Neutral Citation [2012] IEHC 493

THE HIGH COURT

IN THE MATTER OF AN APPLICATION PURSUANT TO ARTICLE 40.4.2

OF THE CONSTITUTION OF IRELAND

[2012 No. 2227 SS]

BETWEEN/

JIN LIANG LI

APPLICANT

AND

GOVERNOR OF CLOVER HILL PRISON

RESPONDENT

JUDGMENT of Mr. Justice Hogan delivered the 28th day of November, 2012

1. Where an illegal immigrant persistently flouts the immigration rules and fails to co-operate with the authorities, does that person pose a threat to "public order" in the sense in which that term is used by s. 9(8) of the Refugee Act 1996 ("the 1996 Act") so as to enable his arrest on this ground and so as to justify his subsequent detention on this basis by order of the District Court? That, in essence, is the question which arises in this application pursuant to Article 40.4.2 of the Constitution. For the reasons I shall shortly set out, I am satisfied that such a person does not come within the scope of s. 9(8) of the 1996 Act *merely* because of non-compliance with immigration law. Since this, however, was essentially the basis on which the applicant was first arrested and thereafter detained, I shall therefore order the release of the applicant as soon as this Court presently adjourns.

Background facts

2. The applicant is a Chinese national who has resided in the State for some thirteen years. It is not in dispute but that he has long since overstayed his visa entitlement and that he has been working here illegally. It is also true that he took active steps to frustrate his deportation, not least when in January, 2010 he stated to Chinese Embassy staff during a formal interview that he would not return to China. This meant that the Embassy would not issue fresh travel documents - the passport in the possession of the Garda authorities having expired - and this in turn meant that effect could not be given to an earlier deportation order. Mr. Jin had in fact been arrested in early January, 2010 pursuant to this earlier deportation order, but he was released after 53 days in custody when it became clear that he could not actually be deported due to the absence of appropriate travel document. It subsequently emerged in September, 2012 that he had another valid Chinese passport which had been issued in April, 2007 and of which the Irish authorities had been previously unaware.

3. The applicant was accordingly arrested on 20th November, 2012, pursuant to s. 5(1) of the Immigration Act 1999. The validity of this initial arrest would not appear to be in dispute. As, however, arrangements were being made for him to be taken by airplane from Dublin to Amsterdam and onwards to Beijing, the applicant applied for asylum. Detective Garda O Sommacháin then released the applicant from his detention under s. 5(1) of the 1999 Act and arrested him pursuant to s. 9(8)(a) of the 1996 Act.

4. The applicant was then brought before the District Court and that Court made an order pursuant to s. 9(10)(a) of the 1996 Act detaining him until today, 28th November, 2012, on the ground he posed a threat to public order in the State. It is accepted that the validity of the applicant's present detention rests on this order.

5. Before considering the relevant statutory provisions in more detail, it is worth observing that the applicant is currently neither charged with- still less convicted of any offence. His current detention is a form of civil detention in aid of the asylum process and, but for the fact that he is applying for asylum, there would be no basis at all for detaining him in custody. Unless the constitutional protection of the right to personal liberty in Article 40.4.1 is to be reduced to a mere platitude, then it is obvious that any orders of this kind call for a high degree of judicial supervision. This is especially so given that the applicant can now be detained on this basis by the District Court for a maximum of21 days: sees. 9(10)(b)(i) of the 1996 Act (as amended by s. 7(c) of the Immigration Act 2003).

6. While it is true that as Dunne J. observed in *Adejegba v. Deery*, High Court, 6th April, 2006, the District Judge must exercise his or her functions "judicially and carefully having regard to the serious consequences involved in an order made under this section", the fact remains that it appears that asylum seekers can be potentially subjected to a series of such detention orders made by the District Court. This is contrast with the eight week maximum detention period prescribed in the case of administrative arrest pending deportation sanctioned by s. 5(6)(a) of the Immigration Act 1999 ("the 1999 Act") (as inserted by s. 1O(b) of the Illegal Immigrants (Trafficking) Act 2000).

7. It is also true, of course, that, as Ryan J. pointed out in *Arra v. Governor of Cloverhill Prison* [2005] IEHC 12, the civil detention at issue here is judicially supervised, something which is not the case with regard to the detention under s. 5(6)(a) of the 1999 Act. It is equally true that the detention is clothed with safeguards. Thus, the applicant may be detained for a maximum of 21 days having been brought before a District Judge as soon as practicable: s. 9(10)(a). The detention may only be authorised in accordance with law in respect of a range of specified grounds (the nature of which I shall presently describe) and the District Judge has the option of releasing the applicant subject to conditions (s. 9(10)(c)), such as surrendering a passport, reporting to the immigration authorities and residing in a particular distinct in the State. Moreover, as Ryan J. noted in *Arra*:-

> "Looking at the section as a whole, a number of provisions may be mentioned. The applicant is given the right to remain in the State until or his or her application is determined. The right of the State to protect itself is recognised by the provisions of sub-s. (8). When that subsection is invoked, the applicant has to be brought before the District Court as soon as practicable. An order for detention is limited to a maximum period of 21 days. At that point, there must be

another hearing or the applicant must be released. If at any time during the period of detention of the applicant, the situation changes so that the sub-s. (8) circumstances no longer apply, the person must be brought back before the District Court for the purpose of being released. The District Court is not obliged to direct the detention of the applicant but has a discretion under sub-s. (10). Instead of detention, conditions may be imposed on the applicant and those conditions may be varied from time to time. There is as I have indicated above an entirely separate hearing each time an applicant is brought before the court when a further order is sought for his or her detention for up to 21 days. These features seem to me to seek to provide the protection of the courts for an applicant in respect of whom the provisions of sub-s. (8) or one or more of them apply.

As to the hearing which takes place in the District Court, it is of course open to an applicant through his legal representative to point to deficiencies in the evidence or the case made by the Garda or Immigration Officer. An applicant may or may not give evidence at the hearing. The Garda or Immigration Officer may be cross-examined and submissions may be made. There is nothing to prevent a new case being made if a further application for detention is made. The case may be made to the Judge that the cumulative periods of detention of the applicant are excessive, notwithstanding the need to process the application for a declaration and the State can be called upon to tell the court how the application is progressing. These elements seem to me to amount to satisfactory protections of the applicant."

8. Section 10(4) imposes a particular duty on the Office of the Refugee Application Commissioner and the Refugee Appeal Tribunal to deal with any such asylum request as a matter of absolute priority in those where the applicant has been so detained.

9. While recognising the value of these safeguards, given that this procedure involves the detention on a preventative basis of an adult with full capacity who is not charged with a crime, it seems to me that these are the absolute minimum that would be necessary in a society committed to the rule of law and the protection of personal liberty. It cannot be overlooked that the concept of preventative detention, while not unknown in our law, is and must remain an exceptional measure.

10. When Article 40.4.1 provides that no person shall be detained "save in accordance with law", this means that the law in question must one which respects "the fundamental norms of the legal order posited by the Constitution: see *King v. Attorney General* [1981] I.R. 227,257 *per* Henchy J. While preventative detention is not excluded on an *ex ante* basis, respect for these fundamental norms means that the necessity for any such detention must be compelling: this seems necessarily implicit in the comments of Keane C.J. in Re Article 26 and the *Illegal Immigrants (Trafficking) Bill* [2000] 2 I.R. 360 at 408-412.

11. In that case, of course, the constitutionality of the detention provisions contained in s. 5 of the Immigration Act 1999 was upheld, precisely because detention provisions of this kind were deemed necessary to enable effect to be given to deportation orders. Those provisions apply *only* to persons who have already been refused asylum and they, of course, are person who by definition have no right to remain in the State. Section 5(6) contains, moreover, a maximum detention period of eight weeks, albeit (unlike the present case) there is no direct judicial supervision of that detention. It was against that *particular* background that the constitutionality of the Bill was upheld, precisely because the necessity for a measure of this kind was objectively necessary to uphold a fundamental State interest, namely, the effective and orderly operation of the deportation system.

12. The fact that the applicant may- presently- have no legal right to be in the State does not *in itself* mean that the State can detain him pending the outcome of an application for asylum. Had the 2000 Bill contained a measure that would have potentially sanctioned the preventative detention of asylum seekers merely (and I again emphasise this word) because they were otherwise in breach of statutory regulation or administrative rules and practices governing the asylum and immigration system, one must greatly doubt whether it would have survived constitutional scrutiny by the Supreme Court.

13. If it is said that there is a compelling State interest in ensuring that persons who happen to have committed breaches of these immigration rules do not remain at liberty and must therefore be detained on a preventative basis pending the outcome of their applications for asylum *simply* by reason of this fact, then I fear that preventative detention would become routine and regular. I refuse to believe that such a state of affairs could be constitutionally sanctioned in a State which is committed to the rule of law and where the words of the Preamble commit the State to ensuring that the "dignity and freedom of the individual may be assured."

14. These considerations must inform both the scope of the sub-section, as well as its judicial application.

15. The fact remains, moreover, that an applicant so detained might well be detained almost indefinitely - albeit under judicial supervision of the District Court for months while the asylum application is being examined and determined. While conscious of the firm belief held by the Garda National Immigration Bureau that this application for asylum is a belated ruse devised by the applicant to thwart his deportation, nevertheless the fact that an applicant could be so detained in this fashion in an apparently open-ended fashion (albeit again subject to judicial supervision by the District Court) once again re-inforces the need for enhanced judicial oversight of the arrest process and, specifically, the grounds for such arrest and the grounds advanced to the District Court

The statutory background
16. It is against this general background that the construction of the relevant statutory provisions falls to be considered. Section 9(8) thus provides:-

"8. Where an immigration officer or a member of the Garda Síochána, with reasonable cause, suspects that an applicant-

(a) poses a threat to national security or public order in the State, (b) has committed a serious non-political crime outside the State, (c) has not made reasonable efforts to establish his or her true identity,

(d) intends to avoid removal from the State in the event of his or her application for asylum being transferred to a convention country pursuant to section 22,

(e) intends to leave the State and enter another state without lawful authority, or

(f) without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents, he or she may detain the person in a prescribed place (referred to subsequently in this Act as "a place of detention").

17. Section 9(10) provides:

"(10)(a) A person detained pursuant to subsection (8) shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district in which the person is being detained.

(b) Where a person is brought before a judge of the District Court pursuant to paragraph (a), the judge may-

(i) subject to paragraph (c), and if satisfied that one or more of the paragraphs of subsection (8) applies in relation to the person, commit the person concerned to a place of detention for a period not exceeding 10 days from the time of his or her detention, or

(ii) without prejudice to paragraph (c), release the person and the judge may make such release subject to such conditions as he or she considers appropriate, including, but without prejudice to the generality of the foregoing, any one or more of the following conditions:

(I) that the person resides or remains in a particular district or place in the State,

(II) that he or she reports to a specified Garda Síochána station or immigration officer at specified intervals,

(III) that he or she surrenders any passport or travel document in his or her possession.

(c) If, at any time during the detention of a person pursuant to this section, an immigration officer or a member of the Garda Síochána is of opinion that none of the paragraphs of subsection (8) applies in relation to the person, he or she shall, as soon as practicable, he brought before a judge of the District Court assigned to the District Court district where the person is being detained and if the judge is satisfied that none of the paragraphs of subsection (8) applies in relation to the person, the judge shall release the person."

The principle of *noscitur a sociis*

18. The language and structure of s. 9(8)(a) calls for some comment. First, s. 9(8)(a) requires that the arresting member must suspect "with reasonable cause". While the section calls for judgment on the part of the arresting member, the use of the words "with reasonable cause" demonstrates that the factual reason for the arrest must be capable of objective justification. Second, the arresting member must thus reasonably suspect that the arrested person must pose a "threat" to either national security or public order. In other words, the arresting member will normally be required to make a judgement about *future* behaviour based on *past* conduct. Third, the context in which the language of s. 9(8)(a) appears is obviously of great significance.

19. In this regard, it will be noted that the reference to public order is juxtaposed with the words "national security" in the very same sentence. This immediately has implications for the meaning to be ascribed to these words. Taken in isolation and on their own, the words "public order" are capable of meaning as having a very wide meaning and, indeed, any breach of the law is itself capable of being described as a a threat to public order.

20. The words in question do not, however, appear in isolation but are rather placed in a particular statutory context. The words rather draw meaning from that context and the present case represents a classic example of the application of the principle of *noscitur a sociis* ("known by its companions"). It is clear that the sense of public order that is involved here is that which is akin to- albeit somewhat different from- national security. As thus stated, the words "public order" refer to public order in the narrower sense of that term, involving a serious threat to fundamental State interests in much as the same general way as might be involved in a threat to national security.

21. As Stamp J. famously observed in *Bourne v. Norwich Crematorium Ltd.* [1967] 1 W.L.R. 691, 696:-

> "English words derive colour from those which surround them. Sentences are not mere collections of words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put back into the sentence with the meaning which one has assigned to them as separate words."

22. This principle is also illustrated by the classic judgment of Henchy J. in *Dillon v. Minister for Posts and Telegraphs*, Supreme Court, 3rd June, 1981. In that case an election candidate sought to avail of the free postage facilities available to such candidates. Objection was, however, taken to his electoral literature on the ground that it was "grossly offensive" within the meaning of Inland Postal Warrant 1939 because it claimed that "Today's politicians are dishonest because they are being political and must please the largest number of people."

23. Henchy J. pointed out that the words "grossly offensive" did not appear in isolation, as the statutory prohibition was against "any words, marks or designs of an indecent, obscene or grossly offensive character." He continued:-

> "That assemblage of words gives a limited and special meaning to the expression 'grossly offensive' character...Applying the doctrine of *noscitur a sociis* ....the expression must be held to be infected in this context with something akin to the taint of indecency or obscenity. Much of what might be comprehended by the expression of it if it stood alone is excluded by its juxtaposition with the words 'indecent' and 'obscene'. This means that the Minister may not reject a passage as disqualified for free circulation through the post because it is apt to be thought displeasing or distasteful. To merit rejection it must be grossly offensive in the sense of being obnoxious or abhorrent in a way that brings it close to the realm of indecency or obscenity. The sentence objected to by the Minister, while many people would consider it to be denigratory of today's politicians, is far from bring of a 'grossly offensive character' in the special sense in which that expression is used in the [Inland Postal Warrant]."

24. This case at hand also presents another textbook example of where *noscitur a sociis* as a principle of statutory interpretation comes into its own. The very fact that the reference to "public order" is juxtaposed beside the words "national security" in s. 9(8)(a) means that the former words take on their traditional and somewhat more restricted meaning in the sphere of immigration law. Adapting the language of Henchy J. in *Dillon* to the present case, "that assemblage of words gives [the words 'public order'] a limited and special meaning." In that context, the words "public order" do not simply mean conduct which involves a breach of our immigration laws, but rather connote a situation where the *personal conduct* of the immigrant poses a real and immediate threat to fundamental policy interests of the State. In that sense, the concept of public order at issue here is but another variant of the concept of national security, albeit wider and somewhat more flexible in its scope and reach than that of national security properly so called.

25. As the Court of Justice observed in Case C-482/01 *Orfanopoulous* [2004] ECR 1-5257 with respect to the principle of public policy

in immigration matters:-

> "66. Concerning measures of public policy..., in order to be justified, they must be based exclusively on the personal conduct of the individual concerned.... Previous criminal convictions cannot in themselves justify those measures. As the Court has held, particularly in *Bouchereau*, the concept of public policy pre-supposes the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society."

26. It is true that these comments were made in the context of a derogation on public policy grounds (as distinct from public order grounds) from the free movement provision of Article 45(3) TFEU (ex Article 39(3) EC). In that respect, it may be acknowledged that the concept of public policy in that context would have to be interpreted with an exactness and strictness that might not necessarily be applicable to the detention of an application under s. 9(8)(a) of the 1996 Act in respect of a threat to public order. At the same time, it is clear, however, that by analogy with decisions such as *Orfanopoulous*, any decision to detain on grounds of public order (in the narrow sense of the term) must be based on the personal conduct of the non-national concerned.

27. As I pointed out in my own judgment in *Ezenwaka v. Minister for Justice and Equality* [2001] IEHC 385 (a case where I also applied the *noscitur a sociis* principle in the course of interpreting a reference in s. 4 of the Immigration Act 2004 to public policy which was placed in the same sub-section as a reference to national security), a good example in this context is provided by the decision of the English Court of Appeal in *R. (Farrakhan) v. Home Secretary* [2002] Q.B. 1391. In this case a well known radical preacher known for highly controversial views was refused entry into the United Kingdom because, as Lord Phillips M.R. put it, the Home Secretary had formed the view that this would be contrary to public policy in view of "the risk that because of his notorious opinions a visit by Mr Farrakhan to this country might provoke disorder". While Mr. Farrakhan may not have committed any criminal offences, the concept of public policy was broad enough to deny him entry by reason of the risk posed to British fundamental interest by the threat of public disorder. One might venture the similar view that had such an applicant applied for asylum here he might have been lawfully detained under s. 9(8)(a) on the ground that he posed a threat to public order.

28. All of this is re-inforced by a consideration of another companion sub-section, s. 9(8)(b), which enables the member of An Garda Síochána to effect an arrest where he or she suspects that the asylum-seeker has "committed a serious non-political crime outside the State." This is a further indicator of what is envisaged by in s. 9(8)(a), because it would be strange if an asylum seeker could be arrested and placed in *preventative detention* by reason of a *future* threat to public order posed by the fact that it is *believed* that he has, for example, committed relatively *minor* offences in the State involving non-compliance with the immigration rules, whereas a person who seeks asylum immediately upon his arrival could only be arrested where it is reasonably suspected that he has committed a *serious* non-political criminal offence *outside* of the State.

The decisions of this Court in *Bennetts* and *Yong Dong*

29. It is now necessary to examine two judgments of this Court dealing with s. 9(8)(a). In the first of these, *Bennetts v. Governor of Cloverhill Prison* [2008] IEHC 227, the applicant had been convicted in a number of diverse jurisdictions of a series of offences involving firearms, assault and domestic violence offences, along with the offence of drunk driving. Birmingham J. held that the firearms offences were "inherently serious", so that the applicant was properly detained pursuant to s. 9(8)(b).

30. Birmingham J. added so far ass. 9(8)(a) was concerned:

> "In that context, when an applicant presents themselves in this State with a criminal record in two other jurisdictions, and where that combined criminal record involves acts of violence in two jurisdictions, firearms offences and an offence of drunk driving, it seems to me that it would be hard to categorise a conclusion by the arresting officer that there was a threat to public order as irrational."

31. It seems to me that this decision is not directly in point, precisely because (i) it was principally a case coming within s. 9(8)(b) and (ii) it was a case where the applicant had been *convicted* of serious offences involving violence and firearms in a variety of different jurisdictions.

32. Different considerations apply to the decision of Charleton J. in *Yong Dong v. Governor of Cloverhill Prison*, an ex tempore judgment delivered on 13th November 2012 in respect of which a transcript of the argument and judgment has been supplied to me. Here the applicant was also a Chinese national who had been working illegally and living in the State for several years. He was arrested pursuant to s. 9(8)(a) when he applied for asylum. Charleton J. held that the arrest was lawful for the following reasons:

> "...the applicant has given a false name, he has overstayed his visa in the State, he has committed an act of careless driving and in addition to that, then the deportation order was sought to be enforced... he behaved in such a way that was necessary for four Gardaí to restrain him...In those circumstances, having regard to the fact that, in addition, he has been unlawfully running a business, there is nothing to indicate to me that the definition in the section should not be applied. He does reasonably fit the category of a person who could be suspected of posing a threat to public order in the State."

33. In my view, that decision is indistinguishable in principle from the present case as the underlying facts are quite similar. It is obvious from that Charleton J.'s judgment rests on his adoption of a meaning of public order in the broader sense of that term, *i.e.*, encompassing all or virtually all breaches of the criminal law and perhaps other regulatory law as well. It is on this issue that I respectfully differ from the views expressed by Charleton J. in *Yong Dong*.

34. It is equally clear from the judgment of Clarke J. in *Kadri v. Governor of Cloverhill Prison* [2012] IESC 27, [2012] 2 I.L.R.M. 392, 400-401 that prior decisions of this Court should normally be followed absent special reasons to the contrary. In this case, however, I have concluded with reluctance and diffidence that this is one such case where are such special reasons as would justify me in not following the earlier decision in *Yong Dong*.

35. These reasons are as follows. First, the decision was delivered ex tempore. Second, it does not appear that the learned judge's attention was drawn to the principle of *noscitur a sociis* and the seminal decision of the Supreme Court in *Dillon* which urges the application of this principle in a statutory context such as this. Third, the judge appeared to have been invited to look at the meaning of the words "public order" in complete isolation, instead of in juxtaposition to the companion words "national security" in s. 9(8)(a). Nor was any reference made by counsel to the possible implications of the words "serious non-political offence" in s. 9(8)(b). Fourth, reference was not made to the principles articulated in cases such as *King* and, specifically, the fundamental principle that the necessity for any preventative civil detention must be compellingly established if the fundamental constitutional norms contained in Article 40.4.1 regarding personal liberty are to be respected and vouchsafed. Fifth, if I may venture to repeat what I said in *A v.*

Minister for Justice, Equality and Law Reform [2011] IEHC 397, the issue here is "fundamental and goes to the heart of our constitutional protection", since it touches on the scope of the power to effect a form of preventative detention.

36. If *Yong Dong* correctly represents the law, it means that the District Court could direct the detention of asylum seekers under s. 9(8)(a) via the making of an order under s. 9(10)(b)(i) simply because it is *believed* that they have committed a series of routine immigration offences in the past (in respect of which, let it be again recalled, in this example they would have not even been charged, let alone convicted) and, on that basis, they pose a threat to public order in the future. If that were the test, then there would be a danger that preventative detention might well become a fairly regular feature of the immigration system, instead of that which the Oireachtas seems to have had in mind, namely, that preventative detention of asylum seekers was to be an exceptional measure designed for exceptional cases.

37. If, moreover, applicants for asylum could be detained on this broad understanding of what constituted public order, then the constitutionality of this measure would be very much open to question. Insofar as preventative detention is known to our law, it is a failsafe measure designed for exceptional circumstances. Certainly, it is hard to see how the routine application of such a power in such circumstances would survive any realistic proportionality analysis of the kind envisaged by the Supreme Court *in Damache v. Director of Public Prosecutions* [2012] IESC 12 if the constitutionality of the measure were to be challenged. Put another way, the constitutionality of s. 9(8)(a) rests on the premise that the objective necessity for such detention will be compellingly established and this in turn must powerfully influence this Court's interpretation of the basic vires of the scope of the power to arrest and detain pursuant to this sub-section and to s. 9(10)(b)(i).

38. I would, of course, normally follow a decision of this Court even where I disagreed with it: see, e.g., my own judgment in *AG v. Residential Institutions Redress Board* [2012] IEHC 492. But since it does not appear that all the relevant arguments and authorities were canvassed before the learned judge in Yang Dong and since the matter touches gravely on constitutional fundamentals regarding the protection of personal liberty, I believe that special circumstances exist such as would justify me in not following this decision.

Conclusions
39. Summing up, therefore, I have concluded as follows.

40. First, the power to arrest an applicant for asylum under s. 9(8)(a) and to detain him or her under s. 9(10)(b)(i) of the 1996 Act for a period of up to twenty-one days represents a form of preventative civil detention which, if the constitutional guarantee in Article 40.4.1 is to mean anything at all, means that the objective necessity for such detention must be compellingly established.

41. Second, these constitutional considerations must inform and of necessity de- limit these powers to arrest and detain. This is underscored here by the application of the principle of *noscitur a sociis*, so that the fact the words "public order" are juxtaposed beside the words "national security." Adapting the language of Henchy J. in *Dillon*, this assemblage of words means that the phrase "public order" must be given its narrower and more restricted meaning. In that sense, the reference to public order refers to the threat posed to fundamental State interests by the likely conduct or even, in particularly unusual cases, the very presence in the State of the applicant for asylum.

42. Third, the applicant's admitted conduct in flouting the immigration regime by, for example, not co-operating with the immigration authorities and working illegally is naturally to be deplored. But his conduct does not threaten fundamental State interests and there are no compelling State interests which would justify his detention on a preventative basis.

43. As the applicant's conduct did not- and could not- *in itself* threaten public order in the special sense which I have held must be ascribed to these words in s. 9(8)(a) (and by extension, s. 9(10)(b)(i)), it follows, therefore, that his arrest and subsequent detention on this basis was unlawful. It was for those reasons that I directed his release pursuant to Article 40.4.2 of the Constitution.