

THE HIGH COURT
JUDICIAL REVIEW

2008 1172 JR

BETWEEN:

**DENIS TEAHAN, PATRICK TEAHAN, JOHN PATRICK TEAHAN, MICHAEL SCANNELL, JOHN STEPHEN O'CONNOR,
TEDDY TEAHAM, MONTY O'NEILL, PATRICK O'SULLIVAN and GERARD O'REILLY**

APPLICANTS

AND

THE MINISTER FOR COMMUNICATIONS, ENERGY AND NATURAL RESOURCES

RESPONDENT

AND

THE SOUTH-WESTERN REGIONAL FISHERIES BOARD

NOTICE PARTY

Judgment of Mr. Justice Hedigan, delivered on the 18th day of August, 2009

1. The applicants are draft net fishermen living in the Cromane and Killorglin areas of County Kerry, continuing a traditional salmon fishery that exists in Castlemaine Harbour ('the harbour') and in respect of which bye-laws have existed since the year 1859.

2. The respondent is responsible for the regulation, protection and development of the natural resources of Ireland. In particular, he is empowered by virtue of section 9 of the Fisheries (Consolidation) Act 1959 ('the 1959 Act') to make bye-laws which are in his opinion expedient for the more effectual government, management, protection and improvement of the fisheries of the State.

3. The notice party is a statutory body, established under the Fisheries Act 1980 ('the 1980 Act'), which operates under the aegis of the respondent. Its primary function is to conserve the inland fisheries and sea angling resources of the south-western region in its own right and to manage, restore, enhance and promote the region in a sustainable manner for the benefit of its local communities.

4. The applicants seek the following relief by way of judicial review:-

(a) An order of *certiorari*, quashing the South Western Fisheries Region No.7 or Kerry District Conservation of Salmon and Sea Trout Bye-Law (No. 844 of 2008) ('the second bye-law') promulgated by the respondent on the 1st of August 2008;

(b) An order of prohibition, restraining the respondent from purporting to close the harbour, or ban the fishing or taking of salmon or sea trout with a draft net or rod and line, from the areas managed and monitored by the notice party;

(c) A declaration that the respondent is not entitled to substitute and impose restrictions directly upon the harbour, or persons fishing within the functional area of the notice party, or implement bans, in substitution of the management of the harbour by the notice party;

(d) A declaration that the respondent is charged pursuant to the 1980 Act with giving, from time to time, directions to the notice party with regard to policy for the management, conservation, protection, development and improvement of fisheries, but that the entitlement of the respondent to give directions does not confer on the respondent a supervisory jurisdiction;

(e) A declaration that the procedure adopted by the respondent in anticipation of the passing of the second bye-law was contrary to natural and constitutional justice;

(f) A declaration that the respondent has displayed actual bias and a failure and refusal to acknowledge and accept the differentiation and separation of powers which exist and inure as between the respondent and the notice party herein;

(g) A declaration that the second bye-law constitutes an unlawful and unconstitutional interference with the proprietary rights of the applicants and constitutes a disposition of by the respondent of the rights of the applicants to such a degree as to be entirely *ultra vires*;

(h) A declaration that the respondent, in seeking to proceed to impose restrictions, such restrictions being the sole preserve of the notice party herein, upon the harbour and the applicants' proprietary rights of fishing, acted in

excess of the powers conferred on him by the Fisheries Acts 1959 to 2006;

(i) A declaration that the actions of the respondent in seeking to ban fishing or close the harbour is arbitrary, capricious and constitutes an unlawful and unconstitutional misappropriation of the rights of the applicants; and

(j) A declaration that, in purporting to implement the second bye-law, the respondent has treated different categories of fishermen, harvesting from the same rivers, in a different manner and has restricted the activities of the applicants to their detriment and for the benefit of other fishermen, which is inequitable and constitutes a disproportionate inequality of treatment and an unlawful attack on the property rights of the applicants.

I. Factual and Procedural Background

5. The applicants have depended, for many years, on fishing of various types during different seasons to earn a livelihood. The most important type of fishing, for present purposes, in which they habitually engage is fishing for salmon by means of draft net in the harbour from the middle of May until the end of July each year. The licensing regime for draft net fishing in the harbour is administered by the notice party, to whom applications for licenses are periodically submitted by the applicants.

6. The harbour is a special area of conservation pursuant to European Council Directive 92/43/EC, more commonly known as the Habitats Directive. The significance of this status is that measures must be taken by the State to ensure the conservation of certain species inhabiting the harbour.

7. On the 24th of April 2008, the respondent became aware that the notice party had made certain proposals for the management of the salmon fishery in the Kerry Fishery District for the year 2008. These proposals included a provision to open the fishery that exists in the harbour on a restricted basis, with special conditions to be attached to any fishing carried out therein. Having learned of this, the respondent sought advice from the standing scientific committee ('the committee') of the National Salmon Commission. The committee advised that the fishery in the harbour amounted to a mixed stock fishery and that the fishing which the notice party was proposing to allow would pose a threat to the objective of upholding the conservation limits in the area.

8. Nonetheless, in or about May 2008, the applicants were granted draft net fishing licenses for the then forthcoming season by the notice party. These licenses were, however, subject to a number of conditions, including:-

(a) An initial quota of 20 salmon being allocated to each license-holder, with a further quota to be granted should DNA testing confirm that only targeted salmon were being caught;

(b) A condition that each salmon caught would be tagged with a unique reference number and no salmon would be sold in the absence of a tag;

(c) A condition that each salmon caught would have a sample of scales removed from it and that those samples would be returned for DNA testing;

(d) A condition that in the event that genetic analysis showed that the salmon were accidentally intercepted from the River Maine, the fishery would close immediately; and

(e) A condition that the applicants would be individually responsible for the collection and remittance of specified information and records, in default of which no further tags or quota would be released.

9. The licenses granted to the applicants entitled them to commence fishing, upon payment of a fee and conservation levy, on the 13th of May 2008. However, on the 14th of May 2008, the applicants were informed by a representative of the notice party that they were not to fish, notwithstanding their licences, on the basis that the respondent intended to introduce a bye-law which would prohibit fishing in the harbour.

10. On the 15th of May 2008, the respondent advertised that he had made the South Western Fisheries Region No.7 or Kerry District Conservation of Salmon and Sea Trout Bye-Law (No. 839 of 2008) ('the original bye-law'). The advertisement specified that this bye-law had been made on the 13th of May 2008 and that it had come into force on the 14th of May 2008. Its effect was stated to be the prohibition of "fishing for salmon and sea trout by means of a draft net and rod and line in the waters specified by the bye-law". The original bye-law was subsequently published in *Iris Oifigiúil* on the 16th of May 2008.

11. The applicants appealed the introduction of the original bye-law to the High Court pursuant to section 11(1)(d) of the 1959 Act. On the 18th of June 2008, Laffoy J. annulled this bye-law on the basis that it had been introduced in breach of the applicants' right to fair procedures. Shortly thereafter, the respondent sought further advice as to how best to ensure compliance with the State's obligations under EU law with respect to the area. This was provided by Dr. Niall Ó Maoiléidigh of the Marine Institute, who reported to the respondent on the 3rd of July 2008, with specific regard to the judgment of the High Court in respect of the original bye-law. Dr. Ó Maoiléidigh re-affirmed the fact that the harbour was a mixed stock fishery which posed a "continuing threat" to the salmon stocks that were already below their conservation limits. He further asserted that the topography of the area and the number of contributory salmon rivers were such that the harbour was not an appropriate location for a fishery under any circumstances.

12. By means of an advertisement published in a national newspaper on the 3rd of July 2008, the respondent informed the public of the annulment of the original bye-law. Above this notice, the respondent notified the public of his intention to introduce the second bye-law. On this occasion, a short consultation process with all interested parties was proposed within the notice, which was designed to run until the 11th of July 2008. In addition to the notice in the national newspaper, the various interested parties were also contacted about this consultation process by the chief executive

officer of the notice party.

13. The applicants sought, and were granted by the respondent, an extension of the consultation period until the 18th of July 2008. This extension of time was also advertised in a national newspaper and the chief executive officer of the notice party once again informed the interested parties. Eleven separate submissions were received by the respondent during the consultation phase. Among these was a scientific report provided by Mr. John Browne of Stillwater Consultants, which was submitted on the final day of the consultation process.

14. In addition to their own submissions, the applicants also requested that the submissions of other interested parties would be made available to them. On foot of this request, the respondent wrote individually to these parties on the 24th of July 2008, requesting permission to release their submissions to the applicants. When the consent of the interested parties was received, the respondent sent copies of the relevant submissions to the applicants on the 28th of July 2008 and suggested, of his own initiative, that the applicants should have until the 30th of July 2008 to respond to these if necessary. Due to an oversight, however, one submission from Cromane Community Council was excluded. This submission, opposing the introduction of second bye-law, did not contain any additional scientific data which might have supplemented the evidence before the respondent. Rather, the Cromane submission referred to economic and social considerations relating to the introduction of the second bye-law.

15. Upon receipt of the applicants' submissions, the respondent also sought advice in relation to their content from Dr. Ó Maoiléidigh as well as Dr. Paddy Gargan and Dr. Cathal Gallagher of the Central Fisheries Board. The opinions of these experts did not differ in any material respect from that which had previously been received by the respondent in relation to the viability of a fishery in the harbour. Nonetheless, these advices were provided to the applicants on the 29th of July 2008 and any observations based thereon were sought within 24 hours. The applicants contacted the respondent on the 30th of July 2008 seeking an extension of time within which to make further submissions on all of the new documentation which had been furnished to them. This request was denied. On the same day, three final submissions were received from interested parties on foot of the respondent's invitation of the 28th of July 2008 to put forward supplementary observations by that date. These were not forwarded to the applicants.

16. Having considered the totality of the evidence before him, the respondent decided to introduce the second bye-law on the 1st of August 2008. The measure was introduced to ensure compliance with the Habitats Directive and to maintain existing government policy on mixed stock fisheries.

17. Leave to apply by way of judicial review was granted by MacMenamin J. in the High Court on the 28th of October 2008.

II. The Legislative Regime

18. Section 9 of the 1959 Act, as amended by section 3 of the Fisheries (Amendment) Act 1962, sets out in considerable detail the powers of the respondent to make bye-laws relating to the fisheries of the State. It provides as follows:-

"(1) In addition to the power of making bye-laws conferred on him by any other section of this Act, the Minister may, subject to the provisions of this Act, make such bye-laws as are in his opinion expedient for the more effectual government, management, protection and improvement of the fisheries of the State and, without prejudice to the generality of the foregoing, may make bye-laws in relation to all or any of the following matters:-

(a) the regulation of the fisheries of the State and the preservation of good order amongst the persons engaged therein;

(b) the times and seasons at which the taking of the several species of fish shall commence and cease;

(c) the times and places or the manner at and in which any fishing engine to be employed in the said fisheries may be used;

(d) the description and form of nets to be used in the said fisheries and the size of the meshes thereof;

(e) the prohibition of the use of nets;

(f) the prohibition of the use at any time of any fishing engine which is in the opinion of the Minister injurious to the fisheries;

(g) the prohibition of any practice whatsoever tending in the opinion of the Minister to impede the lawful capture of fish or to be in any manner detrimental to the said fisheries;

(gg) the imposition of prohibitions or restrictions of an emergency character on the taking by any specified engine or engines of the several species of fish or of any of those species for a specified period not exceeding one year in duration where, in the opinion of the Minister, such prohibitions or restrictions are necessary; and

(h) any other matter or thing relating in any manner to the government and protection of the said fisheries.

(2) This subsection provides for penalties for contravention of the bye-laws aforesaid.

(3) No bye-law shall be made under this Act which is repugnant to any law in force in the State which would tend to injure the effective working power of any mill or factory."

19. The European Communities (Natural Habitats) Regulations 1997 (S.I. 94 of 1997) ('the 1997 Regulations') had the effect of incorporating the Habitats Directive into Irish law. Under the 1997 Regulations, a number of obligations are

imposed on the respondent in the proper exercise of his powers under statute. Regulation 7, for example, requires the respondent to undertake surveillance of the conservation of status of certain species, specified elsewhere within the 1997 Regulations. Regulation 24, meanwhile, empowers the Minister to take such measures as may be of assistance in maintaining a favourable conservation status of these species. Such potential measures are specified in Regulation 24(2) as including, but not being limited to:-

- "(a) directions regarding access to certain property;
- (b) directions regarding the temporary or local prohibition of the taking of specimens in the wild and exploitation of certain populations;
- (c) the regulation by direction of either or both the periods and methods of taking of specimens;
- (d) application, when specimens are taken, of any other statutory provision relating to either or both hunting and fishing which take account of the conservation of such populations;
- (e) establishment of a system of licences for taking specimens or quotas; and
- (f) such other directions as the Minister, or the Minister for the Marine in respect of the fish species stipulated [in the schedule to the Regulations], consider appropriate."

20. Section 67 of the 1959 Act provides for the issuance of fishing licences by regional authorities such as the notice party. However, a limitation on the use of such licences is contained within section 67(14), which provides as follows:-

"Every ordinary fishing licence (other than a freshwater rod ordinary licence) shall operate to authorise the use, during the period specified therein and in the fishery district therein, of a fishery engine of the kind specified therein, but subject to the provisions of this Act and any instrument made thereunder."

III. The Submissions of the Parties

21. The applicants argue that the respondent erred in law and acted *ultra vires* in purporting to introduce the second bye-law. They contend that neither the provisions of section 9 of the 1959 Act, nor those of any other enactment, are sufficiently broad to permit a blanket prohibition on fishing in the harbour such as that contained within the second bye-law. The applicants further contend that in purporting to introduce the second bye-law, the respondent has seized exclusive control of the harbour which lies within the functional area of the notice party. This, in their submission, amounts to a breach of the clear division of jurisdiction between the respondent and the notice party which is delineated in the Fisheries Acts 1959 to 2006.

22. The applicants also assert that the second bye-law was introduced in breach of their right to natural and constitutional justice. They contend that the period which was ostensibly allowed for consultation was illusory in that they were not afforded sufficient time within which to make their initial and supplementary submissions. The applicants also complain that information was withheld from them and that, as a result, they were incapable of predicated their arguments on the totality of the evidence that lay before the respondent.

23. The applicants further argue that the respondent's actions, in purporting to outlaw all draft net fishing in the harbour but nonetheless permit fishing on its tributary rivers to continue, have resulted in an inequality of treatment of different categories of fishermen. This inequality of treatment is invidious and unjustified, in their submission, in particular having regard to the respondent's proposed justification to the effect that the interests of conservation require that fishing in the area should desist entirely.

24. The respondent submits that there is nothing contained within section 9 of the 1959 Act or the legislative code in general which ought to inhibit him from introducing a bye-law such as that at issue. He argues that the second bye-law clearly falls within the generality of section 9(1) of the 1959 Act and that its introduction was therefore a lawful act performed by the respondent within jurisdiction. The respondent rejects any suggestion of usurpation of the powers of the notice party, contending that the applicants' submissions to that effect are based on a fundamental misconstruction of the legislation.

25. With regard to the issue of the fairness of the procedures adopted by the respondent in deciding to introduce the second bye-law, he contends that the requirements of the principles of natural and constitutional justice must be tailored according to the circumstances of the case. In the present proceedings, the respondent submits that the consultation process which was provided was more than adequate to afford the applicants the right to be heard. In particular, the respondent emphasises that there is nothing to suggest that the applicants were at any point unaware of the policy reasons and scientific data which served to underpin his decision to introduce the second bye-law.

26. The respondent also rejects the applicants' contention that the second bye-law has the effect of creating a system of unjustified unequal treatment of different categories of fishermen operating within the same area. He argues that the overwhelming scientific evidence before him demanded that a special prohibition be introduced in respect of the harbour in order to maintain the State's conservatory obligations under the Habitats Directive.

IV. The Decision of the Court

(a) Jurisdiction

27. Section 9 of the 1959 Act, as set out above, has the effect of conferring a broad array of powers onto the respondent so that he may uphold his responsibilities in respect of the fisheries of the State. While some of the measures which may be adopted by the respondent under section 9 are quite specific in their terms, for example section 9(1)(e) which allows for prohibitions on the use of nets, many of the legislative provisions are noteworthy for their breadth and generality. The main clause of section 9(1) permits the respondent to "make such bye-laws as are in his opinion expedient for the more effectual government, management, protection and improvement of the fisheries of the State". This overarching power is in no way limited by the list of specific powers which are enumerated thereafter, as they are expressly stated to operate without prejudice to the generality of the main clause. Furthermore, section 9(1)(h) empowers the respondent to make bye-laws in respect of "any other matter or thing relating in any manner to the government and protection of the [...] fisheries [of the State]".

28. The default rule of statutory interpretation in Irish law is that a literal approach must be taken to the provision being examined. It is only in limited circumstances that this principle may be departed from. The primacy of the literal method was recognised by the Supreme Court in *Keane v. An Bord Pleanála* [1997] 1 IR 184. In that case, Hamilton C.J. pronounced as follows:

"In the interpretation of a statute or section thereof, the text of the statute or section thereof is to be regarded as the pre-eminent indication of the legislator's intention and its meaning is to be taken as that which corresponds to the literal meaning."

29. Section 5 of the Interpretation Act 2005 ('the 2005 Act') now gives formal recognition to the power of the courts to depart from the literal meaning of a statute where it would produce obscure results or where it would undermine the plain intention of the legislature. It provides:

"In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction):-

(a) that is obscure or ambiguous, or

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of:-

(i) in the case of an Act to which paragraph (a) of the definition of Act in section 2(1) relates, the Oireachtas, or

(ii) in the case of an Act to which paragraph (b) of that definition relates, the parliament concerned,

the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole."

30. In interpreting section 9 of the 1959 Act, therefore, it is not the function of this Court to read any limitations or qualifications into the powers conferred on the respondent, in the absence of some form of patent ambiguity or absurdity. To my mind, the words used in the main clause in section 9(1), as well as those employed in section 9(1)(h), afford the respondent a very wide power in the drafting and composition of bye-laws. I am of the opinion that the second bye-law falls within this power, in that it amounts to a measure which, having considered extensive submissions and scientific advice, the respondent feels is necessary for the effectual government of the harbour. Affording the terms of section 9 their plain meaning, and thus upholding the second bye-law as lawful, does not, in my view, result in any degree of absurdity. I am thus unable to accept the applicants' argument that the second bye-law was *ultra vires* the respondent.

31. I am likewise unable to accept the applicants' submission to the effect that the second bye-law essentially usurps the function of the notice party. While the notice party undoubtedly occupies a unique and important role within the legislative regime, section 67(14) of the 1959 Act makes it abundantly clear that its jurisdiction to permit fishing by way of licence is subject to the provisions of the 1959 Act and any instrument made thereunder. The licences awarded to the applicants in the present case are therefore quite clearly trumped by the respondent's powers under section 9 of the 1959 Act and, indeed, the second bye-law which was introduced pursuant thereto.

32. In light of the foregoing, there can be no doubt but that the respondent does have jurisdiction to impose a measure such as the second bye-law. It falls for the Court to consider next whether the introduction of that measure, in the present case, was achieved in breach of the principles of natural and constitutional justice.

(b) Fair Procedures

33. The respondent, like all organs of state, is obliged to adhere to certain principles of natural and constitutional justice in the exercise of administrative power. Indeed, his failure to so adhere in advance of the introduction of the original bye-law prompted the High Court to invalidate that particular provision. It is well-established, however, that the exigencies of fair procedures are not uniform and instead vary considerably according to the circumstances of an individual case. In *International Fishing Vessels Limited v. Minister for Marine* (No. 2) [1991] 2 IR 93, McCarthy J. stated at page 102:-

"Neither natural justice nor constitutional justice requires perfect or the best possible justice; it requires reasonable fairness in all of the circumstances; often it is a matter of impression as to whether or not there was unfairness."

34. The Supreme Court went on to endorse the remarks of Tucker L.J. in *Russell v. Duke of Norfolk* [1949] 1 All ER 109. In that case, the Court of Appeal considered the nature of the doctrine of fair procedures, and what was required of an administrative body thereunder. Tucker L.J. stated at page 118:-

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth."

35. The need for the fairness of administrative action to be assessed subjectively does not mean, however, that no guidance may be drawn from previous decisions relating to similar subject matter. As a general rule, for example, it would seem that decision-making bodies, whose determinations are likely to impact heavily upon the livelihood of individual citizens, are obliged to afford a certain degree of consultation and to provide certain items of information. In *East Donegal Co-Operative Livestock Mart Limited v. Attorney General* [1970] IR 317, the Supreme Court addressed the obligations which befell the Minister for Agriculture and Fisheries in circumstances where he was purporting to revoke a licence for a livestock market. Walsh J. stated the following:-

"[The Minister] is required to consider every case upon its own merits, to hear what the applicant or the licensee (as the case may be) has to say, and to give the latter an opportunity to deal with whatever case may be thought to exist against the granting of a licence or for the refusal of a licence or for the attaching of conditions, or for the amendment or revocation of conditions which have already attached, as the case may be."

36. Applying these principles to the present case, and having particular regard to the decision of Laffoy J. in respect of the original bye-law, it seems clear to me that the respondent was obliged to examine and address thoroughly the submissions made by the applicants as to why the second bye-law ought not to be adopted. As a necessary corollary of this obligation, the respondent was also enjoined to furnish the applicants with information that was material to his proposed decision on the issue

37. I am satisfied that the consultation process which occurred between the 3rd and the 30th of July 2008 amounted to an adequate discharge of the respondent's obligations. The applicants were given ample and extended time within which to make their case; they were furnished with all of the submissions of the other interested parties, bar one which was excluded due to an honest oversight and which did not possess the same level of significance as many of the others; they were made fully aware of the scientific basis for the respondent's proposed initiative, and that the opinions and data had remained constant throughout the entire proceedings. It is true that the applicants were not provided with copies of the three supplementary submissions which the respondent received on the 30th of July 2008 and, as such, they were not given the opportunity to address the contents thereof. Had there been matters of significance contained within these documents, requiring comment or rebuttal, this failure might well amount to a failure of duty on the part of the respondent. However, in the circumstances, it is clear that nothing new arose on foot of those final submissions and thus no unfairness occurred. The same may also be said of the original Cromane Community Council submission which contained no scientific data and was generally supportive of the applicants' position.

38. It should be noted that many of the opportunities to become involved in the process that were afforded to the applicants arose by virtue of the respondent's own initiative. The chance to comment upon the submissions of the other interested parties was something that was never requested by the applicants themselves, and only arose owing to an offer made by the respondent. Furthermore, it is essential to examine the conduct of the respondent in the context in which it arose. The respondent had received expert scientific advice, from numerous sources, that the fishery in the harbour posed an immediate, serious and enduring threat to the conservation status of the fish involved. The respondent was obliged to act as swiftly and as decisively as possible. In the circumstances, a period of almost one month was an adequate window within which to discuss the measure.

(c) Inequality of Treatment

39. Article 40.1 of the Constitution requires that all citizens, as human persons, shall be held equal before the law. It is well settled that the effect of this provision is to prevent invidious or otherwise unjustified discrimination between individuals or groups. In the present case, I am of the opinion that there is little force to the applicants' suggestion that they have been inappropriately discriminated against or that there is no justification for the adoption of measures in respect of the harbour. The State, and *ergo* the respondent, have a pressing responsibility to ensure compliance with European law, in particular the Habitats Directive. In the present case, the respondent had reached the conclusion, supported by an abundance of scientific evidence and expert advice, that an instrument such as the second bye-law is necessary in order to uphold the State's obligations. Any disparity of treatment with other fishermen which results from its introduction is, to my mind, fully justified by the exigencies of the situation.

V. Conclusion

40. It seems clear to me that section 9 of the 1959 Act gives ample jurisdiction to the respondent for the introduction of a statutory instrument such as the second bye-law. Such a measure falls readily within a literal construction of the terms of section 9. No issue arises as to the usurpation of the functions of the notice party since section 67(14) of the 1959 Act expressly states that the licensing regime administered by it is superseded by measures adopted pursuant to section 9.

41. The requirements of fair procedures must be applied depending on the circumstances of each individual case. I am satisfied that the process of consultation and provision of information that was undertaken by the respondent, in relation to the second bye-law, was adequate in light of the surrounding facts. No injustice or unfairness has been occasioned as a result of that limited quantity of information that was withheld from the applicants.

42. Finally, I cannot accept that the second bye-law amounts to an act of invidious discrimination on the part of the respondent. Its introduction is necessitated by the State's obligations under European Law.

43. In light of all of the foregoing, I will refuse the relief sought.

