Neutral Citation: [2013] IEHC 520

THE HIGH COURT

[2010 No. 6822P]

BETWEEN

PATRICK JOSEPH KENNY

PLAINTIFF

AND

THE MINISTER FOR AGRICULTURE AND FOOD, IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

Judgment of Ms. Justice Laffoy delivered on 1st day of November, 2013.

The proceedings and the application

1. These proceedings were initiated by a plenary summons which issued on 16th July, 2010. An amended statement of claim, the second amended statement of claim, was delivered by the solicitors for the plaintiff on 14th October, 2011.

2. The application now before the Court was initiated by a notice of motion dated 24th October, 2012, which was returnable for 19th November, 2012, in which the defendants sought the following orders:

> (a)(i) an order directing the trial of a preliminary issue of law as to whether the plaintiff's claim against the defendants or part thereof, in particular, the alleged causes of action asserted in paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 16A, 17, 17A, 18, 19, 20, 21, 22, 23, 24A(b), 25 and 26 of the amended statement of claim was statute-barred pursuant to the provisions of the Statute of Limitations 1957 (the Act of 1957), as amended,
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> (ii) coupled with an order upon the trial of the issue that the plaintiff's claim is statute-barred and an order dismissing the plaintiff's claim or part thereof against the defendants;
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> (b) an order pursuant to the inherent jurisdiction of the Court dismissing the plaintiff's claim as against the defendants as an abuse of process and/or for delay given the true nature of the claim being made and the requirement to bring forward the same promptly and/or within the time limits provided for an Order 84, rule 21 of the Rules of the Superior Courts (the Rules), which applied by analogy or implication, or within a reasonable time;
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> (c) an order pursuant to the inherent jurisdiction of the Court dismissing the plaintiff's claim as against the defendants in respect of the equitable remedies sought as an abuse of process;
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> (d) an order dismissing the plaintiff's claim as against the defendants pursuant to the inherent jurisdiction of the Court by reason of the inordinate and inexcusable delay of the plaintiff in the commencement and/or prosecution of his claim and the prejudice that would be suffered by the defendants in defending these proceedings and/or on the grounds that the balance of justice requires that the proceedings be dismissed having regard to the aforesaid inordinate and inexcusable delay;
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> (e) an order pursuant to Order 19, rule 28 of the Rules and/or the inherent jurisdiction of the Court striking out the plaintiff's proceedings as against the defendants or part thereof as set out in paragraphs 12, 13, 14, 15, 16, 16A, 17, 17A, 18, 19, 20, 21 and 22 of the amended statement of claim, on the basis that the claims are unstateable and/or not justiciable and/or disclose no reasonable cause of action and/or the plaintiff lacks *locus standi* to make them and/or they are bound to fail and/or are frivolous and/or vexatious; and
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> (f) an order pursuant to the inherent jurisdiction of the Court dismissing the plaintiff's claim as against the defendants as pleaded in paragraph 10 of the amended statement of claim as an abuse of process as a collateral challenge to the outcome of the criminal proceedings.

3. When the matter was first in the motion list on 19th November, 2012, an order was made by the Court (Murphy J.) by consent of the parties that, without further pleadings, a preliminary issue be tried as sought in the notice of motion in the terms set out at (a)(i) in paragraph 2 above. As regards pleadings, in fact, the defendants had delivered an amended defence on 19th October, 2012 and, subsequent to the making of the order, the plaintiff delivered a reply in January 2013.

4. The defendants' application was grounded on an affidavit sworn by a solicitor in the office of the Chief State Solicitor, Jevon Alcock, on 22nd October, 2012. The replying affidavit sworn by the plaintiff's solicitor, Peter H. Jones, on 10th January, 2013 was filed subsequent to the making of the order of 19th November, 2012 in accordance with the order. There is very little by way of outline of the factual foundation of the claims brought in the proceedings pleaded in the amended statement of claim and the factual situation is hardly elaborated on at all in the affidavit of Mr. Jones. In very broad terms, the proceedings are about the operation by the first named defendant (the Minister) of the Diseases of Animals Act 1966 (the Act of 1966) and schemes made by the Minister for the eradication of bovine tuberculosis (TB Scheme) and bovine brucellosis (Brucellosis Scheme) and, in particular, the absence of a statutory scheme of compensation in relation to the compulsory slaughter of reactor animals, and the operation of Community Aid payment schemes for payment to farmers. As they are at the core of the defendants' contention that most elements of the plaintiff's claim are statute-barred or otherwise out of time, it is essential to try and identify the factual bases of the claims and, in particular, the time factors involved, as well as their legal bases, as pleaded. That has not been an easy task, because the pleading is somewhat confusing and lacks clarity in places.

The factual and legal bases of the plaintiff's claims as pleaded
5. One learns from paragraph 1 of the amended statement of claim that the plaintiff is a farmer who farms in County Roscommon, that he is the lawful owner of a cattle herd and that a specified herd number has been allocated to him by the Minister.

6. Paragraphs 7, 8 and 9 of the amended statement of claim relate to an allegation by the plaintiff that the Minister has wrongfully withheld from the plaintiff his full entitlement in respect of monies owing to him under various Community Aid payment schemes, which are itemised, for example, what is referred to as the "Cattle Headage Scheme in more severely handicapped areas", based, *inter alia*, on a wrongful accusation that the plaintiff was in breach of the Act of 1966. It is clear that the allegation relates to withholding of payments for each year from 1991 to 1997. Accordingly, the plaintiff could have pursued his claim in relation to the alleged wrongful withholding in respect of the most recent year to which a claim relates, 1997, at least twelve years before these proceedings were instituted and, in the case of the oldest claim, which dates from 1991, at least eighteen years before the proceedings were instituted. In relation to the alleged wrongdoing, the relief sought by the plaintiff is declaratory relief reflecting the plaintiff's allegation and also a mandatory injunction or an order of mandamus directing payment to him of the withheld monies he alleges to be entitled to for the years 1991 to 1997 together with interest.

7. Paragraph 10 of the amended statement of claim relates to criminal proceedings brought at the instigation of the Minister against the plaintiff on 26th October, 1992 on three charges of failure to move a reactor cow in accordance with a movement permit contrary, *inter alia*, to s. 48 of the Act of 1966. The nub of the factual basis of this element of the plaintiff's as deposed to by Mr. Alcock, which will be elaborated on later, is that on 4th March, 1993, the plaintiff was convicted in the District Court on those charges. He subsequently appealed to the Circuit Court. On the hearing of the appeal in the Circuit Court on 12th October, 1993, the plaintiff pleaded guilty to one of the charges and the Judge of the Circuit Court applied the Probation Act to him. As regards the other two charges, the State entered a *nolle prosequi*. The wrong alleged in paragraph 10 is that the proceedings were grounded on the plaintiff's refusal to surrender alleged reactors into the Minister's "non-statutory reactor grant/movement permit based direction to slaughter scheme" as being conduct on the part of the plaintiff which breached the Act of 1966.

8. It is difficult to relate what is pleaded in paragraph 10 on its own to any specific relief claimed in the prayer in the amended statement of claim, which overall itemises no less than thirty five forms of relief, which are not set out in a logical sequence having regard to the sequence of the pleas of wrongdoing in the body of the amended statement of claim. The relevant item may be item (xx), in which declaratory relief is sought that the Minister maliciously and without reasonable cause procured the bringing of criminal proceedings against the plaintiff under a TB Scheme and a Brucellosis Scheme, each of which Schemes is alleged to be tainted with illegality under Irish law and under European Union law. The position adopted by counsel for the defendants – that the plaintiff has not pleaded any basis for seeking that relief – is understandable, in that item (xx) contains the first reference to malice or alleged malicious conduct on the part of the defendants in the amended statement of claim. If item (xx) does relate to paragraph 10, it relates to proceedings which were terminated in the Circuit Court just short of seventeen years before these proceedings were instituted. Alternatively, as regards that relief, the plaintiff has not specifically identified when the proceedings which are alleged to have been maliciously prosecuted were initiated, although it may relate to what is alleged in paragraph 24 of the amended statement of claim referred to later.

9. Paragraph 11 of the amended statement of claim relates to a criminal prosecution brought against the plaintiff in July 1994 for breaches of the Act of 1966 based on obstruction of a veterinary inspector in the execution of his statutory duties. It is not clear what happened to those proceedings but it is reasonable to infer that they were disposed of within a few years of initiation and many years before these proceedings were instituted. Further, while it is not clear what relief the plaintiff is seeking in respect of the alleged wrongdoing on the part of the Minister, or, indeed, what the basis of the alleged wrongdoing is, I think it is reasonable to infer that it is similar to, and in the same position as, the relief sought based on the element of the claim in relation to the allegations contained in paragraph 10. In other words, I assume that it relates to criminal proceedings which were terminated considerably in excess of six years before July 2010.

10. In paragraph 12 of the amended statement of claim the plaintiff pleads that since 19th December, 1990 the Minister has been "continually" aware that he was exceeding his powers under the Act of 1966 "in directing slaughter of TB and/or Brucellosis reactors on foot of the issuance of movement permits". The significance of the date pleaded is that it was on 19th December, 1990 that judgment was delivered in the High Court by Lardner J. in Lucey and *Madigan v. The Minister, Ireland and the Attorney General* (Unreported). That judgment, of course, was in the public domain from the time it was delivered. The plaintiff or any other litigant seeking relief against the Minister on the basis that he was acting in breach of the rights of the plaintiff or other litigant, having regard to what was determined in that judgment, could have done so at any time after 19th December, 1990. Apart from that, there is nothing pleaded which suggests any action on the part of the defendants against the plaintiff similar to the action taken against Mr. Lucey and Mr. Madigan, so that the plaintiff would have had *locus standi* or sufficient interest to challenge the actions of the Minister alleged, on the basis of the decision of Lardner J., to have been *ultra vires* the Act of 1966.

11. While consideration of the plaintiff's reply strays beyond the parameters of the order of 19th November, 2012 because it was delivered after it was made, the reply may give some assistance in understanding the plaintiff's claim under paragraph 12. For instance, the plaintiff pleads in the reply that "certain material facts relevant to the plaintiff's right of action were deliberately concealed" by the Minister and that the plaintiff did not discover, and could not have discovered with reasonable diligence, the concealment until 2009 following the determination of certain District Court proceedings taken by the Minister against the plaintiff and the plaintiff "having received certain legal advices at that time". On my reading of the reply, the only matter referred to in the particularisation of that claim is the decision of Lardner J. of 19th December, 1990. At the risk of unnecessary repetition, it must be emphasised that that decision was in the public domain before the prosecutions against the plaintiff in 1992 and 1994 were brought and for almost twenty years before these proceedings were initiated. Apart from that, the position of counsel for the defendants is that no cause of action was pleaded in paragraph 12.

12. Paragraphs 13 and 14 of the amended statement of claim contain allegations of alleged breaches by the Minister of two aspects of "the purposes of" the Act of 1966. The first relates to the provision of a statutory system of compensation for bovine animals slaughtered, which I understand to mean that there was a statutory requirement for such a scheme. The second is an alleged prohibition on stamp duty or other charges arising in relation to inspections and suchlike prescribed in the Act of 1966.

13. As regards the latter aspect, in paragraph 14 it is pleaded that the Minister acted contrary to the purpose of the Act of 1966 in that, *inter alia*, on 28th September, 2010, the Minister deducted from the payments due to the plaintiff under the "Single Farm Payment/Disadvantaged Area Scheme" the sum of €155.32 in respect of "Department testing fees". Counsel for the defendants submitted that by virtue of s. 6 of the Act of 1966 it was provided that no stamp duty would be payable or, "save as otherwise prescribed", no fee or charge demanded in relation to matters specified. However, from 1996, as a result of Statutory Instruments made by the Minister, for example, the Brucellosis in Cattle (General Provisions) (Amendment) Order 1996 (S.I. No. 86 of 1996), it was prescribed that where an owner failed to comply with a requirement of the Minister to have each animal in the herd tested in

accordance with the provisions of that Statutory Instrument, a veterinary inspector would be entitled to test each animal in the herd and the cost of such test could be recovered by the Minister from the herd owner as a simple contract debt. Accordingly, it was submitted on behalf of the defendants, the plaintiff has no reasonable prospect of success in seeking the relief sought at item (xiii(a)) of the prayer for relief, in which the plaintiff seeks a declaration that the Minister is precluded by the provisions of s. 6 of the Act of 1966 from imposing a charge or causing a charge to be levied on herd owners in respect of the costs of testing animals under the TB Scheme and Brucellosis Scheme.

14. In paragraph 14 it is also alleged that, in permitting or authorising "third party commercial entities" to impose a charge upon flock owners/herd owners in respect of purchasing costs of "sheep/goat identification tags", the Minister is exceeding his authority under s. 6 of the Act of 1966 and Council Regulation (EC) No. 21/2004, which are the subject of declarations sought in items (xii(b)) and (xiii(c)) of the prayer. Save what is pleaded later in paragraph 24A of the amended statement of claim, there is nothing to link the plaintiff to the alleged breach by the Minister and, in particular, it is not pleaded in the amended statement of claim that the plaintiff was or is the owner of a sheep herd or a goat herd in respect of which he was charged for such tags within the limitation period. Accordingly, nothing on the face of the amended statement of claims suggests that the plaintiff has *locus standi* to challenge the actions of the Minister complained of. The position of counsel for the defendants in their submissions was that what is alleged in paragraph 14 does not amount to an actionable wrong.

15. As regards the first aspect of the asserted purpose of the Act of 1966 referred to in paragraph 13, the provision of a statutory system of compensation, the wrongdoing alleged on the part of the Minister seems to be largely subsumed into the wrongdoing alleged in paragraph 15 and the succeeding paragraphs, although in paragraph 14 the failure of the Minister to put in place a statutory system of compensation is particularised as being contrary to the purpose of the Act of 1966.

16. In paragraph 15 of the amended statement of claim the plaintiff alleges that, when the Bill which ultimately became the Act of 1966 was going through the Oireachtas, the Minister at the time promised that every Statutory Instrument made under the Act controlling bovine TB and brucellosis "would have compensation provisions stated within its body". That statement, it is alleged, gave rise to a legitimate expectation in favour of the plaintiff that every Statutory Instrument made under the Act of 1966 controlling bovine TB and brucellosis would have compensation provisions "stated within its body". In the succeeding paragraphs of the amended statement of claim (paragraphs 16, 16A, 17 and 17A), it is alleged that the Minister for the time being failed to honour that promise in Statutory Instruments made in 1978, 1980, 1989 and 1991, and thus denied the plaintiff's legitimate expectation. Among the reliefs sought by the plaintiff are declarations that the relevant Statutory Instruments are *ultra vires*, coupled with orders by way of injunction or *mandamus* directing the Minister to put in place a statutory system of compensation in relation to animals slaughtered under the instructions of official veterinarians under the TB Scheme and Brucellosis Scheme. Once again, the plaintiff has not expressly demonstrated in the amended statement of claim that the plaintiff is adversely affected by the absence of such a statutory scheme so as to have *locus standi* to seek the relief claimed. In their defence, the defendants have asserted that the matters pleaded are not cognisable by the Court and do not give rise to causes of action.

17. In paragraphs 18, 19 and 20 of the amended statement of claim the plaintiff alleges that the Minister was under an obligation to operate the TB Scheme and the Brucellosis Scheme in compliance with certain European Community regulations (Council Directive 64/432/EEC, as amended; Council Directive 77/391/EEC; and Council Directive 78/52/EEC) but that he had failed to do so. In particularising those claims, various failures on the part of the Minister are alleged, including, *inter alia*, the following: that the Minister has failed to carry out an annual herd test for TB and brucellosis in respect of the plaintiff's cattle herd in the years 1992, 1993, 1994, 1995 and 1996; and that he caused and directed slaughter of cattle belonging to the plaintiff in the years 1991, 1992, 1993, 1997 and in the year 2000 without having a statutory system of compensation in place (paragraph 20B). In the prayer in the amended statement of claim the plaintiff seeks declarations that the Directives identified have not been validly transposed into Irish law. He also seeks a declaration that the TB testing procedures applied in respect of the plaintiff's cattle did not comply with the provisions of the first Council Directive cited. On the face of the plea, the most recent alleged wrongdoing on the part of the Minister occurred at least nine years before these proceedings were instituted.

18. Although I do not consider it necessary to adjudicate on this point, I think it is appropriate to record that the position of the defendants is that the Directives outlined in paragraph 18 of the amended statement of claim do not create a right in favour of an individual enforceable by action, and that the plaintiff has misunderstood the purpose and effect of the Directives. In particular, counsel for the defendants addressed the specific provisions of Council Directive 77/391/EEC, which dates from May 1977, and Council Directive 78/52/EEC, which dates from December 1977, and pointed out that the two Directives have broad parameters and that they regulate what a Member State has to do to qualify for the Community financial contribution and that Member States were not required to comply with the Directives unless they wanted to get such funding. It was submitted by counsel for the defendants that the plaintiff's claim that the Directives were not properly transposed, which is the relief claimed at items (i) and (ii) of the prayer, is unstateable.

19. In paragraph 21 of the amended statement of claim the plaintiff pleads that the Minister sought to impose, without power or authority, a non-statutory system of reactor grants "in respect of alleged TB reactors in the Plaintiff's possession, which . . . were directed to be slaughtered by [the Minister]". Reading paragraph 21 in conjunction with paragraph 20B, it is to be inferred that the wrong alleged occurred at the latest in the year 2000, at least nine years before the proceedings were initiated. It is specifically pleaded in particularising the allegation in paragraph 21 that the conduct of the Minister in putting in place a non-statutory system of reactor grants was repugnant to the provisions of Article 15.2.1 of the Constitution. Article 15.2.1 provides that the sole and exclusive power of making laws for the State is vested in the Oireachtas. Item (iii) in the prayer for relief in the amended statement of claim flows from that plea, in that the plaintiff seeks a declaration that the non-statutory system of reactor grants operating as part of the TB Scheme and the Brucellosis Scheme is repugnant to the provisions of Article 15.2.1. There is also a claim for damages "for breach of constitutional rights".

20. In paragraphs 22 and 23 of the amended statement of claim it is alleged that the Minister breached EU law in respect of the plaintiff's cattle herd, the breach alleged in paragraph 22 being of Council Directive 92/102/EEC (as amended), and the breach alleged in paragraph 23 being of Commission Regulation 494/98. While what is pleaded is somewhat difficult to comprehend, my understanding is that the actions on the part of the Minister or his servants or agents complained of were the attaching of brass ear tags to the plaintiff's cattle between 1997 and 1999, allegedly in breach of Council Directive 92/102/EEC, with consequent action on the part of the Minister on 11th April, 2000 in causing movement restrictions to be placed on the plaintiff's cattle herd on the basis of alleged breach of the identification provisions of Council Regulation (EC) No. 820/97 without lawful cause or good reason. As I understand the case as pleaded, the plaintiff's position is that the only breach, if any, of the identification provisions had been caused by the Minister's servants or agents in attaching the brass ear tags between 1997 and 1999. Various declaratory reliefs are sought in the prayer in the amended statement of claim condemning the attaching of brass ear tags to the plaintiff's cattle. As regards the actions on the part of the Minister complained of in paragraphs 22 and 23, the earliest occurred at least twelve years before these proceedings were initiated and the latest at least nine years before these proceedings were initiated.

21. In paragraph 24 of the amended statement of claim it is pleaded that on 25th June, 2007, the Minister, unlawfully and without justification, "(considering the constitutional defects inherent in the TB Scheme and the Brucellosis Scheme . . . ; the Community law defects)", caused the criminal process to be invoked against the plaintiff in respect of the TB Scheme and the Brucellosis Scheme. Details are given of four summonses issued against the plaintiff in the District Court on 25th June, 2007. There is no indication in the amended statement of claim itself as to what the outcome of the prosecutions was, although there will be reference later to averments made in the affidavits and to some information contained in the written submissions filed on behalf of the plaintiff which may relate thereto. It may be that the declaratory relief sought by the plaintiff in item (xx) of the prayer referred to earlier relates to the plea contained in paragraph 24, as well as, perhaps, to the plea in paragraph 10. The only basis pleaded for the alleged unlawfulness of the prosecutions, when one reads the plea in paragraph 24 and, in particular, the words quoted earlier, in conjunction with the reliefs sought, is that the TB Scheme and the Brucellosis Scheme are each tainted with illegality under Irish law and tainted with illegality under European Union law, which, perhaps, refers back to earlier pleas.

22. In paragraph 24A of the amended statement of claim it is alleged that the Minister breached the provisions of Council Regulation (EC) No. 21/2004 in respect of the plaintiff's farming livelihood. First, it is alleged that the Minister breached that Regulation by unlawfully deducting from the payment due to him under the Single Farm Payment/Disadvantaged Area Scheme the sum of €518 in 2009 for alleged non-compliance by the plaintiff with Articles 3, 4 and 5 of that Regulation in respect of the management of his goat herd and his sheep flock. In response, the defendants submitted that, while the amended statement of claim does not identify what the problem complained of was, a challenge to a decision of the Minister should have been initiated in a timely manner by analogy to Order 84, rule 21 of the Rules. Secondly, and this is the element of the claim in paragraph 24A which it is alleged by the defendants is statute-barred, the plaintiff alleges a breach of that Regulation by the Minister in permitting or authorising third party commercial entities to impose a charge upon flock owners/herd owners in respect of the Minister's purchasing costs of authorised sheep/goat identification tags. Counsel for the defendants submitted that no recognisable cause of action has been pleaded in relation to this alleged breach and that the plaintiff's claim should be dismissed on the grounds that it is vexatious and frivolous.

23. Finally, it is pleaded that the plaintiff suffered loss and damage by reason of the Minister having wrongfully and directly interfered with his cattle herd (paragraph 25) and by reason of the Minister withholding his Community Aid payment monies (paragraph 26). It is not expressly pleaded when the events complained of in paragraphs 25 and 26 occurred, but paragraphs 25 and 26 may be linked to the earlier pleas, paragraph 25 being introduced by the words "[by] reason of the premises". Following delivery of the plaintiff's first statement of claim, by letter dated 12th July, 2011, the Chief State Solicitor sought particulars of the loss and damage referred to in paragraphs 25 and 26 and sought confirmation that no further loss or damage other than claimed in paragraphs 25 and 26 as particularised would be made at the hearing. It would appear that that request for particulars was not responded to. It is interesting to note that the only specific losses which the plaintiff has identified in the amended statement of claim aggregate €673.32 (i.e. deductions of €155.32 referred to in paragraphs 14A and of €518 referred to in paragraph 24A(a)). There is also a claim for damages for trespass, which can only be grounded on what is alleged in paragraph 25.

24. In the prayer for relief the plaintiff also seeks a preliminary reference to the Court of Justice of the European Union on the issues of European Union law inherent in the action, which issues of law are not specifically identified.

Legal submissions
25. The Court has had the benefit of written legal submissions from each side, which I assume have been filed and are a matter of public record. I propose considering the issues which have arisen on the application under the headings (truncated in some cases) set out in the defendants' written submissions, which headings were adopted by counsel for the plaintiff.

Preliminary issue on the Statute of Limitations 1957 as amended
26. The basis on which the defendants contend that the plaintiff's civil law claims as pleaded in the various paragraphs of the amended statement of claim referred to in the order of 19th November, 2012 directing the trial of the preliminary issue are statute-barred is that the claims being pursued by the plaintiff against the defendants are claims in tort and that the relevant limitation period, save in respect of personal injuries, is, by virtue of s. 11 of the Act of 1957, six years from the date of the accrual of the cause of action. As regards the nature of the plaintiff's cause of action, it was submitted that it is a claim in tort whether –

> (a) it is based on alleged breach of statutory duty by the defendants, or
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> (b) it is based on alleged breaches of obligations by the State under European Union law (per Carroll J. in *Tate v. Minister for Social Welfare* [1995] 1 I.R. 418 at p. 442), or
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> (c) it is based on alleged breach by the defendants of the plaintiff's constitutional rights (per Keane J. in the Supreme Court in *McDonnell v. Ireland* [1998] 1 I.R. 134 at p. 156 *et seq.).*

27. As regards when the plaintiff's cause of action in tort, whether for breach of statutory duty, or of obligations under European Union law, or of constitutional rights or for trespass, accrued, counsel for the defendants relied on a number of authorities, namely: the decision of the High Court (Feeney J.) in *Minister for Justice and Law Reform v. Devine* [2012] IECH 159; the decision of Griffin J. in the Supreme Court in *Hegarty v. O'Loughran* [1990] 1 I.R. 148; and the decision of Geoghegan J. in the High Court in *Irish Equine Foundation Limited v. Robinson* [1999] 2 I.R. 442; the judgment of Finlay C.J. in the Supreme Court in *Tuohy v. Courtney* [1994] 3 I.R. 1; and the decision of the High Court (Carroll J.) in *Clerkin v. Irwin Pharmacy Limited*, (the High Court, Unreported, 30th April, 1993). I consider it sufficient for present purposes to quote the passage from the judgment of Griffin J. in *Hegarty v. O'Loughran* relied on by the defendants, where he stated (at p. 158):

> "The period of limitation therefore begins to run from the date on which the cause of action accrued, i.e. when a complete and available cause of action first comes into existence. When a wrongful act is actionable *per se* without proof of damage, as in, for example, libel, assault, or trespass to land or goods, the statute runs from the time at which the act was committed. However, when the wrong is not actionable without actual damage, as in the case of negligence, the cause of action is not complete and the period of limitation cannot begin to run until that damage happens or occurs."

It is important to emphasis that it is clear from the decision of the Supreme Court in *Hegarty v. O'Loughran* that discovery, as such, cannot be relevant in considering what is the appropriate commencement date of the limitation period, as was pointed out by Geoghegan J. in *Irish Equine Foundation Limited v. Robinson (*at p. 445). The fact that the plaintiff did not discover until 2009, within six years before the commencement of these proceedings, that, as asserted in the plaintiff's reply, "the said movement permit based direction to slaughter scheme had been struck down" in the *Lucey and Madigan* case is absolutely immaterial to the operation of the Act of 1957 to the plaintiff. Apart from that, one is assumed to know the law and its effect.

28. It is the defendants' position that any civil law claim the plaintiff may have arising out of what is pleaded in the paragraphs of the

amended statement of claim referred to in the order of 19th November, 2012 was statute-barred when the plenary summons issued on 16th July, 2010 in accordance with those principles. Mr. Alcock in his affidavit (at paragraph 6) has helpfully summarised the time-line of the matters complained of by the plaintiff by reference to each of the paragraphs of the amended statement of claim and I have had regard to the summary in compiling the summary of the plaintiff's claims pleaded in paragraphs 5 to 24 above. I am satisfied that Mr. Alcock's summary is an accurate summary. On its face it bears out the defendants' contention that the claims in issue are statute-barred.

29. The response of counsel on behalf of the plaintiff was that, while the various authorities cited by counsel for the defendants appear apposite to the general areas addressed in the evolving jurisprudence, none of them addresses what counsel for the plaintiff submitted was the real question which the Court has to address. It was submitted that the real question is whether the Court, in keeping with its duty to uphold the Constitution, can deny the plaintiff a remedy even if the plaintiff seeks a remedy outside the timeframe specified in s. 11 of the Act of 1957, where it is alleged that for many years going back to 1989/1990 the Minister has "deliberately concealed the gross offending of Article 15.2.1 of the Constitution inherent in non-statutory reactor grants". Various authorities were cited in support of the proposition that at least from 1989 it was known to the Minister's Department that bringing into place non-statutory reactor grants was an unpermitted exercise of law-making powers by the Minister. The authorities cited on behalf of the plaintiff were the following: the decision of the High Court (Murphy J.) in *Howard v. Minister for Agriculture and Food* [1990] 2 I.R. 260; the decision of the High Court Lardner J. in *Lucey and Madigan v. Minister for Agriculture and Food* referred to earlier; and the decision of the High Court (Carroll J.) in *Farrell v. Minister for Agriculture and Food* (High Court, Unreported, 11th October, 1995). That is a peculiar argument, given that Mr. Jones in his affidavit acknowledged that in the judgment in the *Howard* case "judicial comment was not made about reactor grants (described in the judgment as 'an independent non-statutory scheme')", and neither of the other two authorities was concerned with the existence of a non-statutory scheme, as distinct from a statutory compensation scheme. In any event, as the decisions were in the public domain, the Minister was not in a position to conceal their existence.

30. A major theme running through the plaintiff's response to the defendants' submission that his claim is statute-barred, which was based on alleged "concealment" by the Minister that non-statutory grants offended Article 15.2.1 of the Constitution, was that the Minister's Department over the years has relied on a particular decision of the Supreme Court, to the extent of "putting [it] into orbit as a cloak of respectability adorning non-statutory reactor grants" and thereby causing "grave harm". The decision in question was the decision of the Supreme Court on a special case stated from the High Court in *Rooney v. Minister for Agriculture and Food and Ors.* [1991] 2 I.R. 539, usually referred to as *Rooney No. 1*.

31. Some facts are asserted in the written submissions filed on behalf of the plaintiff which have not been proved on affidavit. For instance, it is stated that at the Circuit Court appeal proceedings on 19th October, 1993, counsel for the Minister's Department specifically relied on the Supreme Court decision in *Rooney No. 1* as implied authority for the proposition that the constitutionality of every aspect of the bovine the TB Scheme and the Brucellosis Scheme, including non-statutory reactor grants, had been exhaustively confirmed by that decision. The averment in Mr. Jones' affidavit that the then Minister or his servants or agents "deliberately ensnared the plaintiff in participating in constitutionally prohibited prosecutorial/judicial plea bargaining", which was made without identifying any source for such serious allegation, in my view, cannot be treated as factually supporting the proposition. My understanding, on the basis of what is deposed to in the affidavit of Mr. Alcock, is that the appeal to the Circuit Court took place on 12th October, 1993. A certificate of the County Registrar dated 22nd October, 1993 has been exhibited by Mr. Alcock, which corroborates the date of the appeal as having been 12th October, 1993. Nothing turns on that. However, I have already recorded the substance of what is in that certificate in relation to the outcome of the appeal. Furthermore, in his affidavit, Mr. Alcock also averred, identifying the source of his information as "the records available to me and what I have been informed" as to what occurred on 12th October, 1993 as follows:

> "In addition, counsel on behalf of the Plaintiff undertook on behalf of the Plaintiff to surrender the reactor cow to the Department for collection and also to accept the scheme of compensation then being operated. He also undertook that a further test would be carried out shortly thereafter on the remainder of his herd. By virtue of the arrangement arrived at with the [Minister] in the light of the agreed plea the officials present on behalf of the [Minister] indicated that a recommendation would be made that full grants, headage and compensation under the then applicable scheme be paid. The Plaintiff, through Counsel, also gave an undertaking that in future the Plaintiff would comply with the scheme as operated by the Department in the county of Roscommon."

The specific facts in that averment have not been contradicted on affidavit. Mr. Jones' questioning on affidavit of the "propriety of the stance taken by" Mr. Alcock in that averment, in my view, is wholly inappropriate.

32. It was also asserted in the written submissions filed on behalf of the plaintiff that it was not until the conclusion in June 2009 of criminal proceedings taken by the Minister against the plaintiff that the plaintiff "did discover the concealment engaged in by the [Minister's Department] of its disregard for the Constitution and its further disregard for the [Act of 1966]". It may be assumed that the criminal proceedings referred to are the criminal proceedings referred to in paragraph 24 of the amended statement of claim as having been initiated on 25th June, 2007. What the outcome of those proceedings was has not been clearly put before the Court. However, in the context of responding to the defendants' allegation of laches on the plaintiff's part, which is addressed later, there is reference in the plaintiff's written submissions to the proceedings in the District Court in 2008 and 2009 and, as I understand it, to the fact that there was a request by the plaintiff for a consultative case stated and to the subsequent application by the Director of Public Prosecutions to dismiss the criminal proceedings against the plaintiff, so that the case stated did not proceed. If I understand what is stated in the written submissions correctly, and, again, it is important to emphasise that the factual position has not been proved on affidavit in this Court, the proceedings which were instituted in 2007 did not proceed to a judicial determination.

33. The thrust of the argument advanced on behalf of the plaintiff is that, notwithstanding the decision of the Supreme Court in *Rooney No. 1*, the constitutionality of non-statutory reactor grants remains to be determined. As the headnote in the official report of *Rooney No. 1* states, the Supreme Court held, *inter alia*, as follows:

> "That as the Minister had in place a reasonable scheme for providing financial assistance to owners of diseased cattle it was not necessary in the circumstances to decide whether there was a constitutional requirement to provide for the compensation sought. If there was such a requirement the Minister would only be obliged to provide compensation as far as practicable having regard to the common good; this he had done by establishing the extra-statutory scheme then in existence."

34. In support of the argument that the constitutionality of non-statutory reactor grants remains to be determined, counsel for the plaintiff also relied on a recent decision of the Supreme Court delivered on 9th March, 2010 in *Rooney v. Minister for Agriculture and Food and Ors.* [2010] IESC 12. On that appeal, the Supreme Court was addressing whether, notwithstanding the decision of the

Supreme Court in 1991 on the special case, elements of the proceedings, which dated back to 1987, in which the special case had been brought, still remained to be determined. The following passage from the judgment of Finnegan J., with whom the other Judges of the Supreme Court concurred, is quoted in the plaintiff's written submissions:

> "It is quite clear that the special case procedure can be availed of where the opinion on the special case will determine the outcome of the proceedings but also where its effect will be to significantly reduce the issues in the case or shorten the hearing. In this case there is nothing to suggest that either the High Court or the Supreme Court considered whether a decision on the special case adverse to the appellant would finally dispose of the action."

Having outlined the discussion which took place in the Supreme Court in 1991 in relation to the order to be made in 1991, Finnegan J. stated:

> "From the foregoing it is quite clear that the intent of the order of the 19th December 1991 was that the plaintiff's claim comprised in the special case should be dismissed, but that if there are further or other claims in the statement of claim they should not be affected and the appellant should be entitled to pursue the same. No adjudication was made as to whether any such claims exist. Whether or not any such claims exist is a matter to be determined in the High Court."

The matter was remitted by the Supreme Court in 2010 to the High Court so that the High Court could determine whether the statement of claim in the *Rooney* proceedings dating from 1987, as existing or as amended pursuant to leave granted by the High Court, contains any issue which was not disposed of by the judgment of the Supreme Court on the special case.

35. Having asserted that *Rooney No. 1* "was a case not fought", it was submitted by counsel for the plaintiff in the written submissions filed on the plaintiff's behalf that "it must be reasonable to assume that the Constitution is gravely offended by the manner in which *Rooney No. 1* was used by the [Minister's Department] on 19th October, 1993 to dissuade the [plaintiff] from seeking to achieve a resolve to the injustice caused to his cattle by the [Minister's Department]". Once again, there is no affidavit evidence to support the assertion that the plaintiff was dissuaded in the manner suggested.

36. It is not clear from the pleadings, the affidavits or the submissions what has transpired in relation to the *Rooney* proceedings since they were remitted by the Supreme Court to the High Court on 9th March, 2010. That creates a difficulty for this Court, because it must exercise caution in not expressing any view as to what was not disposed of by the judgment of the Supreme Court on the special case in *Rooney No. 1*, or otherwise in relation to it. The Court's difficulty is compounded by the fact that counsel for the plaintiff in this case, Sean Rooney, Barrister-at-Law, is the plaintiff in the *Rooney* case.

37. Having said that, even if there are live issues in the *Rooney* proceedings dating from 1987 which might have been relevant to the interaction between the plaintiff and the Minister's Department and how the plaintiff was entitled to be, and was, treated by the Minister's Department back in the 1990s in relation to the operation of the TB Scheme and the Brucellosis Scheme, that is no answer to the defendants' contention that the elements of the plaintiff's claim in these proceedings, as itemised in the order of 19th November, 2012, are statute-barred. The decision of the Supreme Court on the special case was in the public domain at the time of the Circuit Court proceedings in 1993. It had even been reported in the Irish Reports for 1991. If the plaintiff had a cause of action in civil law for infringement of his constitutional rights which had accrued arising out of the disposition of, or in relation to, the Circuit Court appeal in October 1993, it was for him and his legal advisers to take the action to initiate the claim. Ignorance of the law does not stop the Act of 1957 running. Not having done so within the six year limitation period from the time the cause of action accrued, the claim is statute-barred.

38. There was a strange averment in the replying affidavit sworn by Mr. Jones, which counsel for the defendants interpreted as acknowledging, *prima facie*, that the relevant elements of the plaintiff's claim are statute-barred. It was to the effect that the plaintiff would argue, in response to the defendants' reliance on the Act of 1957, that "it is just, equitable and in keeping with the 1937 Constitution and the Treaty on the Functioning of the European Union that the provisions of the Statute of Limitations 1957 be disapplied in the particular and exceptional circumstances" of these proceedings. The circumstances then outlined by Mr. Jones were the following: that the Minister operated the TB Scheme and the Brucellosis Scheme knowing that they were grossly repugnant to the provisions of the Constitution and, accordingly, the defendants could never avail of the protection of the Act of 1957; that the defendants were guilty of deception having regard to the decision of Lardner J. in the *Lucey and Madigan* case; that the defendants were the law breakers insofar as the operation of the Act of 1966 was concerned; and that "to afford protection via [the Act of 1957] in resisting the plaintiff's rightful access to withhold Community Aid monies" would cause the plaintiff's "European Union citizenship rights to be effectively set at nought". The comment of counsel for the defendants on Mr. Jones' averment was that it is unclear what was intended by the reference to "disapplied".

39. The submission that the Act of 1957 is "disapplied" in the circumstances adverted to is wholly misconceived. The Act of 1957 is a post-Constitution Act, which defines the limitation period for initiating an action in tort, which, on the authorities relied on by counsel for the defendants, covers breaches of obligations of the State under European Union law and breaches of constitutional rights. Accordingly, it must be applied by this Court. As counsel for the defendants pointed out, the plaintiff has not claimed that the relevant provision of the Act of 1957 is repugnant to the Constitution.

40. In general, I am satisfied that every element of the claim pleaded in the amended statement of claim which arose out of actions by the Minister or his Department earlier than July 2004 is statute-barred. While there is some vagueness and lack of clarity in some of the paragraphs of the amended statement of claim itemised in the order of 19th November, 2012, on the assumption that the elements of the claim advanced are based on pre-July 2004 events or inaction, I have come to the conclusion that the question posed in that order should be answered on the basis that the alleged causes of action asserted at paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 16A, 17, 17A, 18, 19, 20, 21, 22, 23, 24A(b), 25 and 26 are statute-barred pursuant to the provisions of the Act of 1957. If the plaintiff has a claim against the defendants which is not statute-barred, there is nothing to prevent the plaintiff from advancing that claim in new proceedings in a properly formulated manner. I would point out, however, that claims for money payments aggregating €637.32 are within the jurisdiction of the District Court.

Dismissal for abuse of process/delay by analogy to Order 84 of the Rules

41. As appears from the outline of the contents of the amended statement of claim set out earlier, most of the reliefs claimed in the prayer in the amended statement of claim reflect public law challenges to decisions, actions or inactions on the part of the defendants in that, in general, they are based on the following types of assertions:

> (a) that European Union Directives have not been validly transposed into Irish law;
>
> (b) that the Minister has breached or has failed to comply with European Union law by decisions, actions or inaction;

(c) that the non-statutory system of reactor grants is repugnant to the Constitution;

(d) that certain Statutory Instruments made by the Minister are *ultra vires* the Act of 1966; and

(e) that the Minister breached or failed to comply with the Act of 1966 by decisions, action or inaction.

42. As counsel for the defendants pointed out, Order 84, rule 21 of the Rules, which applied during the relevant time periods referred to in the amended statement of claim, required a public law challenge to be taken promptly and in any event within three months of the occasion upon which the cause for complaint first arose, or six months in the case of an application for *certiorari*. Counsel for the defendants relied, in particular, on the recent decision of the Supreme Court in *Shell E & P Ireland Limited v. McGrath and Ors.* [2013] IESC 1, in which the Supreme Court stated that the decision of the High Court (Costello J.) in *O'Donnell v. Dun Laoghaire Corporation* [1991] ILRM 301 represented the law in this jurisdiction. In the latter case, as counsel for the defendants pointed out, Costello J. addressed the matter of delay and applied, by analogy, the rules and principles of Order 84, rule 21 of the Rules to public law claims brought in a plenary action, stating as follows (at p. 315):

> ". . . I think I should exercise my discretionary powers in relation to the plaintiff's delay by applying by analogy rules and principles contained in O. 84 r. 21. I should therefore refuse to grant the plaintiff relief unless I am satisfied that had the application been one for judicial review I would have concluded that there would be good reason for extending the time for allowing an application notwithstanding the expiration of the three months' time limit contained in the rule."

43. It was submitted by counsel for the defendants that the plaintiff in these proceedings has failed to comply with Order 84 and neither acted promptly nor within the time limits applicable. An illustration of that submission is the point made by counsel for the defendants in relation to the first element of paragraph 24A relating to the alleged wrongful withholding of €518 sometime in 2009 outlined in paragraph 20 above. While the plaintiff has not properly demonstrated the legal nature of this claim, it was submitted that, insofar as it is based on a challenge to a decision of the Minister, *prima facie*, it was initiated outside the time limit imposed in Order 84, rule 21.

44. Further, it was submitted by counsel for the defendants that it is for the plaintiff to explain the delay and to show justifiable excuse for the same such as to merit an extension of time. The explanation offered, it was submitted, did not adequately explain or provide good reason for extending time, and certainly not by the length that would be required. It was further submitted that while delay on its own requires the proceedings to be dismissed, delay combined with non-arguability of the claims made, amounts to an abuse of process.

45. The "explanation" for not commencing the proceedings until 16th July, 2010 is contained in paragraph 14 of the replying affidavit of Mr. Jones which, in reality, refers only to one factual matter to which I will return. The principal reasons advanced by way of explanation are as follows:

(a) that for the greater part of the time span from 1991 the defendants "effectively operated a stranglehold" over the plaintiff in respect of withheld Community Aid monies and in restricting his ability to properly operate his farming livelihood, thus suggesting that "mustering of finance", which I understand to mean inability to fund proceedings, "was overwhelmingly dispositive of delay";

(b) the fact that he was dissuaded in 1992/1993 (reference being made to the prosecuting barrister and judges) by what he was hearing about the decision of the Supreme Court in *Rooney No. 1*, suggesting that a legal challenge would be futile, and also that he was "unable to access clear legal advice on the predicament he found himself immersed in";

(c) in the period from 1991 he engaged in the pursuit of justice as best he could by communicating with the Ombudsman and the European Commission and so forth;

(d) that it was not until the conclusion of the District Court proceedings in June 2009 that he became "fully appraised of" matters such as the decision of Lardner J. in the *Lucey and Madigan* case and also what was decided and what was not decided on in *Rooney No. 1*.

The only factual matter relied on was the sudden and untimely death of the plaintiff's wife in 2001, which was a set-back for him and his family which it took a long time to recover from. While the Court must be understanding in circumstances where a party has been bereaved, there could be no justification for a gap of nine years between the bereavement and the commencement of the proceedings in this case.

46. It seems to me that the proper interpretation of what Mr. Jones has averred to is that the plaintiff, although he was the subject of criminal prosecutions in 1992, 1993, 1994 and 2007, did not receive legal advice that he had a cause of action against the defendants in relation to matters which happened over a span of approximately twenty years from 1990 until 2009 or 2010, and that he did not get the assistance of lawyers who were prepared to pursue those claims on his behalf until 2010. It is noteworthy that it is by no means clear on the basis of the evidence before the Court that the plaintiff did not have the benefit of legal representation before 2009 and 2010 in defending the criminal prosecutions. While Order 84, rule 21 of the Rules in its original form conferred a discretion on the Court, where it considers "that there is good reason for extending the period within which the application shall be made", to do so, as regards the public law challenges which the plaintiff makes in these proceedings, in my view, he has not established a good reason for extending the time for initiating the challenges. In reaching that conclusion, I have considered the submissions made on behalf of the plaintiff that these proceedings possess a "uniqueness" which distinguish them from the *O'Donnell* case and the *Shell* case, arising as they do, as alleged, out of an attack on Article 15.2.1 and the concealment of knowledge of that attack for an extended period. On the evidence before the Court, the plaintiff has not established any such concealment by the defendants in the operation of the non-statutory system of reactor grants as part of the TB Scheme and the Brucellosis Scheme, which has been operated and conducted in public. Further, the various judicial decisions in relation to the operation of the Scheme referred to by counsel for the plaintiff, for example, the decision of Lardner J. in the *Lucey and Madigan* case and the decision of the Supreme Court in Rooney No. 1 have at all times been in the public domain.

Laches

47. The doctrine of laches as a bar to the plaintiff's claims is of limited relevance in this case because the civil law claims are subject to a statutory period of limitation, as outlined earlier, and the public law claims are subject to strictures on delay in initiating a challenge by analogy to Order 84 of the Rules. Counsel for the defendants adopted the definition of laches accepted by Henchy J. in *Murphy v. The Attorney General* [1982] I.R. 241 at p. 318 to the following effect:

> "Laches essentially consists of a substantial lapse of time coupled with the existence of circumstances which make it inequitable to enforce the claim."

Insofar as the plaintiff is seeking equitable relief on foot of claims based on decisions, action or inaction dating from 1965 to 2000, which are not otherwise barred, I agree with counsel for the defendants that the lapse of time is substantial and that it would be inequitable to enforce the claims by granting equity based forms of relief.

48. Acquiescence may also be a bar to pursuing a claim in equity. Acquiescence arises where a plaintiff either expressly or impliedly represents that he does not intend to enforce a claim and, as a result of the representation, it becomes unjust in all the circumstances to grant the equitable relief he subsequently seeks. On the basis of what Mr. Alcock has deposed to as to the factual basis of the disposal of the prosecutions in 1992 and 1993, which has not been contradicted, the plaintiff must be barred on the grounds of acquiescence from seeking equitable relief on foot of the claims which are predicated on some form of wrongdoing by the defendants in initiating, conducting and procuring the disposal of those prosecutions at the time, which is without any factual or legal foundation.

Inordinate and inexcusable delay in the commencement and prosecution of the claim
49. As is the position in relation to reliance on the doctrine of laches, it seems to me that this ground of seeking to have the plaintiff's claims dismissed is largely irrelevant because of the application of the Act of 1957 and the application of Order 84, rule 21 by analogy to the circumstances of this case. As regards any claims which are not otherwise time-barred by operation of the Act of 1957 or by analogy to Order 84 which the plaintiff is seeking to litigate, which were at least ten years old when the proceedings were initiated, in my view, the defendants have established both inordinate and inexcusable delay on the part of the plaintiff in commencing the proceedings. Mr. Alcock's affidavit also identifies prejudice to the defendants caused by delay. Further, the delay is of a nature that is prejudicial to the public interest, in line with what was stated by the High Court (Peart J.) in *Byrne v. Minister for Defence* [2005] 1 I.R. 577. While I am satisfied that there has not been material delay on the part of the plaintiff in advancing the proceedings since they were commenced, as alleged on behalf of the defendants, notwithstanding that no less than three statements of claim have been delivered on behalf of the plaintiff, that finding does not assist the plaintiff.

50. The contention of the plaintiff that "the real culprit for the undoubted inordinate delay" is the Minister's Department, because of alleged concealment "that it had been offending Article 15.2.1 of the Constitution from the Autumn of 1976", and its alleged concealment "that it had been offending the Act of 1966 from the 19th December, 1990", is absurd. At the risk once again of unnecessary repetition, I reiterate that no case of concealment against the Minister or his Department has been established. All of the relevant matters were in the public domain. The plaintiff could have initiated a challenge to the non-statutory system of reactor grants operating as part of the TB Scheme and the Brucellosis Scheme by reference to Article 15.2.1 of the Constitution at any time from 1990 onwards, when, apparently, his troubles with the Minister's Department began. Similarly, he could have relied on the decisions of the High Court outlined earlier in paragraph 24, including the decision in the *Lucey and Madigan* case, from the early 1990s, insofar as they were relevant to his grievance against the Minister and his officials.

Unstateable/non-justiciable claims/no reasonable cause of action/lack of locus standi
51. As appears from the outline of the reliefs sought by the defendants on this application set out earlier, the defendants have invoked both the Court's inherent jurisdiction and the Court's jurisdiction under Order 19, rule 28 of the Rules. There is an element of "belt and braces" about these aspects of the defendants' case for dismissal of the proceedings, given that they have successfully argued that most of the plaintiff's claims are statute-barred or, being of a public law nature, are barred on the grounds of delay by analogy to Order 84 of the Rules. In the circumstances, in general, I think it is unnecessary to address in detail the well established jurisprudence on the Court's inherent jurisdiction and its jurisdiction under Order 19, rule 28.

52. Subject to one qualification, it was specifically submitted on behalf of the defendants that the plaintiff, in respect of the claims made in paragraphs 13, 14, 15, 16, 16A, 17, 17A, 18, 19, 20, 21 and 22 of the amended statement of claim, has neither locus standi nor sufficient interest for the purpose of Order 84, rule 20(4) of the Rules to pursue the claims. The qualification was that the plaintiff has *locus standi* to pursue claims in relation to payments due to him alleged to have been wrongfully withheld from him by the Minister.

53. Insofar as the plaintiff seeks to challenge the actions of the defendants on the grounds of alleged unconstitutionality, it is true that, as was pointed out by counsel for the defendants, the primary rule was identified by Henchy J. in *Cahill v. Sutton* [1980] I.R. 269 in the following passage (at p. 286):

> "The primary rule as to standing in constitutional matters is that the person challenging the constitutionality of the statute, or some other person for whom he is deemed by the court to be entitled to speak, must be able to assert that, because of the alleged unconstitutionality, his or that other person's interests have been adversely affected, or stand in real or imminent danger of being adversely affected, by the operation of the statute."

Order 84, rule 20(4) requires that an applicant has "a sufficient interest in the matter to which the application relates" to establish an entitlement to leave to apply for judicial review.

54. Deficiency in the pleading of the plaintiff's case has already been pointed to. For example, as has been pointed out earlier, it has not been pleaded that the plaintiff had a goat herd or a sheep flock in respect of which he was charged for tags. However, for a court to strike out proceedings under its inherent jurisdiction on the ground that the plaintiff's case is not stateable, or under Order 19, rule 28 on the ground that no reasonable cause of action has been shown, would be a fairly drastic remedy. The following observations of McCarthy J., with whom the other Judges of the Supreme Court concurred, in *Sun Fat Chan v. Osseous Limited* [1992] 1 I.R. 425 (at p. 428) are apposite:

> "By way of qualification of the jurisdiction to dismiss an action at the statement of claim stage, I incline to the view that if the statement of claim admits of an amendment which might, so to speak, save it and the action founded on it, then the action should not be dismissed."

Insofar as any claim in the relevant paragraphs of the amended statement of claim, which counsel for the defendants characterised as generic challenges, does not indicate with clarity that the plaintiff has standing or sufficient interest to bring and pursue the claim in question or the reliefs sought in respect of it, it may be that a further amendment of the statement of claim would disclose that the plaintiff has standing and a sufficient interest to pursue the reliefs sought in paragraphs 13 to 22 inclusive. In any event, having already found that those claims are time-barred, either under the Act of 1957 or Order 84, rule 21, I consider that it is neither necessary nor appropriate to make any orders under the heading of lack of *locus standi*.

55. For completeness, I propose to consider the defendants' broader contention of entitlement to dismissal of the plaintiff's claim on the ground that they are unstateable or non-justiciable or must fail in relation to two particular elements thereof.

56. First, as regards the contention in paragraph 14 of the amended statement of claim that the sum of €155.32 was wrongfully withheld in respect of "Department testing fees", on the basis of the submissions made on behalf of the defendants, which have been outlined in paragraph 13 above, I am satisfied that the plaintiff has not established that he has a cause of action arising from such withholding.

57. Secondly, I accept as correct the defendants' submission that no recognisable cause of action at the suit of the plaintiff has been properly pleaded in relation to the second element of paragraph 24A, as outlined in paragraph 22 above. While there does appear to be some link between that element of paragraph 24 and what is pleaded in paragraph 14 in relation to "third party commercial entities", it is impossible to identify a sustainable cause of action at the suit of the plaintiff in what has been pleaded.

Collateral challenge to outcome of criminal proceedings
58. In support of their contention that, to the extent that the plaintiff appears to assert that causes of action arise from what is pleaded in paragraph 10 of the amended statement of claim, constitutes an attempt by the plaintiff to collaterally challenge the final outcome of the criminal proceedings and as such is an abuse of process, counsel for the defendants merely cited the decision of the High Court (O'Hanlon J.) in *Kelly v. Ireland* [1986] ILRM 318. Whether, in particular circumstances, issue estoppel may be raised in a civil case on foot of a previous decision in a criminal case is an extremely difficult issue, as is clear from the very helpful commentary in Delany and McGrath on Civil *Procedure in the Superior Courts* at paragraphs 32 – 93 to 32 – 97. In short, given the confusion on the "paperwork" as to precisely what was decided in the Circuit Court in 1993 and, in particular, given the unsatisfactory state of the affidavit evidence, and not fully understanding, because of the dearth of information, what the issue being raised by the plaintiff in relation to those proceedings in these proceedings is, it would not only be futile but foolish in the extreme to attempt to express a view on such a difficult question in the context of this case.

Order
59. In the interests of simplicity, I propose that there will be two elements in the order of the Court, because I do not consider it necessary, for example, to reflect what is decided in paragraphs 56 and 57 above in the order.

60. The first element will be that the question posed on the preliminary issue will be answered as follows:

> The plaintiff's claims in these proceedings based on paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 16A, 17, 17A, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of the amended statement of claim delivered by the plaintiff on 14th October, 2011 are statute-barred pursuant to the provisions of the Statute of Limitations 1957, as amended.

Ancillary to that finding, there will also be an order dismissing the plaintiff's claim insofar as it is statute-barred.

61. The second element will be an order under the Court's inherent jurisdiction dismissing the balance of the plaintiff's claim on the basis that, given the public law nature of the balance of the claim, it should have been, but was not, brought promptly and within the time limits provided in Order 84, rule 21 of the Rules, which applied by analogy to these plenary proceedings.