

**AN ARD-CHÚIRT**  
**ATHBHREITHNIÚ BREITHIÚNACH**

**2009 751 JR**

**IDIR/**

**PEADAR Ó MAICÍN**  
**AGUS**

**IARRATASOIR**

**ÉIRE, AGUS AN t-ARD-AIGHNE, AN t-AIRE DLÍ AGUS CIRT, COMHIONANNAIS AGUS ATHCHÓIRITHE DLÍ, AN BREITHEAMH  
CUARDA RAYMOND GROARKE, AGUS AN STIÚRTHÓIR IONCHÚISEAMH POIBLÍ**

**FREAGRÓIRÍ**

**BREITHIÚNAS an Bhreithimh Roderick Murphy tugtha ar on 14ú lá de Mí na Bealtaine, 2010.**

**1. Claim**

1.1 By application for judicial review dated 13th July, 2009, the applicant sought three reliefs.

The first of these was to have a bi-lingual jury who could hear evidence in Irish and in English without the help of an interpreter drawn from the people of Galway county as a constitutional jury. He sought a further declaration that he was so entitled and an order for *certiorari* in relation to the order of his Honour Judge Groarke.

He also looked for an order against the third defendant, the Minister for Justice, to take all necessary steps to have a bilingual jury in a new jury district under s. 5 (2) of the Juries Act 1976 and/or to cause a new written summons to be made by regulations under s. 12 of the same Act.

The applicant also sought a declaration that there was a constitutional requirement on the State and the Attorney General and Minister to publish the rules of the Circuit Court in the first official language.

Since the proceedings commenced the Minister has published the Rules of the Circuit Court in Irish though without some of the amendments thereto. Accordingly as this matter is now met the Court refuses to grant that relief.

The applicant also sought a declaration to have the Rules of the Court of Criminal Appeal available in the first language before his trial on indictment number 761033 and number 812952.

Finally, the applicant sought an order of prohibition on the continuation of the indictment no. 761033 until the determination of the judicial review.

By order of O'Neill J. on 13th July, 2009, leave was given to the applicant to apply for judicial review on the basis of the grounds detailed in the statement.

1.2 The applicant had been charged as Peadar Macken, with date of birth 21st April, 1953, that:

"On 28/05/2008 at Beal an Daingean, Leitir Móir, Galway in the said district court area of Doire an Fhéich, district number 7, assaulted one Martin Whelan causing him harm.

Contrary to section 3 of the Non-Fatal Offences against the Person Act 1997

and

on 28/05/2008 at Beal an Daingean, Leitir Móir, Galway within the said District Court area of Doire an Fhéich, district number 7, you did while committing assault on Martin Whelan in the course of a fight produced in a manner likely unlawfully to intimidate another person an article capable of inflicting serious injury, to wit, a broken whiskey bottle,

contrary to section 11 Firearms and Offensive Weapons Act 1990."

**1.3** The matter came before the Circuit Court, Western Circuit, County of Galway, record No. A05/09 between the Director of Public Prosecutions, as prosecutor and Peadar Macken, as accused.

The matter was heard by the fifth named respondent, his Honour Judge Groarke on 29th May, 2009. The Court noted submissions on behalf of the Director that evidence would be electronically recorded in the language in which it was given at the trial of the accused. The Court ordered:

(1) That the application for a bilingual jury for the trial herein be refused.

(2) That the matter be adjourned for mention to Galway Circuit Criminal Court sitting on Tuesday, the 6th day of October, 2009.

**2. Applicant's evidence**

**2.1** By affidavit filed 13th July, 2009, the applicant with an address at Bothar na Trá Iachtareacht, Gaillimh, referred to the first mentioned charge and by supplemental affidavit to the second mentioned charge.

He said he was a native Irish speaker. Although born in Dublin he had gone to Ros Muc when he was three years of age where he was brought up and learned English at school but did not acquire mastery in that language until his teens.

He referred to the allegation that he had assaulted a person on 28th May, 2008 in Beal an Daingean, Leitir Móir, Connemara, being part of the Gaeltacht. He said he was not guilty and would strongly resist the charge. He said he wished to prepare, run, govern and manage the case in Irish which was his native language, the national language and the first language of the State. He was advised and he believed that he had a constitutional right to do so.

He referred to his request on 23rd March, 2009, to have the book of evidence in Irish and noted that the Director of Public Prosecutions indicated on 29th May, 2009, that this would be made available.

In relation to a bilingual jury he said that he had not received an answer from the Director and understood that the case was going ahead in English as the counsel for the Director had spoken in English in the Circuit Court in Galway on 29th May, 2009.

He said he was advised and believed that an Irish court could not take into account that he had knowledge of English when he wished to use Irish and that he had a constitutional right to do so in the first principal language of the State. He said he would be disadvantaged if his case were heard with an interpreter as it would with a jury which did not understand Irish which he wanted to use as his native tongue, the language of the place, the national language and the first official language of the State. As the Circuit Court was situated in a county in which there was a strong gaeltacht area he believed that he was entitled to a suitable jury.

He was advised and believed that there was no difficulty in the Minister creating a new jury district in Co. Galway pursuant to s. 5 of the Juries Act 1976 and to select a jury pursuant to regulations made under section 12.

**2.2** The applicant referred to the most recent population studies from 2006 which established that just under 50% of the population of Galway between county and city over three years of age had Irish. Of the population of 108,124 aged three and over 39,697 were daily speakers. Of that number 25,137 were receiving education, 10,788 were outside the education system and 3,772 were both inside and outside the education system (unclear whether these were part-time students or not). Finally, 8,140 were weekly speakers. The applicant referred to Daonáireamh 2006 Imleabhar 9 - An Ghaeilge.

He referred to s. 44 of the Courts of Justice Act 1924 which provides:

"44. – So far as may be practicable having regard to all relevant circumstances, the Circuit Judge assigned to any Circuit which includes a district where the Irish language is in general use shall possess such a knowledge of the Irish language as would enable him to dispense with the assistance of an interpreter when evidence is given in that language."

This section is, of course, limited to the requirement that the Circuit Court judge possess such knowledge of the language to enable him or her to discuss with the assistance of an interpreter when evidence is given. It has no application to the jury.

The applicant referred to the order of the Circuit Court of 29th May, 2009 where the learned judge agreed that a judge with fluent Irish would hear the matter, that there would not be any danger of there not being a fair trial and that electronic recording of the evidence would be taken by the court.

The applicant says that he believes that he has a constitutional right to have proceedings in the Circuit Court in Irish without any impediment or disadvantage in comparison with someone who is satisfied to use English notwithstanding what ability he has in English and that he is not obliged to proceed in English. He says that he would be disadvantaged if his case was run with an interpreter to ensure that the jury who did understand Irish was used as this would not be direct evidence in his own native language, the language of the place, the national language and the principal official language of the State.

He says that in the proceedings before his Honour Judge Groarke, the standard of interpretation was very poor. Often his lawyer had to help the interpreter. If there was the same difficulty between himself and a jury on the day of trial he was concerned that he would be disadvantaged and that he would not have equality compared to others.

The matter in the Circuit Court was put back to 6th October, 2009. He could not prepare his case nor run or manage it without having the Rules of the Superior Courts in Irish.

Accordingly he asked the Court for the reliefs sought.

### **3. Decision of the Court**

#### **Part II qualification and liability for service as a juror**

Section 5 of the Juries Act 1976 provides as follows:

"5.—(1) Subject to the provisions of this section, each county shall be a jury district and for this purpose the county boroughs of Dublin, Cork, Limerick and Waterford shall be deemed to form part of the counties of Dublin, Cork, Limerick and Waterford respectively.

(2) The Minister may by order divide a county into two or more jury districts or limit a jury district to a part or parts of a county.

(3) The Minister may by order revoke or vary an order under this section.

(4) Every issue that is triable with a jury shall be triable with a jury called from a panel of jurors drawn from the jury district in which the court is sitting."

The section poses no difficulty in interpretation. Unless the Minister by order divides a county into two or more jury districts or limits a jury district to a part or parts of a county a jury district is synonymous with a county.

The power of the Minister for Justice to divide or limit is necessarily geographic.

This corresponds to the right of citizens to be tried by each of the county within which offences are alleged to have been committed.

A jury is selected from the electoral register of that jury district. The selection is made by random sampling. The selection cannot be restricted in any way, for example, by way of political affiliation, religious belief, cultural identity or otherwise. To do so would be to interpret the section beyond its simple meaning.

It would follow that a selection by linguistic ability, albeit restricted to the official languages of the State, would not accord with the provisions of section 5. It would, as well as other discriminants, create a bias and would be unworkable.

The system of justice requires juries to be drawn from a common pool of those entitled to vote. Restrictions such as the exclusion of non-ratepayers, which discriminated against women as was seen in *deBurca*, moved the basis away from ratepayers to the electorate within the geographic area. The random selection is an integral part of the jury. It would be absurd to say that the basis for jury selection should be otherwise than a random selection of a jury.

It would, moreover, be beyond the power of the Court to interfere with the power of the executive or the Minister in relation to the exercise of his discretion under s. 5 (2) of the Juries Act.

The Court, accordingly, refuses the relief sought.

The second matter is whether the Minister is obliged to have the Rules of the Court of Criminal Appeal available in the first language.

There are, of course, no Rules of the Court of Criminal Appeal other than the reference to that court in Order 86 of the Rules of the Superior Courts which contains 38 rules.

The powers hitherto exercised by the Court of Criminal Appeal are now vested in the Supreme Court pursuant to s. 4 of the Court and Court Officers Act 1995.

The application in relation to this relief lacks the required precision that the Court would expect in proceedings of this nature.

The Court is not satisfied that the letter from the applicant's solicitor renders such relief relevant to the charges faced by the applicant. The matter is not before the Court of Criminal Appeal. The applicant can not be prejudiced by the absence of a version of O. 86 which is, in any event, more of a procedural matter in due course for his legal representatives to advise on rather than a matter for the applicant.

It follows, as a consequence, that the Court will not prohibit the continuation of indictment 761033.