will be set out later, which were not prosecuted by the plaintiff, on the plaintiff's entitlements to damages against the defendants in these proceedings; and, secondly, the implications of the Act of 1957 on the plaintiff's claim for damages against the defendants in these proceedings.

The evidence

5. The plaintiff's evidence was given to the Court over two days: on 18th March, 2011 and on 27th May, 2011. There is a transcript available of each hearing.

6. In broad terms, the basis of the plaintiff's claim for damages in these proceedings is that, because of the existence of s. 260 of the Act of 1945, the repeal of which did not become effective until 1st November, 2006, he was precluded by the courts from pursuing three actions, which are referred to in the 2010 judgment as the 1997 proceedings, 1998 proceedings and the 1999 proceedings, in which he was seeking damages for wrongs alleged to be perpetrated by the defendants in those proceedings against him. In broad terms, the factual basis of the plaintiff's claim for damages against the defendants in the 1997 proceedings and in the proposed 1998 proceedings and the proposed 1999 proceedings was that on three occasions the plaintiff was involuntarily admitted, in other words, wrongfully committed to The St. John of God Hospital, Stillorgan, Co. Dublin (the Hospital), and was detained there and was treated during the period of detention in a manner which infringed his personal rights under the Constitution.

7. The three periods during which the plaintiff was in the Hospital were:

(a) from 25th February, 1984 to 16th May, 1984;

(b) from 29th January, 1987 to 16th April, 1987; and

(c) from 17th January, 1991 to 7th February, 1991.

The plaintiff put before the Court a copy of each of the three orders made pursuant to s. 185 of the Act of 1945 on foot of which he was admitted to and detained in the Hospital. Each order was made on the application of Patricia Blehein, who was his wife, to whom the plaintiff referred as his "estranged wife". The first was certified by Dr. Sean G. Murphy (Dr. Murphy) and Dr. S. Ahmed (Dr. Ahmed) on 25th February, 1984. The second was certified by Dr. Murphy and Dr. Fionnuala Kennedy (Dr. Kennedy) on 29th January, 1987. The third was certified by Dr. Murphy and Dr. Kennedy on 17th January, 1991. The plaintiff gave evidence as to the circumstances surrounding his admission to the Hospital and how he was transported to the Hospital. He also gave evidence of his treatment in the Hospital and, in particular, the drugs he was prescribed on the basis of case notes and other documentation of the Hospital. The plaintiff expressed his opinion on the inappropriateness of his treatment by reference to various medical publications.

8. In cross-examination, the plaintiff acknowledged that in the period from 1984 to 1990 he had consulted and had sought the services of at least four firms of solicitors in relation to his admission to and detention in the Hospital. He had been examined by a psychiatrist at the request of one firm during the first period of detention.

9. Five months after he was discharged from the Hospital for the last time, the plaintiff, by letter dated 8th July, 1991, wrote to Dr. Dermot Walsh, Inspector of Mental Hospitals. In that letter, the plaintiff outlined his complaint about the following matters:

(a) the manner in which he was "committed" to the Hospital on 25th February, 1984, stating that Dr. Ahmed did not see him;

(b) the diagnosis and treatment he was given in the Hospital, which he contended deprived him of his powers of recollection and reasoning until the summer of 1986;

(c) that he was "committed" to the Hospital in January 1987, without any semblance of examination;

(d) that in the Hospital the same diagnosis was made and the same treatment given although more effectively, as his powers and reasoning did not return until December 1989;

(e) that on 17th January, 1991 he was again "arrested and committed" to the Hospital, without any semblance of examination.

The plaintiff contended that the diagnosis was erroneous and his "committals", and detentions and the treatments he was given were wrong. He queried whether, as Inspector of Mental Hospitals, the addressee would be able to give him any assistance. The relevance of that letter is that, by reference to it, counsel for the defendants explored the plaintiff's state of knowledge on 8th July, 1991. The plaintiff acknowledged that his state of mind as of that date was that, in relation to each period in the Hospital, his prior examination by doctors was not correct.

10. The plaintiff also acknowledged that in December 1992 he had written to the Attorney General requesting him to seek a High Court injunction to suspend the operation of s. 260, or whatever application he might deem appropriate to make, pending the full hearing in regard to its constitutionality. The Attorney General did not accede to the request. The emphasis laid by counsel for the defendants on that letter was to demonstrate the plaintiff's knowledge of the complaints he tried to litigate subsequently at that time, in support of the defendants' contention that the causes of action he sought to litigate in the 1997 proceedings, the 1998 proceedings and the 1999 proceedings were statute-barred when they were initiated.

Proceedings initiated by the plaintiff

11. The evidence adduced threw light on the various proceedings initiated by the plaintiff prior to the initiation of these proceedings. In this judgment, the Court is not concerned with the judicial review proceedings referred to at para. 3.4(a) of the 2010 judgment, which did not come within the ambit of s. 260 of the Act of 1945. Nor is the Court concerned with the proceedings initiated in 1995 (the 1995 proceedings) by the plaintiff against the Minister for Health, Ireland and the Attorney General (Record No. 1995 No. 8934P), which are referred to in para. 1.11 of the 2010 judgment, save to refer to one factual matter. My understanding is that the appeal to the Supreme Court against the order of this Court made in those proceedings on 16th March, 2009 refusing to re-enter the 1995 proceedings before the High Court is still pending.

12. The evidence given by the plaintiff to the Court on 18th March, 2011 and 27th May, 2011 elaborated on the circumstances and the facts surrounding the other proceedings initiated by the plaintiff. Chronologically, the earliest were proceedings between the plaintiff, as plaintiff, and Dr. Murphy and Dr. Kennedy, as defendants, Record No. 1993 No. 8449P (the 1993 proceedings). It is appropriate to consider those proceedings, which were not addressed in the 2010 judgment, first.

The 1993 proceedings

13. When the 1993 proceedings were initiated by the issue of a plenary summons on 17th December, 1993 Garrett Sheehan & Co., Solicitors, were acting for the plaintiff and it is clear that senior counsel and junior counsel were involved and, indeed, the names of senior counsel and junior counsel are on the statement of claim. On the basis of the evidence before the Court, the procedural steps taken in those proceedings were as outlined in the following paragraphs.

14. As I have recorded, the plenary summons was issued on 17th December, 1993 and it claimed the following reliefs:

(a) damages for assault, false imprisonment, battery, breach of statutory duty, trespass, libel and slander, negligence and breach of duty (including breach of statutory duty) on the part of the defendants on or about 17th January, 1991; and

(b) damages for violation by the defendants of the plaintiff's constitutional right to bodily integrity, good name, freedom of expression, liberty, violation of the inviolability of the dwelling, the right to earn a livelihood, and constitutional and natural justice.

15. In the statement of claim, the date of delivery of which is not clear, it was pleaded that on 28th February, 1984 the plaintiff was

"involuntarily committed" to the Hospital and detained there until 16th May, 1984 and that the application for committal was made by the plaintiff's wife and that it was accompanied by two certificates in statutory form, one of which was signed by Dr. Murphy. It was also pleaded that on 29th January, 1987 the plaintiff was "involuntarily committed" to the Hospital and that the application for the committal order was made by the plaintiff's wife and accompanied by two certificates in the prescribed form signed by Dr. Murphy and Dr. Kennedy. The drugs prescribed for the plaintiff while he was in the Hospital and while he was attending Dr. Murphy after his release up to December 1988 were referred to. The circumstances in which the plaintiff was brought to the Hospital on the 17th January, 1991 were then outlined in detail. The completion of the certificates for the purposes of s. 185 of the Act of 1945 by Dr. Murphy and Dr. Kennedy was pleaded and it was pleaded that at the material time the plaintiff was not mentally ill or, alternatively, that he was not suffering from a mental illness which necessitated him being voluntarily committed to a psychiatric institution. It was alleged that the certification in the 1991 proceedings was made negligently and in breach of duty and that it constituted false imprisonment, assault, battery, trespass to the person and libel of the plaintiff and that it constituted a violation of the plaintiff's constitutional rights to bodily integrity, liberty, the right to a good name, the right to freely express his convictions and opinions, the right to the inviolability of the dwelling home and his right to constitutional and natural justice. It was pleaded that as a consequence of those acts the plaintiff had suffered personal injury, loss and damage and that his reputation had been seriously damaged and he had suffered considerable distress and embarrassment. There followed particulars of negligence and breach of duty and particulars of personal injury, loss and damage. It was specifically pleaded that, as a result of the drugs with which the plaintiff was treated in the Hospital, he had suffered severe side effects, which were outlined. The only relief sought in the statement of claim apart from interest and costs was damages.

16. The defence of both defendants, who had single representation, was delivered on 15th March, 1995. In the defence, the defendants denied all of the allegations of wrongdoing against them.

17. The initiation of the 1993 proceedings had been preceded by an application to the Court (under record No. 1993 No. 54 IA), wherein the plaintiff sought leave to institute the 1993 proceedings. The application was grounded on an affidavit sworn by the plaintiff on 2nd December, 1993 and filed on his behalf by Garrett Sheehan & Co., Solicitors, on 3rd December, 1993. By order of the Court (Lynch J.) made on 13th December, 1993, it was ordered pursuant to s. 260 of the Act of 1945 that the plaintiff was at liberty to institute the 1993 proceedings.

18. The plaintiff put before the Court a letter dated 25th September, 1996 from Garrett Sheehan & Co. to him, which was in response to a letter from the plaintiff dated 10th September, 1996. It would appear that the plaintiff had requested Garrett Sheehan & Co. to include a challenge to the constitutionality of s. 260 of the Act of 1945 in the 1993 proceedings. The response of his then solicitors was that the plaintiff did not have "*locus standi*" to challenge the constitutionality of s. 260 and that, in any event, s. 185 and s. 186 of the Act of 1945 were being challenged in the plaintiff's case against the State, which was a reference to the 1995 proceedings, which were then being prosecuted. The plaintiff's evidence was that, although he disagreed with the advice he had been given, he had to take notice of it.

19. By order of the High Court (Johnson J.) made on 30th March, 1998, it was declared that Garrett Sheehan & Co. had ceased to be solicitors acting on behalf of the plaintiff in the 1993 proceedings. That order had been preceded by another order of the High Court (O'Sullivan J.) made the previous month, that is to say, on 2nd February, 1998, wherein it was ordered that Garrett Sheehan & Co. had ceased to act as solicitors for the plaintiff in the 1995 proceedings in which a declaration was sought that s. 185 and s. 186 of the Act of 1945 were invalid having regard to the provisions of the Constitution. While the plaintiff sought to re-enter the 1995 proceedings, as set out in para. 1.11 of the 2010 judgment, no steps were taken in the 1993 proceedings after Garrett Sheehan & Co. had ceased to act.

20. In cross-examining the plaintiff on 18th March, 2011, counsel for the defendants explored why the allegations of wrongdoing in the 1993 proceedings were made in respect of what the plaintiff alleged had happened in 1991 only, and not in relation to what he alleged had happened in 1984 or 1987. The plaintiff's response was that it was done on the basis of legal advice. Shortly thereafter, the plaintiff volunteered the following information to the Court: that "the urgency with the 1993 case was to ensure that it would be within the Statute of Limitations and other periods of detention were excluded for fear they might put the case at risk of the Statute of Limitations". At the hearing on 27th May, 2011, the plaintiff questioned the accuracy of the portion of the transcript which recorded that evidence and he suggested that what I have quoted was put to him by counsel for the defendants. Having considered the transcript carefully, I am of the view that it is a correct record of the evidence given. The position of the plaintiff on 27th May, 2011 was that it was on the basis of the legal advice he had obtained, rather than his own belief, that claims were not pursued in respect of the events of 1984 and 1987 in the 1993 proceedings. In relation to the exchanges between the plaintiff and counsel for the defendants on that issue, and, indeed, on all of the issues raised, it is appropriate to record that I found the plaintiff to be an honest, truthful witness and his cross-examination by counsel for the defendants was conducted in a proper manner with due regard to the fact that he was a personal litigant. In the course of the evidence, further light was thrown on the subsequent proceedings initiated by the plaintiff and I propose considering that evidence briefly.

The 1997 proceedings

21. As I recorded at para. 3.4(b) of the 2010 judgment, the 1997 proceedings were plenary proceedings between the plaintiff, as plaintiff, and the Hospital, as defendant. The plenary summons was issued on 30th July, 1997 by the plaintiff as a personal litigant. A statement of claim was delivered on 18th August, 1997. In the statement of claim the plaintiff's detention against his will in the Hospital in 1984, 1987 and 1991 was pleaded. It is clear from the various declaratory reliefs sought by the plaintiff in the statement of claim that he was alleging wrongdoing by the Hospital in relation to each of those periods of detention. For instance, he sought a declaration that he was detained "against his will in violation of the principles of fair procedures, contrary to natural and constitutional justice and in complete disregard of the provisions of the Constitution of Ireland, 1937". Apart from the declarations sought, which number in excess of twenty, the plaintiff claimed damages *simpliciter*, interests and costs. In substance, the particulars of personal injury, loss and damage set out in the statement of claim mirror the particulars in the statement of claim in the 1993 proceedings, although framed in different terms. However, it is quite clear that the plaintiff was claiming in respect of injuries alleged to have been incurred between 1984 and 1990. On the basis of the declaratory relief sought, it would appear that the wrongdoing on the part of the Hospital which the plaintiff was alleging included –

> (a) breach of his personal rights protected by the Constitution, for example, his right to earn a livelihood, his right to privacy and his right to his good name;
>
> (b) that his detention and his treatment with drugs constituted assault, battery and trespass to the person; and
>
> (c) that he had been subjected to torture, inhumane and degrading treatment contrary to natural and constitutional justice.

22. The circumstance in which the matter came before the High Court (Kelly J.) on 3rd November, 1997 was that the plaintiff had brought a motion for judgment in default of appearance against the defendant. Counsel for the defendant had argued that the plaintiff's proceedings were not in order by reason of the fact that they been commenced without necessary leave having been obtained pursuant to the provisions of s. 260 of the Act of 1945. As leave had not been obtained, the proceedings were struck out. The order of the Supreme Court dismissing the appeal brought by the plaintiff and affirming the order of the High Court was dated 20th May, 1998.

23. In the course of cross-examination, the plaintiff acknowledged that the 1997 proceedings were directed to each of his periods of detention in the Hospital in 1984, 1987 and 1991,

The 1998 proceedings
24. As is clear from the outline contained in para. 3.4(c) of the 2010 judgment, the 1998 proceedings constituted an application in an intended action for leave to issue proceedings under s. 260 of the Act of 1945 against the defendants identified later. While the original notice of motion is not before the Court, it would appear that the application was initiated in late 1998. In any event, the grounding affidavit was sworn by the plaintiff on 2nd November, 1998. The draft of the proposed plenary summons exhibited in the grounding affidavit is not before the Court either. However, the reliefs claimed by the plaintiff are outlined in the judgment of Keane C.J. on the plaintiff's appeal against the order of the High Court (Geoghegan J.) made on 8th July, 1999 refusing leave. In his judgment (reported at [2000] 3 I.R. 359), Keane C.J. outlined the reliefs sought (at p. 361). The declaratory reliefs sought related solely to the events of 1987 and the specific allegations of wrongdoing which may be extrapolated from the declarations sought are:

> (a) that in January 1987, on separate dates, the first and second defendants (Dr. Murphy and Dr. Kennedy) issued medical certificates in relation to the plaintiff which were libellous and defamatory and led to his unlawful arrest and detention;
>
> (b) that each of the defendants conspired to deprive the plaintiff of his constitutional rights, including his right to personal liberty; and
>
> (c) that the privacy of the plaintiff's dwelling was violated and that the plaintiff had been "libelled, slandered, damnified and defamed" by the actions of each of the defendants.

It is recorded by Keane C.J. that the plaintiff was additionally claiming damages, costs and interest.

25. The defendants in the 1998 proceedings were:

> (a) Dr. Murphy;
>
> (b) Dr. Kennedy;
>
> (c) Patricia Blehein, the plaintiff's estranged wife; and
>
> (d) Richard Quinlivan, Thomas O'Connor and Desmond Nolan, members of An Garda Síochána.

Affidavits in response to the plaintiff's application were sworn and filed in the 1998 proceedings. The same solicitors (Arthur Cox) acted for Dr. Murphy and Dr. Kennedy as were on record for them in the 1993 proceedings. In his first affidavit sworn on 11th June, 1998, Dr. Murphy averred that the reliefs sought in respect of the events which allegedly occurred in January 1987 were statute-barred. Similarly, in each of the affidavits sworn by members of An Garda Síochána, it was asserted that the proceedings were statute-barred pursuant to the provisions of the Act of 1957.

26. In his evidence, the plaintiff agreed with counsel for the defendants that the proposed proceedings related to events in 1987 only. They did not contain any complaint about his period of detention in 1984, because his legal advice at that point was that they were too far removed and that they would have been statute-barred.

The 1999 proceedings
27. There is little additional factual evidence in relation to the 1999 proceedings, the nature of which was outlined in para. 3.4(d) of the 2010 judgment, than was before the Court previously. However, on the basis of what is averred to in the replying affidavit dated 19th November, 1999 sworn by Ray Leonard, the Secretary Manager of the Hospital, it seems that the plaintiff's complaints related to his periods of detention in the Hospital in 1984, 1987 and 1991. That is borne out by the outline of the terms of the draft plenary summons, which are set out in the judgment of McGuinness J. delivered in the Supreme Court on 31st May, 2002 referred to later. A comparison of that outline with the endorsement of claim on the plenary summons in the 1997 proceedings indicates that, subject to one variation, the plaintiff was seeking precisely the same reliefs against the Hospital in the proposed 1999 proceedings as he had claimed in the 1997 proceedings. The variation, according to the judgment of McGuinness J. (at pp. 2 and 3), was that the first relief the plaintiff sought was a declaration that "the orders for detention of the Plaintiff in . . . [the] Hospital . . . made by the Defendant his (sic) servants and/or agents on 26th February, 1984, on 30th January, 1987, and on 18th January, 1991 are fraudulent documents". The plaintiff also sought a declaration that the detention of the plaintiff during the three periods in issue "was grounded on fraudulent misrepresentation; was effected without statutory authority . . .".

28. The judgment of the High Court (O'Sullivan J.) in the 1999 proceedings was delivered on 6th July, 2000 and the order refusing the application under s. 260 was dated 18th July, 2000. The plaintiff's appeal to the Supreme Court against that refusal was dismissed. As stated earlier, the judgment in the Supreme Court was delivered by McGuinness J. on 31st May, 2002. The history of the proceedings in the High Court after 6th July, 2000 is set out in the judgment of McGuinness J. and it was pointed out in the judgment (at p. 11) that there were two aspects to the plaintiff's appeal: he sought to have his application pursuant to s. 260 remitted to the High Court for the purpose of trying his challenge to the constitutionality of s. 260; or, alternatively, he sought to overturn the order of the High Court refusing him leave to bring proceedings against the Hospital on the terms set out in the draft plenary summons. The Supreme Court affirmed the order of O'Sullivan J. and dismissed the appeal. As regards the intended challenge to the constitutionality of s. 260, McGuinness J. stated that the wording of s. 260(1) did not, on its face, apply to such a challenge, and the plaintiff did not require leave to initiate such proceedings. He could commence new proceedings by plenary summons in order to challenge the constitutionality of the section, but that was for him to decide.

29. The plaintiff did embark on the course signposted by McGuinness J. It will be recalled that these proceedings were initiated by plenary summons which issued on 11th July, 2002.

Limitation period: relevant legislation
30. The core argument advanced on behalf of the defendants in the most recent hearings in these proceedings was that the limitation period governing the 1997 proceedings and the intended actions in the 1998 proceedings and in the 1999 proceedings was governed by s. 11(2) of the Act of 1957. Counsel for the defendants referred to the provisions of that sub-section, which provide as follows:

> "(a) Subject to paragraphs (b) and (c) of this subsection, an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued.
>
> (b) An action claiming damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any contract or any such provision), where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, shall not be brought after the expiration of three years from the date on which the cause of action accrued.
>
> (c) An action claiming damages for slander shall not be brought after the expiration of three years from the date on which the cause of action accrued."

Counsel for the defendants added emphasis to the elements of subs. (2) which are underlined in the above quotation.

31. For completeness, it is appropriate to record that counsel for the defendants apprised the Court of the fact that the Supreme Court has held in *Devlin v. Roche* [2002] 2 I.R. 360 that the three year limitation period applicable to negligence and nuisance actions does not apply to actions for intentional trespass to the person. The limitation period in respect of such actions is six years.

32. As counsel for the defendants pointed out, paragraph (b) of subs. (2) of s. 11 was amended by the Statute of Limitations (Amendment) Act 1991 (the Act of 1991) and also by the Civil Liability and Courts Act 2004, s. 7. The amendment effected in the Act of 1991 was that, in the case of an action claiming damages in respect of personal injuries, the limitation period is three years "from the date on which the cause of action accrued or the date of knowledge (if later) of the person injured". As counsel for the defendants submitted, in the application on the statutory time limits for bringing proceedings, knowledge is irrelevant other than in relation to a claim for personal injuries.

33. Counsel for the defendants also drew the Court's attention to s. 49 of the Act of 1957, which deals with the extension of the limitation period in case of disability. In s. 48 of the Act of 1957 the meaning of "under a disability" for the purposes of the Act is set out. A person is under a disability while, *inter alia*, "of unsound mind". Sub-section (2) of s. 48 provides as follows:

> "For the purposes of subsection (1) of this section but without prejudice to the generality thereof, a person shall be conclusively presumed to be of unsound mind while he is detained in pursuance of any enactment authorising the detention of persons of unsound mind . . .."

It is important that I emphasise that I am not ignoring the fact that a fundamental plank of the plaintiff's case is that he was not at any material time of unsound mind. Indeed, as had been noted earlier, it was pleaded in the statement of claim in the 1993 proceedings that he was not mentally ill, or, alternatively, that he was not suffering from a mental illness which necessitated him being involuntarily committed to the Hospital. Notwithstanding having acknowledged that, it is appropriate to refer to paragraph (a) of subs. (1) of s. 49 which provides:

> "If, on the date when any right of action accrued for which a period of limitation is fixed by this Act, the person to whom it accrued was under a disability, the action may, subject to the subsequent provisions of this section, be brought at any time before the expiration of six years from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired."

In the case of claims for personal injuries and slander, s. 1(a) has effect as if, for the words "six years", there were substituted the words "three years" (s. 49(2) and (3)).

34. In order to determine the application of the relevant statutory provisions to the plaintiff's claims in the 1997 proceedings, the 1998 proceedings, the 1999 proceedings and in these proceedings it is necessary to consider whether a claim for damages for breach of constitutional rights, including such a claim against the State, is subject to statutory time limits for bringing such a claim and, if so, how such an action is characterised for the purposes of the application of the relevant statutory provisions.

Time limitation on actions for breach of constitutional rights?
35. In their submissions, counsel for the defendants relied primarily on the analysis of the law contained in the judgment of Keane J. in *McDonnell v. Ireland* [1998] 1 I.R. 134. That case was discussed at para. 10 in the 2010 judgment. For the avoidance of doubt, I reiterate what I stated at para. 10.2, albeit in a different context. Given that the decision of the Supreme Court in that case was based on a claim by a litigant who had not successfully challenged the validity of the impugned provision, unlike the position of the plaintiff who has successfully challenged the validity of s. 260 having regard to the provisions of the Constitution, the decision in that case is of no precedential relevance to the issue before this Court. However, I am of the view that the judgment of Keane J. does give guidance to the Court on the issue now under consideration.

36. As he indicated, the analysis of the law conducted by Keane J. was predicated on the plaintiff in that case having had an identifiable cause of action in 1974 in respect of which he initiated proceedings in 1991 following the decision of the Supreme Court in *Cox v. Ireland* [1992] 2 I.R. 503. He stated (at p. 156) that the case before him must be treated on the basis that the plaintiff had some form of action, however loosely defined and conceptually uncertain, for breach of his constitutional rights and he posed the following rhetorical question: is there any reason why such action, whatever its legal parameters, should not be regarded as an action founded on tort within the meaning of s. 11(2) of the Act of 1957? In answering that question, he considered the manner in which a tort is defined in the leading English text book on the subject (Salmond & Heuston on *The Law of Torts* (20th Ed.)). He also discussed the manner in which the law of tort had evolved, suggesting that the English law of tort had, as a matter of history, demonstrated over the centuries a flexibility and a capacity to adapt to changing social conditions, even without legislative assistance, which made it the obvious instrument for the righting of civil wrongs when the Constitution was enacted in 1937. Keane J. observed that the dynamic nature of the tort action was well understood when the Act of 1957 was enacted, although he did recognise the possibility that the draughtsman "did not envisage the extent to which the developing constitutional jurisprudence of the High Court and the Supreme Court in later decades would powerfully reinforce the progressive development of the law of civil wrongs". Keane J. then outlined aspects of that jurisprudence which are of particular relevance in relation to the issue this Court has to determine.

37. First, he referred to the decision in *Kennedy v. Ireland* [1987] I.R. 587, where the unenumerated constitutional right of privacy was upheld, and in which, although Keane J. did not advert to this, each of the plaintiffs was awarded damages. Keane J. reasoned that the form of action which gave rise to that result "can be classified as a civil wrong, which is not a breach of contract, but which is remediable by an action for unliquidated damages and/or injunction". The same considerations applied to the case before him for breach of constitutional rights, which he considered could appropriately be described as an action in tort.

38. Secondly, having quoted the passage from the judgment of Walsh J. in *Meskell v. Córas Iompair Éireann* [1973] I.R. 121, at p. 132, where Walsh J. recorded that on numerous occasions the Supreme Court has stated that –

> ". . . a right guaranteed by the Constitution or granted by the Constitution can be protected by action or enforced by action even though such action may not fit into any of the ordinary forms of action in either common law or equity and that the constitutional right carries within it its own right to a remedy or for the enforcement of it",

Keane J. observed that the passage was perfectly consistent with the constitutional right being protected by a new form of action in tort.

39. Thirdly, Keane J. observed that he did not see any conflict between that observation and the passage in the judgment of Henchy J. in *Hanrahan v. Merck Sharp & Dohme (Ireland) Limited* [1988] ILRM 629, where it was stated (at p. 636):

> "A person may of course in the absence of a common law or statutory cause of action, sue directly for breach of a constitutional right (see *Meskell v Córas Iompair Éireann* . . .); but when he founds his action on an existing tort he is normally confined to the limitations of that tort. It might be different if it could be shown that the tort in question is basically ineffective to protect his constitutional right."

Keane J. stated that there was nothing in that passage to suggest that where a plaintiff is obliged to have recourse to an action for breach of a constitutional right, because the existing corpus of tort law affords him no remedy, or an inadequate remedy, that action cannot in turn be described as an action in tort, albeit a tort not hitherto recognised by the law, within the meaning of, and for the purpose of, the Act of 1957.

40. On the question of the appropriate limitation period, Keane J. stated (at p. 159):

> "Whatever may be the position in regard to other possible defences, no one has been able to identify in this case any ground for supposing that an action for breach of a constitutional right which has all the indicia of an action in tort should have a different limitation period from that applicable to actions in tort generally, or indeed no limitation period at all, other than its origin in the Constitution itself, which is a classically circular argument. Nor could it be seriously argued that the fact that the action for breach of a constitutional right frequently takes the form of proceedings against organs of the State is of itself a reason for treating a limitation statute as inapplicable. Even if it were, it is to be borne in mind that, as is made clear by *Meskell v. Córas Iompair Éireann* . . ., the defendant in such actions need not necessarily be an organ of the State."

In that context, Keane J. recalled the policy considerations which underlie statutes of limitations such as the Act of 1957, quoting from the judgment of Finlay C.J. in *Tuohy v. Courtney* [1994] 3 I.R. 1 (at p. 48), where it was stated that the primary purpose would appear to be to protect defendants against stale claims and avoid injustices which might occur to them were they asked to defend themselves from claims which were not notified to them within a reasonable time. Keane J. stated that that policy consideration and the other policy considerations identified by Finlay C.J. in the passage he had quoted were applicable to actions such as the case before him as much as to actions founded on tort in the conventional sense.

41. On the basis of the foregoing analysis, Keane J. stated that he was satisfied that the decision of the High Court (Carroll J.), which held that breach of a constitutional right was a tort and that the plaintiff's claim was statute-barred pursuant to s. 11(2) of the Act of 1957, was correct and should be upheld. As counsel for the defendants pointed out, in his judgment in *McDonnell v. Ireland*, Barrington J. did not find it necessary to decide, for the purposes of that case, whether all breaches of constitutional rights are torts within the meaning of the Act of 1957.

42. While counsel for the defendants did not refer to any authority on the application of the Act of 1957 to actions for breach of constitutional rights later in time than *McDonnell v. Ireland*, it is interesting to note that in *J.M. Kelly The Irish Constitution* (4th Ed.), which was published in 2003, it is stated as follows (at para. 8.2.75):

> "It is, however, now plain that damages may be awarded against the State for breach of constitutional rights. Thus, damages have been awarded for breach of the constitutional rights to communicate; property; privacy; fair procedure; liberty and education. Such an action for damages for breach of constitutional rights is regarded as a tort, so that the ordinary limitation periods etc. apply."

The authority cited for the last sentence is *McDonnell v. Ireland*.

43. Before attempting to apply the law to the facts of this case, I think it is appropriate to consider the nature of a defence that a claim is statute-barred.

Nature of defence that claim is statute-barred

44. In *Tuohy v. Courtney* [1994] 3 I.R. 1, against the background of determining an issue as to the constitutionality of s. 11 of the Act of 1957, in delivering the judgment of the Supreme Court, Finlay C.J. quoted the following passage from the judgment of Henchy J. in *O'Domhnaill v. Merrick* [1984] I.R. 151 (at p. 158):

> "Although the statute states that an action 'shall not be brought' after the expiration of the period of limitation, such a statutory embargo has always been interpreted by the courts as doing no more than barring a claim instituted after the expiration of the period of limitation if, and only if, a defendant pleads the statute in his defence. It is only when a defendant elects to rely on the statute as a defence that the statutory bar operates. Consequently, although a claim may be plainly, and on the face of the claim, brought after the expiry of the relevant period of limitation, the action will not be held to be statute barred unless the defendant elects by a plea in his defence to have it so treated.
>
> Thus, although the statute says that the action 'shall not be brought' after the statutory period, such a prohibition in a statute of limitations has been construed not as barring a right to sue but as vesting in a defendant a right to elect, by

pleading the statute, to defeat the remedy sought by the plaintiff.

So construed, the statute does not bear on a plaintiff's *right to sue*, either within or after the period of limitation. What it affects is a plaintiff's *right to succeed* if the action is brought after the relevant period of limitation has passed and if a defendant pleads the statute as a defence. In such circumstances the statute provides an absolute defence to that particular action."

(Emphasis in original)

Finlay C.J. stated that, while the judgment in *O'Domhnaill v. Merrick* dealt with a case of delay after the institution of proceedings within the applicable period of limitation, the Supreme Court was satisfied that it represented a correct analysis of the effect of the Act of 1957, which the Supreme Court adopted.

Application of *O'Domhnaill v. Merrick* principle to plaintiff's claim in proceedings he was prevented from prosecuting
45. The position, of course, in this case is that the proceedings which the existence on the statute book, and the presumed validity, of s. 260(1) of the Act of 1945 effectively precluded the plaintiff from prosecuting, the 1997 proceedings, the 1998 proceedings and the 1999 proceedings, never got to the stage at which the defendants in those proceedings would have had to elect to plead the statute against the plaintiff. That being the case, it seems to me that the Court has to determine whether, as a matter of probability, the defendants in those actions would have pleaded the statute, if the proceedings had reached the point where the defendants were delivering a defence. For the following reasons, I think that the Court is entitled to find that, as a matter of probability, each of the defendants would have pleaded the statute.

46. First, all of the defendants in the 1997 proceedings, the 1998 proceedings and the 1999 proceedings had actively resisted the attempts by the plaintiff to prosecute the proceedings against them. The 1997 proceedings were struck out following an application on behalf of the defendant, the Hospital, that s. 260(1) had not been complied with. In the case of the 1998 proceedings and in the case of the 1999 proceedings all of the defendants in each appeared and filed affidavits in response to the plaintiff's application for leave under s. 260(1). It is reasonable to infer that all of the defendants would have defended the proceedings against them by relying on every defence open to them, if the plaintiff had been permitted to prosecute the proceedings.

47. Secondly, Dr. Murphy and Dr. Kennedy were defendants in the 1993 proceedings which were pending when the 1998 proceedings were initiated. When faced with the prospect of being defendants in the 1998 proceedings and having to defend actions which occurred in 1987, more than ten years earlier, it would have been reasonable for their legal advisers to infer that when the 1993 proceedings were initiated, as he testified was the case, the plaintiff had been advised that any action he had in relation to the events of 1984 and 1987 were statute-barred. In any event, in responding to the plaintiff's application for leave under s. 260(1) in 1998, as has been recorded earlier, Dr. Murphy averred that any claim of the plaintiff arising out of the events of 1987 was statute-barred. Dr. Murphy and Dr. Kennedy were represented by the same firm of solicitors, Arthur Cox, in opposing the application in the 1998 proceedings. It is reasonable to infer that the Act of 1957 would have been pleaded on behalf of both Dr. Murphy and Dr. Kennedy, if the plaintiff had been given leave to prosecute the 1998 proceedings. All of the other defendants in the 1998 proceedings, other than the plaintiff's wife, responded to the application for leave by averring that the claims arising out of the 1987 events were statute-barred. Again, it is reasonable to infer that those defendants would have pleaded the statute.

48. Thirdly, in responding to the plaintiff's application for leave to issue the 1999 proceedings, Mr. Leonard, on behalf of the Hospital, in his affidavit addressed factual matters in relation to the plaintiff's admission to the Hospital in 1984, 1987 and 1991 by reference to the affidavit of the plaintiff grounding his application. The content of his affidavit was directed to supporting his final averment that the Hospital had not acted in bad faith or without reasonable care towards the plaintiff, which was the primary issue which would have had to be addressed on the plaintiff's application. Given that more than eight and a half years had elapsed since the plaintiff's final discharge from the Hospital before the application in the 1999 proceedings was initiated, and that the Hospital had been the defendant in the 1997 proceedings which had been initiated over two years previously and had been struck out, I think it is reasonable to infer that, if the plaintiff had been given leave to issue the 1999 proceedings, the Hospital would have defended the proceedings on the basis of all defences open to it, including the defence that the plaintiff's claim was statute-barred.

49. Having come to the conclusion that, as a matter of probability, all of the defendants in the 1997 proceedings, the proposed 1998 proceedings and the proposed 1999 proceedings would have defended the proceedings against them on the basis that the plaintiff was statute-barred, it is necessary now to consider whether the defendants would have been successful in that plea.

Application of the Act of 1957 to plaintiff's claim in proceedings he was prevented from prosecuting
50. If the plaintiff had been permitted to pursue the 1997 proceedings, the 1998 proceedings and the 1999 proceedings and if, as I have found would have occurred on the balance of probabilities, the defendants in those proceedings defended the proceedings on the basis that the plaintiff's claims were statute-barred, I believe that there are substantial grounds for concluding that the defendants would have been successful in their pleas.

51. As regards the accrual of his causes of action, the period covered by the most recent series of complaints against the various defendants was the period from 17th January, 1991 to 7th February, 1991, when the plaintiff was discharged from the Hospital. On the assumption that the plaintiff could have responded (even if, as the evidence suggests, he would not have so responded) to a plea that the claims were statute-barred on the basis that he was under a disability within the meaning of s. 49 of the Act of 1957, it is clear on the evidence that he had ceased to be under disability at least by 8th July, 1991 when he wrote the letter of that date, the contents of which have been outlined earlier, to the Inspector of Mental Hospitals, which was expressed to be a repetition of a letter he had written on 21st June, 1991, which he feared had got mislaid in the post. Accordingly, the plaintiff's cause of action against all of the defendants which he subsequently sued or attempted to sue from 1997 onwards accrued on 8th July, 1991, if not earlier.

52. As regards the relevant limitation period, some of the causes of action which the plaintiff attempted to pursue in those proceedings were actions for damages for personal injuries in respect of which the relevant limitation period was three years from the date on which the cause of action accrued. However, an analysis of the pleadings or the proposed pleadings in those proceedings also disclosed that the plaintiff pleaded or proposed pleading other causes of action in respect of which the relevant limitation period was six years. Looking at the claims and the proposed claims in the round, at most, the plaintiff had six years from 8th July, 1991 in which to initiate proceedings in respect of the claims so as to avoid a successful plea that his claims were statute-barred. All of the proceedings or proposed proceedings, which the plaintiff was precluded from prosecuting, were initiated (in the case of the 1997 proceedings) or were the subject of applications under s. 260 which were initiated (in the case of the 1998 proceedings and the 1999 proceedings) beyond that period. The earliest, the 1997 proceedings, were initiated by a plenary summons which issued on 30th July, 1997.

53. In the 2010 judgment, at para. 11.6, I quoted from the judgment of Keane C.J. in *Blehein v. Murphy (No. 2)* [2000] 3 I.R. 359 (at p. 366), in which, apropos of the proposed 1998 proceedings, Keane C.J. stated that it was quite clear that any proceedings which were instituted at that time, that is to say, in July 2000, would be well outside the limitation period prescribed by the Act of 1957 and that none of the provisions of that Act or the Act of 1991 enabling proceedings to be brought outside the limitation period in cases of fraud, mistake or (in the case of personal injuries) lack of knowledge, relied on by the plaintiff, had any application to the facts of the proposed 1998 proceedings. However, Keane C.J. recognised that, if leave were granted, it might be that the defendant would prefer to contest the action on the merits and not plead the Statute of Limitations.

54. On the basis of the evidence now before the Court, I have concluded that, as a matter of probability, the defendants would have pleaded the statute. It is of interest to note that on the appeal to the Supreme Court in *Blehein v. Murphy (No. 2),* Murphy J. also addressed the question of the Act of 1957 stating (at p. 371):

> "Furthermore, I might add, there is a degree of unreality about the application. Counsel on behalf of the intended defendants informed the court that it would be the intention of his clients to plead the Statute of Limitations, 1957, if the plaintiff was given liberty to take proceedings against any of them. It would be difficult to imagine a case in which such a plea would be more appropriate. The affidavits already sworn demonstrate the difficulty which the intended defendants would have in seeking to match their honest recollection of events which took place on a day more than twelve years ago against that of the plaintiff who understandably feels intensely about those events and the beliefs or allegations based on them. There is, too, the particular fact that the plaintiff's brother, Brendan, who was present on that critical date and to whom the first defendant claims to have spoken on several occasions prior to the 29th January, 1987, has since died. In the words of Henchy J. in *Sheehan v. Amond* [1982] I.R. 235 at p. 239, the events in dispute have been:-
>
> > '. . . allowed so to fade into the dim uncertainties of the past as to be beyond the reach of fair litigation.'
>
> It is entirely understandable that the Statute of Limitations, 1957, should protect all defendants against litigation of that nature."

55. Finally, I have not overlooked the fact that in the endorsement of claim in the proposed plenary summons in the 1999 proceedings, as outlined in the judgment of McGuinness J. referred to earlier, the concept of fraudulent activity on the part of the defendant, that is to say, the Hospital, appeared for the first time and had not been alleged in the 1997 proceedings against the Hospital, although a statement of claim had been delivered in those proceedings. Therefore, I consider it is reasonable to conclude that the plaintiff could not have maintained the claim against the Hospital on the basis of the alleged fraudulent conduct, if he had been granted leave to issue the 1999 proceedings against the Hospital.

Implications of existence of 1993 proceedings

56. The course of the 1993 proceedings has been outlined earlier. It will be recalled that those proceedings, in respect of which leave had been given by the High Court pursuant to s. 260(1) before they were initiated, were against Dr. Murphy and Dr. Kennedy. They were still in existence when the plaintiff sought leave to issue the 1998 proceedings, which included Dr. Murphy and Dr. Kennedy as defendants. The position adopted on behalf of the defendants was that a claim for damages against the State cannot arise, as a matter of principle, in these proceedings in relation to an action for which leave was, in fact, given, but not pursued, that it to say, the 1993 proceedings. That is because the plaintiff was not, as a matter of fact or law, disadvantaged by the provisions of s. 260(1) of the Act of 1945 in those proceedings, in that leave was, in fact, granted. While there appears to be a causation issue lurking beneath that submission, which, in an appropriate factual context, would have to be addressed, I have come to the conclusion that it does not have to be addressed on the facts of this case. The plaintiff's claim in the 1993 proceedings against Dr. Murphy and Dr. Kennedy related to the events in 1991, not to the events of 1987 which were to be the subject of the proposed 1998 proceedings, although, of course, the narrative in the statement of claim in the 1993 proceedings outlined the factual situation from 1984 onwards. Therefore, I have come to the conclusion that it is not appropriate to attach weight to that submission.

Conclusion

57. Having outlined the factual background to, the procedural course of, and the outcome of the various proceedings which the plaintiff was precluded from prosecuting because of judicial decisions made pursuant to s. 260 of the Act of 1945, it is appropriate at this juncture to review the plaintiff's case as pleaded in the statement of claim in these proceedings, insofar as it supports a claim for damages, and the defendants' response to it.

58. The plaintiff has pleaded in paragraph 7 of the statement of claim that as a result of the arrests, incarcerations, intoxications, conditional releases and dilution of his property rights, he sustained severe personal injury, loss and damage which he proceeded to particularise. Save in one respect, the particulars related to the manner of the plaintiff's committal to the Hospital, and his detention and treatment in the Hospital, during the periods in issue. The exception relates to orders made by the Circuit Court in Galway in family law proceedings on 23rd July, 1998. The plaintiff has pleaded that he was "greatly prejudiced" in defending the application in the Circuit Court "by the legal disabilities imposed upon him" by s. 260. While the plaintiff has sought to link the reliefs sought against him in the family law proceedings to the events in 1984, 1987 and 1991, it is difficult to discern any causal link between those events and the limited information before this Court as to what happened in the Circuit Court.

59. As has been recorded in the 2010 judgment, at para. 12.11, the defendants have pleaded that, as regards any personal injury, loss or damage alleged to have been sustained by the plaintiff, the proceedings are statute-barred by virtue of s. 11(2) of the Act of 1957, as amended by s. 3(1) of the Act of 1991. That plea addresses the plaintiff's claim for damages for personal injury, which, in reality, is the only claim for damages expressly particularised by the plaintiff in the statement of claim.

60. The response of the plaintiff in his reply was that personal rights guaranteed to him by the Constitution are not subject to, nor amenable to, valid limitation by statute. Having regard to the current jurisdiction of the Superior Courts, which I have outlined earlier, that contention does not stand up to scrutiny. The plaintiff further pleaded that such delay as had occurred was caused by the defendants in their enactment and administration of the provisions of s. 260 of the Act of 1945 and that, accordingly, the Act of 1957 was not a defence. My note of the plaintiff's final observation to the Court on the hearing of submissions on this aspect of his claim reflected that last plea. He submitted that, as a matter of commonsense, the Act of 1957 could not be a barrier to him recovering damages, because s. 260 "tied my hands behind me".

61. While the existence of s. 260(1) of the Act of 1945 and its enforcement by the High Court and the Supreme Court in the 1997 proceedings, the 1998 proceedings and the 1999 proceedings did prevent the plaintiff from prosecuting the claims made, or proposed to be made in those proceedings, the reality is that by the time the earliest of those proceedings was initiated the claims the plaintiff wished to pursue were statute-barred. Therefore, even if the plaintiff's causes of action in those proceedings or proposed proceedings had the prospect of being successful against the defendants or proposed defendants, as I have found, the probability is

that the defendants would have pleaded the Act of 1957 and, if they had done so, it would have been found that the plaintiff's claims were statute-barred. Therefore, the plaintiff has not established that any loss or damage consequential on the events of 1984, 1987 and 1991, which are the basis of his complaints, has been incurred by him, or has flowed from, or is a consequence of the decisions made by the Superior Courts in the 1997 proceedings, the 1998 proceedings and the 1999 proceedings, which precluded him from prosecuting those proceedings.

62. Apart from his claim for personal injury, loss and damage, the only other matter pleaded by the plaintiff in the statement of claim in these proceedings which could conceivably give rise to an entitlement to damages arises from his contention that the decisions in the 1997 proceedings, the 1998 proceedings and the 1999 proceedings were in violation of his right of access to justice and his right to natural and constitutional justice and the fact that he has pleaded specifically in relation to the effect of the decisions in the 1998 proceedings and in the 1999 proceedings on him that he –

> ". . . felt greatly humiliated and demoted to the rank of a second class citizen in being obliged to make the said Application for leave to exercise the most fundamental right in a democracy and he was greatly prejudiced in so doing by the legal disabilities imposed upon him by the said section 260."

Broadly speaking, what the plaintiff complains of there can be characterised as an assertion that he has been personally hurt and he has been prejudiced in that his reputation has been adversely affected by having had to bring applications under s. 260. If the plaintiff has an entitlement to damages by reason of the Supreme Court having effectively found in these proceedings that the statutory requirement that he seek leave under s. 260(1) infringed his constitutional right to access to the Court, in my view, what has been pleaded as to the consequences of the necessity to bring applications under s. 260 and the refusal of the courts to accede to the applications, does not seem to be a basis for awarding him damages or any redress beyond the redress which the plaintiff has obtained, that is to say, a declaration of invalidity of s. 260.

63. While it is wholly understandable that the plaintiff harbours a grievance as to the outcome of the applications he brought to get leave to bring the 1998 proceedings and the 1999 proceedings, which were refused, given that s. 260 was subsequently held to be invalid having regard to the provisions of the Constitution, and that he considers that he has been prejudiced and has suffered damage to his person and reputation as a consequence of that outcome, it is important to remember the circumstances in which the plaintiff's applications were unsuccessful. On those applications, the High Court and the Supreme Court were applying a statutory provision which enjoyed the presumption of constitutionality. The provision they were applying had been in force for in excess of fifty years when the plaintiff brought his applications. It is clear from the documentation before the Court that the plaintiff got a full hearing both in the High Court and in the Supreme Court on each of the applications and he got reasoned decisions from each court. Indeed, it was obviously the final decision, the judgment of McGuinness J. on 1999 proceedings, which triggered these proceedings. When the plaintiff challenged the constitutionality of s. 260 in these proceedings, even though the challenge was obviously strenuously opposed by the defendants, he was successful in both the High Court and in the Supreme Court. The result was a declaration that s. 260 was invalid having regard to the provisions of the Constitution. Without, I trust, sounding condescending, that was a very significant achievement for a litigant in person.

64. Of more significance, however, in the context of his claim for damages is that the plaintiff's engagement with organs of the State in relation to the wrong of which he complains, namely, the fact that he had to seek leave under s. 260, which was subsequently found to be invalid, to prosecute the proceedings he wished to prosecute, was with the High Court and the Supreme Court. The outcome which gave rise to the feelings of hurt and the prejudice which he has outlined came about, to use the words of Murray C.J. in *D.K. v. Crowley*, from "acts *bona fide* done by a judge exercising his jurisdiction under a law which at the time enjoyed the presumption of constitutionality".

65. The plaintiff's constitutional rights were clearly vindicated by the declaration of the invalidity of s. 260(1) having regard to the provisions of the Constitution. That declaration of itself was sufficient to redress the wrongdoing against him of which he complains, including the hurt to his person and the prejudice to his reputation which he has asserted were the result of the necessity to bring applications under s. 260 and the outcome of those applications. It is a matter of public record that the plaintiff should not have been required to bring the applications, so that his reputation has been wholly vindicated in the eyes of the public.

Order

66. There will be an order declaring that the plaintiff does not have an entitlement to an award of damages against the defendants in these proceedings.