Neutral Citation Number: [2007] IEHC 350

**THE HIGH COURT**
**JUDICIAL REVIEW**

**[2006 No. 443 J.R.]**

**BETWEEN**

**THOMAS McDONAGH, MARY McDONAGH, JOHN PAUL McDONAGH, BRIDGET McDONAGH, MARTIN McDONAGH, WINNIE McDONAGH, MICHAEL McDONAGH, MARY McDONAGH, PATRICK McDONAGH, ANNE McDONAGH**

**APPLICANTS**

**AND**

**KILKENNY COUNTY COUNCIL, THE COMMISSIONER OF AN GARDA SÍOCHÁNA, THE DIRECTOR OF PUBLIC PROSECUTIONS, IRELAND AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**Judgment of Mr. Justice O'Neill delivered the 23rd day of October, 2007**

1. The applicants are members of the travelling community and consist of one extended traveller family. The first named applicant was born on the 20th July, 1954 and is married to the second named applicant and they have ten children. Four of whom are still living with these applicants and are aged between 13 and 18 years of age. The third and fourth named applicants are married to each other but have no children. The third applicant is 26 years of age. The fifth and sixth named applicants are married to each other and have seven children between the ages of 13 and 2. The seventh and eighth applicants are married to each other and have no children. The ninth and tenth applicants are married to each other and have six children aged from 11 down to an infant. The applicants have always tended to travel together and as of the commencement of these proceedings there were ten adults and seventeen children travelling and living together.

2. The events which gave rise to these proceedings took place at two locations or sites in County Kilkenny. The first of these was at Graiguenakill, Glenmore, Co. Kilkenny which appears to have been a picnic area owned by the first named respondent. The applicants had moved onto this site and were parked there for some time. In due course some of them moved away but the first named applicant remained. Notices pursuant to s. 19 of the Criminal Justice (Public Order) Act, 1994 as amended by s. 24 of the Housing (Miscellaneous) Provisions Act, 2002 were served on the applicants, notifying them that they had entered these lands without the due consent of the owner and directing them to leave these lands and to remove from it any object belonging to the applicants or was under their control. The first named applicant refused to comply with the direction in this notice and subsequently on the 3rd February, 2006 the applicant was arrested under s. 19(b) of the Criminal Justice (Public Order) Act, 1994, brought to Waterford Garda Station where he was charged with an offence under s. 19(d) of this Act due to his failure to move on, on the 21st January, 2006, pursuant to the direction given by a member of An Garda Síochána and to remove from the land an object, a caravan belonging to the applicant. This charge was contained in charge sheet number 462991.

3. On the 9th February, 2006 when the first named respondents were conducting works at this site to prevent unauthorised use an incident occurred involving the first named applicant, arising out of which he was arrested and brought to Waterford Garda Station and charged with an offence of obstruction of traffic. This offence is contained in charge sheet number 465849. Subsequently on the 26th February, 2006 the first named applicant left the site and removed his caravan.

4. Early in April, 2006 the applicants moved onto a piece of land at the Old Road, Dunkitt, Kilmacow, Co. Kilkenny, another piece of land owned by the first named respondent, and used as a place for the storage of road chippings. On the 7th April, 2006 a member of An Garda Síochána spoke to the applicants and they promised to move on the 11th April, 2006. On the 11th April, the first applicant informed the Gardaí that they were not going to move as they had no place to go. On the 12th April, 2006 the Gardaí served notices pursuant to s. 19 of the Criminal Justice (Public Order) Act, 1994 on six of the applicants, directing them to leave this land and remove any objects placed by them on it. On the 13th April, 2006 the applicants applied in these proceedings ex-parte to this court (Clarke J.) and obtained interim relief pursuant to O. 84, r. 20(7) preventing the first and second named respondents from taking any steps against the applicants for failure to comply with the undated notices served on them on the 12th April, 2006 pursuant to s. 19 of the Criminal Justice (Public Order) 1994. On the 8th May, 2006 this court (Peart J.) gave leave to the applicants to pursue the reliefs now sought by way of judicial review in these proceedings and continued the injunctive relief granted on the 13th April, 2006 until the termination of the application for judicial review.

**The Case against the First Named Respondent**

5. The applicant seeks against the first named respondents an order of *certiorari* quashing the decision of the first named respondent to refuse consideration of the applicants application for accommodation as set out in a letter of the 22nd February, 2006. In addition the applicant seeks against this respondent orders of *mandamus* compelling the first named respondent to perform its statutory duties under the Housing Acts 1966 to 2004 and to assess the applicants for accommodation; directing the first named respondent to exercise its statutory functions in a reasonable manner and to provide suitable accommodation for the applicants as a matter of urgent priority; directing the first named respondent to give the applicants priority within the meaning of s. 9 of the Housing Act, 1988 having regard to the fact that the applicants are travellers and living in unsuitable and overcrowded conditions, some of whom are suffering from ill health. In addition the applicants seek declarations against the first named respondents to the effect that the applicants are entitled to priority within the meaning of the Housing Acts 1966 – 2002; that there is a presumption that the powers under s. 24 of the Housing (Miscellaneous Provisions) Act, 2002 will be exercised in a reasonable manner and in accordance with constitutional justice and that it is ultra vires their powers to withhold consent to the applicants remaining on lands belonging to the first named respondents at Dunkitt, Kilmacow, Co. Kilkenny; and that it is unreasonable of the first named respondents to withhold consent to the applicants remaining on the site at Dunkitt, Kilmacow, Co. Kilkenny in all the circumstances of their case and having regard to their statutory functions under the Housing Acts, 1966 to 2004 to provide accommodation.

6. In the affidavits sworn by the first named applicant it is averred that the applicants are indigenous to the South Kilkenny area as the place where they primarily live subject of course to their traveller lifestyle which took them to County Clare where the first named applicant's father lives and where he spent a good deal of his childhood and where the applicants would spend a considerable amount of time.

7. Also the applicants travel to Roscommon where the first named applicant's wife is from and where her family are primarily located. It is the applicants case that notwithstanding their travelling lifestyle as members of the travelling community, that their base is and has been in the South Kilkenny area. As a consequence they contend that they are "indigenous" to Kilkenny for the purposes of the Traveller Accommodation Programme of the first named respondents and hence the first named respondents were the local authority who had the duty under the Housing Acts 1966 to 2004 to assess their accommodation needs and to provide appropriate accommodation for them. In this regard the applicants contend that the first named respondents have failed in this duty as a consequence of which the applicants found themselves forced to camp or park on various sites in the South Kilkenny area and were

living in unsanitary and unhealthy conditions due to the absence of the provision of appropriate accommodation by the first named respondents.

8. Finally having no where else to go they refused to comply with the direction from An Garda Síochána in the notices served on them on the 12th April, 2006 to leave the site at Dunkitt, Kilmacow, Co. Kilkenny and sought the protection of the court to remain there pending the determination of these proceedings.

9. They remained on the site at Dunkitt until July 2006 when they left this site temporarily to travel to Donegal for a two week vacation. When they returned from this vacation they discovered that the site had been blocked off and they were unable to gain access. The first named respondents insist in correspondence that they had nothing whatever to do with the blocking off of this site, that this had been done by third parties, apparently local farmers. A mobile home which had been on the site was moved from the site and left at the side of the road and according to the first named respondents was removed there from by third parties.

10. There is no evidence as to where the applicants have resided since that time.

11. The affidavits filed on behalf of the first respondent dispute in all material respects the claims made by the applicants.

12. Firstly it is averred that the first named respondents have in place a Traveller Accommodation Programme in accordance with the requirements of s. 7 of the Housing (Travelling Accommodation) Act, 1998. As part of that programme there is a requirement that those members of the travelling community who are to benefit from the programme must be "indigenous" to Kilkenny. The particular term in the first named respondents Traveller Accommodation Programme in this regard is as follows;

> "Traveller families permanently resident in Kilkenny for at least one year will be regarded as indigenous. Traveller families who have resided in Kilkenny for at least six months each year for the three years prior to commencement of the programme will be deemed indigenous if:
>
> (i) If the functional area is their predominant place of residence, and
>
> (ii) They are not included in the Traveller Accommodation Programme of another local authority."

13. The first named respondents submit that the inclusion of an "indigenous" requirement in its Traveller Accommodation Programme is lawful and in this regard they place reliance upon the judgment of O'Sullivan J. in the case of M*cDonagh v. Clare County Council* [2002] 2 I.R. 634, a case in which the first named applicant in this case was also one of the two applicants.

14. It is averred on behalf of the first named respondents that until the year 2005 the applicants were unknown to the first named respondents or any of its officials who had responsibility for the travelling community and no application was made to the first named respondents until June, 2005 when the first named applicant made a "shared ownership" housing loan application to the first named respondent. Subsequently in a letter dated 16th February, 2006, the applicants through their solicitor applied for accommodation.

15. Attention is drawn to the fact that the first named applicant herein, in the previous case above mentioned, deposed on affidavit to being indigenous to County Clare and made no reference whatever in those proceedings to a connection with County Kilkenny. In addition it is averred that the first named applicant made four applications to Clare County Council for accommodation, in February, 1992, December, 2001, September, 2003 and November, 2004. It is averred that the first named applicant was given accommodation by Clare County Council in the form of a family tenancy at 5 Cul na Greine, Shannon in the County of Clare, but he refused to take up this tenancy in May of 2005 on the basis of fear or apprehension of attack from another traveller family. It is averred, however, on behalf of the first named respondent, that by that time, the dispute between the first named applicant and this other traveller family had been resolved and the other traveller family had moved away from County Clare.

16. It is further averred that the first named applicant remained on the housing list with Clare County Council until 12th February, 2006 when he asked to be removed from that list and from further consideration for allocation of accommodation by Clare County Council. It is further averred that the third and fourth named applicants have as of the commencement in these proceedings, an outstanding housing application with Clare County Council and that the second, third, fourth, fifth, sixth, ninth and tenth applicants are included in the current (2005-2008) Clare County Council Traveller Accommodation Programme.

17. In para. 7 of her affidavit sworn on 18th October, 2006 Anne Marie Walsh says the following:

> "… I say however that the letter of 16th February, 2006 from Messrs. Brophy was treated by me as an application on behalf of the applicants. I say that I duly considered the said application having considered the facts at my disposal in relation to the family and in particular to the facts that have been conveyed to me as to the applicants' place of residence in the months and years preceding the correspondence, the fact that they have been offered accommodation in June, 2005 (and were thus included in the Clare Traveller Accommodation Programme) and the fact that any purported threat to their safety in Shannon had in fact abated, I deemed it appropriate to refuse the said application in the manner outlined in my letter of 22nd February, 2006."

18. In the aforesaid letter of 22nd February, 2006 the first named respondents refused the applicants' application for accommodation in the following terms:

> "… As previously stated in our correspondence to English, Leahy, Donovan, Solicitors, this family is not included in our Traveller Accommodation Programme for 2005 – 2008. They have refused accommodation offered by Clare County Council in Shannon in June, 2005. The Gardaí in Ennis and Shannon, County Clare have advised Kilkenny County Council that there is no threat against the McDonaghs and that the 'dispute' has been resolved. Therefore, Kilkenny County Council does not accept any responsibility for their accommodation needs."

19. Having considered all of the evidence on affidavit, I am satisfied that prior to the summer of 2005 the applicants did not have an habitual presence or residence in County Kilkenny. Prior to then the evidence points overwhelmingly to the applicants being indigenous to County Clare. Their children attended school in County Clare whereas prior to the summer of 2005 they did not attend school in County Kilkenny. The affidavits sworn by the first applicant in the previous case against Clare County Council convey the unequivocal impression that the applicants were indigenous to County Clare.

20. Thus, as of time of the making of the application for accommodation and the decision to refuse it made on 22nd February, 2006, it is quite clear from the material deposed to on affidavit that the first named respondent did consider the applicants' application for

accommodation, and having considered the application, the first named respondent refused the application on the basis of a wealth of material before it which inexorably pointed to a refusal of the application.

21. I am satisfied that on the basis of the evidence on affidavit, there is no basis for an order of *certiorari* quashing the decision of the first named respondent to refuse the application made by the applicants for accommodation in February of 2006. Nor indeed is there any basis for an order of *mandamus* directing them to consider any such application or to make any provision for the accommodation needs of the applicants at this time.

22. It may very well be the case, as indeed is averred to in the affidavit of Anne Marie Walsh, that continued residence in County Kilkenny together with discontinuance of their inclusion in the Traveller Accommodation Programme in County Clare, may entitle the applicants in the future to have their accommodation needs assessed and catered for in County Kilkenny. However, that is a separate matter and will have to be the subject of a new application for accommodation and is not subject to these proceedings.

**The Case against the Other Respondents**

23. The challenges made against these respondents arise from the service on the applicants of notices pursuant to s. 19 of the Criminal Justice (Public Order) Act, 1994 as amended by s. 24 of the Housing (Miscellaneous) Provisions Act, 2002, whereby the applicants were directed by An Garda Síochána to, in the first place leave the site at Graiguenkill, County Kilkenny, and later to leave the site at Old Road, Dunkitt, Kilmacow, County Kilkenny and to remove objects, i.e. caravans or mobile homes from these sites. In addition, the criminal proceedings arising out of the charges laid on charge sheet No. 462991 relating to 21st January, 2006 and charge sheet No. 465849 which contains the charge of obstruction of traffic on 9th February, 2006, are the subject of challenge by the applicants.

24. So far as these criminal proceedings are concerned the applicants seek orders preventing further prosecution on the two charges as set out in the aforesaid charge sheets. The basis of the challenges made in this regard are that the offence created under s. 19(d) of the Criminal Justice (Public Order) Act, 1994 is one of strict liability and that a variety of defences are excluded, specifically where there is a mistaken belief as to consent, or where there is no alternative but to enter the land, or where the party charged does not think their conduct is likely to have the deleterious consequences which are a necessary ingredient of the offence. It is submitted further that the presumption in s. 19(g)(2) to the effect that consent was not given, until the contrary as shown, reverses the presumption of innocence contrary to Article 38.1 of the Constitution and article 6(2) of the European Convention on Human Rights. Thirdly, it is submitted that the content of the offence is excessively vague, such that a citizen would not be able to ascertain whether or not their conduct was likely to attract criminal liability.

25. It is well settled that the judicial review jurisdiction cannot be used as an advisory or consultative jurisdiction in advance of criminal proceedings. Whether or not there is merit in any of the applicants' submissions in regard to this offence is an issue which has to be tested first in the criminal trial. In advance of the trial there is no factual basis set up in evidence, upon which to test these legal issues. Thus, at this remove from the criminal trial, it cannot be ascertained whether these applicants have any *locus standi* to raise these issues, as it is not yet apparent what defences are available to them, or whether the aforesaid presumption would be relied upon at all. Therefore it is not yet clear whether or not any of the contentions sought to be raised in these proceedings would actually affect them in the criminal proceedings. (See *C.C. v. Ireland Supreme Court*, 12th July, 2005, *Blanchfield v. Harnett* [2001] 1 I.L.R.M. 193, and *Kennedy v. D.P.P.* Unreported, High Court, 11th January, 2007.)

26. I am satisfied that the applicants are not entitled to any prohibition or injunction preventing the further prosecution of these offences on the grounds put forward. It should, of course, be noted that insofar as the charge contained in charge sheet 465849, i.e. the obstruction of traffic is concerned, no grounds whatever were advanced as a basis for a prohibition of a further prosecution of this offence.

27. The applicants complain that the exercise of the powers given to the Gardaí under s. 19 of the Criminal Justice (Public Order) Act, 1994, in a variety of ways, violate rights of the applicants. They rely upon Article 40.5 of the Constitution which says:

> "The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law."

28. and also article 6 of the European Convention on Human Rights which is as follows:

> "Right to a Fair Trial
>
> > 1. In the determination of his civil rights and obligations or of any criminal charge against him everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice …"

29. In addition, the applicants sought to rely upon article 8 of the European Convention on Human Rights which protects the right to respect for private and family life. The respondents objected to this on the basis that article 8 is not amongst the grounds in respect of which leave had been granted. I upheld that objection.

30. The relevant part of s. 19 reads as follows:

> "19(b). – (1) This part does not apply to any public road within the meaning of the Roads Act, 1993.
>
> (2) This part is without prejudice to any other enactment (including any other provision of this Act) or any rule of law.
>
> 19(c) – (1) A person without the duly given consent of the owner, shall not –
>
> > (a) enter and occupy any land, or
> >
> > (b) bring onto or place on any land any object, where such entry or occupation or the bringing onto or placing on the land of such object is likely to –
> >
> > > (i) substantially damage the land,

(ii) substantially and prejudicially affect any amenity in respect of the land,

(iii) prevent persons entering to use the land or any amenity in respect of the land from making reasonable use of the land or amenity,

(iv) otherwise render the land or any amenity in respect of the land or of the lawful use of the land or any amenity in respect of the land, unsanitary or unsafe,

(v) substantially interfere with the land, any amenity in respect of the land, the lawful use of the land or any amenity in respect of the land.

(2) A person who contravenes subsection (1) shall be guilty of an offence.

(3) Where a member of the Garda Síochána has reason to believe that a person is committing or has committed an offence under subsection (1) the member –

(a) may demand of the person his or her name and address,

(b) may direct the person to leave the land concerned and to remove from the land any object that belongs to the person or that is under his or her control, and

(c) shall inform the person of the nature of the offence in respect of which it suspects that person has been involved the statutory consequences failing to comply with the demand or direction under this section.

19(d) – Where a person –

(a) refuses or fails to give his or her name and address to a member of the Garda Síochána when demanded under section 19c, or gives to the member a name or address that is false or misleading, or

(b) fails to comply with the direction under that section, he or she shall be guilty of an offence.

19(e). - A member of the Garda Síochána man arrest without warrant a person –

(a) who fails or refuses to give his or her name or address when demanded under section 19c(3)(a) or gives a name and address which the member has reasonable grounds for believing it is false or misleading,

(b) who fails to comply with a direction given under section 19c(3)(b), or

(c) whom the member finds committing an offence under section 19c(1).

19(f) – (1) Where a person fails to comply with a direction under section 19c(3)(b) a member of the Garda Síochána may remove or cause to be removed any object which the member has reason to believe was brought onto or placed on the land in contravention of section 19c(1) and may store or cause to be stored such objects so removed.

(2) Any person who obstructs or impedes or assists a person to obstruct or impede a member the Garda Síochána in the execution of his or her duty under this section shall be guilty of an offence.

(3) Where an object has been removed under this section without the presence or knowledge of any person claiming to own, occupy, control or otherwise retain it, the Commissioner shall serve or cause to be served upon each such person whose name and address can be ascertained by reasonable inquiry, a notice informing the person where the object may be claimed and recovered, requiring the person to claim and recover it within one month of the date of service of the notice and informing him or her of the statutory consequences of his or her failure to do so.

(4) An object removed and stored under this section shall be given to a person claiming possession of the object if, but only if, he or she makes a declaration in writing that he or she is the owner of the object or is authorised by its owner to claim it or if, for a specified reason, otherwise entitled to possession of it and, at the discretion of the Commissioner, the person pays the amount of any expenditure reasonably incurred in removing and storing the object.

(5) The Commissioner may dispose of, or cause to be disposed of, an object removed and stored under this section if –

(a) the owner of the object fails to claim it and remove it from the place where it is stored within one month of the date on which a notice under subsection (3) was served on him or her, or

(b) the name and address of the owner of the object cannot be ascertained by reasonable inquiry.

(6) Where the Commissioner becomes entitled to dispose of cause to be disposed of an object under subsection (5) and the object is, in his or her opinion, capable of being sold, the Commissioner shall be entitled to sell or cause to be sold the object for the best price reasonably obtainable and upon doing so shall pay or cause to be paid to the person who was the owner of the object at the time of its removal, where the name and address of the owner can be ascertained by reasonable inquiry, a sum equal to the proceeds of such a sale after deducting therefrom any expenditure reasonably incurred in its removal, storage and sale.

19(g) – (1) A person guilty of an offence under this part shall be liable on summary conviction to a fine not exceeding

€3,000 or to a term of imprisonment not exceeding one month or to both."

31. The applicants complain that under these provisions their caravans, which are their homes, could be confiscated by the Gardaí, and that the consequence of these notices for them was that they were forced to leave the two sites in question by the respondents in circumstances where they had nowhere to go and where no inquiry was conducted by any of the respondents before exercising the powers conferred by s. 19 so as to ascertain the effect the exercise of those powers would have on the applicants' rights and specifically rights under Article 40.5 of the Constitution, their right to respect for their family life under article 8 of the European Convention on Human Rights, all of this occurring in circumstances where the applicants contend that the first name respondent had a statutory obligation to assess and cater for their accommodation needs.

32. It was submitted that the service of these notices was in effect a determination of the applicants' rights and it was submitted that the absence of any inquiry or any hearing in which the applicants could participate before a decision was taken to serve these notices breached the applicants' right to a fair hearing under Article 6(1) of the European Convention on Human Rights.

33. In this regard the applicants place reliance upon the jurisprudence of the European Court of Human Rights and in particular the cases of *Buckley v. The U.K.* 23 EHRR 101, *Chapman v. U.K.* 33 EHRR 399, *Connors v. The U.K.* [2004] 40 EHRR 189 and also a decision of the United Kingdom Court of Appeal in *Samaroo v. the Secretary of State for the Home Department* [2001] U.K. HRR 1150.

34. Whilst the applicant in his amended statement of grounds does make a complaint in reliance upon article 6 of the Convention that complaint is solely to the effect that the offences contained in s. 19A to H are impermissibly vague with the prospect of arbitrary enforcement and that the presumption in s. 19G(2) is contrary to the presumption of innocence.

35. In resolving the issues raised it is important to identify the rights of all of the parties involved that were affected by the circumstances of this dispute.

36. In the first place, the first named respondents were and are the legal owners of these two sites. There is no dispute about that. Secondly, it is accepted that the applicants did not have the consent of the first named respondents to enter upon or bring any objects on to those sites. It necessarily follow, therefore, that their entry on and occupation of and the bringing on to these sites of their caravans was a trespass and was illegal. Thus, it is certain that the rights of the first named respondents as the owners of this land were infringed by the applicants on their illegal entry and occupation of the land.

37. Like all human beings the applicants are entitled to the protection of Article 40.5 of the Constitution which protects the inviolability of the dwelling. However, this protection does not entitle the applicants individually or as a family group to invade somebody else's land and establish their dwelling upon it. In other words, the protection given by Article 40.5 cannot be used simply to shield against an unlawful infringement of someone else's rights.

38. Similarly, the protection afforded by article 8 of the European Convention on Human Rights cannot be invoked simply to shield from scrutiny and redress an illegal invasion of another person's property rights. In all of the E.C.H.R. cases above mentioned relied upon by the applicants, the applicants in each case either owned the land in respect of which the dispute arose or had enjoyed a lawful occupation of it and hence, in my view, are clearly distinguishable from the circumstances in this case.

39. Section 19 of the Criminal Justice (Public Order) Act, 1994 does not make unlawful what was lawful before. What this section does is to criminalise that which was previously merely tortious, i.e. entry upon land without the consent of the owner, where the specific requirements of s. 19(e)(1)(b)(i) to (v) are met. Section 19 then contains a procedure whereby a member of An Garda Síochána can serve a notice upon the illegal entrant directing him or her to leave and to remove any objects placed on the land. Failure to comply with such a direction is in itself an additional criminal offence.

40. When the first named respondents made a complaint to the Garda Síochána and requested that they invoke the powers given to them under s. 19 all they were doing was merely exercising their rights as landowners to recover that to which they were entitled, i.e. unfettered possession of their land. In essence, that exercise, so far as the assertion by the first named respondents of the rights as landowners is concerned, is in principle no different from applying to the court for injunctive relief to compel the applicants to leave and remove their caravans or simply requesting the applicants to leave without any further step. All they were doing was asserting their rights of ownership by requiring the trespasser to leave, failing which there could be invoked the common law procedure of applying to the court for equitable relief or the statutory procedure of requesting An Garda Síochána to use the powers conferred on them under s. 19. The assertion of their rights of ownership by any of these three methods, in my opinion, could not amount to an interference or infringement of the applicants' rights under Article 40.5 of the Constitution or article 8 of the European Convention on Human Rights.

41. The fact that this illegal entry exposes applicants to a criminal liability under s. 19 is immaterial. The addition of criminal culpability or liability by this statutory provision could not enhance the position of the applicants so as to cloak the undoubted illegality of their conduct with the protection of either constitutional or Convention rights.

42. The fact that the two sites in question are owned by the first named respondents as local authority, coupled with the fact that the first named respondents are the housing authority who have the relevant statutory duty to provide for the accommodation of travellers is also immaterial. Persons who seek accommodation from a housing authority and are disgruntled with the outcome of their application cannot take the law into their own hands and occupy other land simply because it is owned by the housing authority. This simple proposition of law holds good regardless of whether the piece of property invaded is the town hall or the two sites which are involved in this dispute.

43. Nor can the applicants avail of a defence of necessity, as discussed in the case of *Southwark LBC v. Williams* [1971] 2 All E.R. 175, as a justification for illegal entry and occupation of these lands. I am satisfied, that, taking the applicants' case at its highest, would not enable them avail of this defence. In point of fact, however, I am satisfied on the evidence, that the applicants resort to County Kilkenny and these two sites in particular was a matter of choice rather than necessity.

44. Against this background then it cannot be said that there has been an infringement of article 6(1) of the Convention on the basis contended for in the applicants' submission.

45. The applicants seek to illustrate the procedural deficiency of which they complain by comparing the absence of the procedure they contend for, namely of some kind of hearing before the invoking of the s. 19 powers, to the situation which appertained prior to the enactment of s. 19, namely where aggrieved landowners sought injunctive relief from the courts to restrain trespass. In this

situation it was submitted that the trespasser had a hearing which was required by article 6(1). What was entirely overlooked in the applicants' submission in this regard is that the circumstances now relied upon by the applicants as justifying their illegal entry would have been no defence and would have gained them no relief or concession from the court, where there was no dispute but that the entry on land was unlawful.

46. Implicit in the submission by the applicants that there should have been a hearing prior to the invocation of the s. 19 powers in order to vindicate their rights under article 6(1), is the notion that the tribunal as envisaged by article 6(1) could uphold or vindicate the applicants' claims to be entitled to remain on these lands.

47. Having regard to the plain and obvious illegality of what was done by the applicants and the absence of any form of justification which would entitle the applicants to remain on these lands, in my view any tribunal charged with upholding the law, could not vindicate the applicants' position. Hence, in my view, the applicants' claim that their article 6(1) rights were breached by the absence of such a hearing is hollow and devoid of any reality.

48. I am satisfied that there has been no breach of the applicants' rights under article 6(1) of the Convention.

49. In the course of submissions the applicants placed a very heavy emphasis on the principle of proportionality. Needless to say, in circumstances where I have found that there has been no interference with the applicants' rights, the question of proportionality does not arise.

50. A large part of the applicants' complaint was based on the potential confiscation of or destruction of their caravans or mobile homes, which are their dwellings. As is clear from the evidence, neither of these happened in this case. Hence the applicants lack a *locus standi* to make a case on that basis.

51. The first respondent as a housing authority discharges its obligations as a Housing Authority by the correct and fair adherence to, and application of the relevant provisions of the Housing Acts, 1966 – 2004. I am satisfied, that in this case, the first respondents did this.

52. Where an applicant is disappointed with the outcome of an application for accommodation, the decision of the Housing Authority is amenable to review by this court, as occurred in this case. In itself, such an avenue of redress is a vindication of the applicants' rights under Article 6(1) of the E.C.H.R. Disappointment and distress associated with an unsuccessful housing/accommodation application cannot be permitted by the courts to turn into illegal acts, such as occurred here.

53. In conclusion, I am satisfied that there is no basis for orders of *certiorari* or *mandamus* against the first named respondent and that the exercise by the second named respondent of the powers conferred by s. 19 of the Criminal Justice (Public Order) Act, 1994 did not infringe any of the applicants' constitutional rights or rights under the European Convention on Human Rights or any other legal rights. Accordingly, I must refuse the reliefs sought.