Neutral Citation No. [2016] IEHC 302

THE HIGH COURT

[2015 No. 10615 P]

IN THE MATTER OF THE IRISH CONSTITUTION AND

IN THE MATTER OF THE COURTS AND COURT OFFICERS ACT 1995

BETWEEN

JERRY BEADES

PLAINTIFF

AND

IRELAND, ATTORNEY GENERAL,

JUDICIAL APPOINTMENTS ADVISORY BOARD AND THE

MINISTER FOR JUSTICE AND EQUALITY

DEFENDANTS

JUDGMENT of Mr. Justice Haughton delivered on the 3rd day of June, 2016

1. In this case there are two motions before the court. In the first application, the defendants seek an order pursuant to O. 19, r. 28 of the Rules of the Superior Courts striking out the Plenary Summons and Statement of Claim and dismissing the proceedings on the grounds that the pleadings disclose no reasonable cause of action and/or that any cause of action thereby disclosed is frivolous or vexatious, or alternatively, pursuant to the inherent jurisdiction of the court to strike out proceedings on the basis that they are bound to fail and constitute an abuse of process.

2. In the second motion, the plaintiff seeks judgment in default of defence. As it is more logical to first deal with the defendant's motion to dismiss, that is what I have determined to do, and I heard argument from both parties in respect of that motion on 31st May, 2016. Accordingly, the plaintiff's motion for judgment in default of defence will be deferred until judgment on the first motion is delivered.

3. The procedural background to this case is that by Plenary Summons issued on 17th December, 2015, the plaintiff seeks a number of orders:-

> (1) an order compelling the defendants and each of them singly and collectively to adhere to the provisions under the Irish Constitution and the Courts and Court Officers Act, 1995;
>
> (2) a declaration that nominee, Peter Kelly, as publically published for the post of President of the High Court is unsuitable and an unfit person for the position;
>
> (3) a declaration that Peter Kelly does not comply with s. 16(7)(b) of the Courts and Court Officers Act, 1995, for reasons particularised in the General Endorsement of Claim at (a) – (h);
>
> (4) an order compelling the first and second named defendants to set up a Judicial Council to regulate the judiciary "as is commonly required in other common law jurisdictions to protect the citizens of the State" and in further compliance with obligations under Article 6 of the European Convention; **[1]**
>
> (5) "Failure to comply with the specific statutory requirements under the Courts and Court Officers Act 1995";
>
> (6) further and other relief; and
>
> (7) costs.

4. On 21st December, 2015, the plaintiff sought *ex parte* an order prohibiting the appointment of Kelly J. as President of the High Court "until such time as there is a proper examination as to his suitability". That application was made *ex parte* initially before Baker J. on the morning of 21st December, 2015. She ordered that the application be adjourned to 2pm on that day, and that the plaintiff notify and serve the defendants through the office of the Chief State Solicitor.

5. The making of that application seems to have resulted in a postponement of the ceremony due to take place before the President of Ireland to effect the appointment of Kelly J. as President of the High Court.

6. The plaintiff's application for an injunction ultimately came on before Gilligan J. on the afternoon of 21st December, 2015, and an order was made refusing the application, and refusing a stay on the ceremony and costs were ordered to be paid by the plaintiff. Gilligan J. subsequently ordered that a copy of the transcript of the DAR (Digital Audio Recording) for the hearing held before him on 21st December, 2015 be released to the plaintiff.

7. Gilligan J. refused an application on 21st December, 2015 to strike out the proceedings for failing to disclose a cause of action, but granted liberty to the defendants to bring an application by notice of motion to strike out. I am satisfied that in so doing Gilligan J. did not determine the issue now before this court, and that there is no question of the defendants' current applicant being *res judicata*.

8. The ceremony before the President proceeded and Kelly J. was duly appointed President of the High Court on 21st December, 2015.

9. It should be noted that one of the plaintiff's complaints is that Baker J. commenced hearing his application at 2pm on 21st December, 2015, but that it was interrupted by a communication that came through the court registrar, and that the case was thereupon transferred before Gilligan J. who heard and dealt with the application. On 14th January, 2016, the plaintiff made an application before Baker J. to preserve all (relevant) material whether hard copies, electronic or all digital communications arising from the hearing before her at 2pm on 21st December, 2015. That application was, in part, refused, the court directing only that the application be adjourned to 19th January, 2016, to the extent that it related to mobile phone records of the court registrar.

10. On 22nd December, 2015, the plaintiff filed an application for leave to appeal to the Supreme Court against the order of Gilligan J. on 4th January, 2016. The defendants filed the required respondent's notice, contesting that appeal. The defendant asserts that that appeal is now moot. I was informed that the Supreme Court did not accede to the plaintiff's application, and the plaintiff indicated his intention to apply to the Court of Appeal for an extension of time within which to appeal the decisions made on 21st December, 2015, but such an application has not yet been made.

The Statement of Claim

11. The plaintiff delivered a Statement of Claim dated 29th January, 2016. An examination of this is central to the court's decision in respect of the defendants' motion, and I have considered it carefully, and also considered and taken into account the somewhat different pleas and reliefs claimed in the Plenary Summon. In so doing I have taken into account that these documents were prepared by a lay person and without the precision that would be expected of lawyers.

12. The following is a summary of the claims made by the plaintiff in his Statement of Claim:-

> (i) That the plaintiff, as a citizen, has an entitlement that the Government's executive function in relation to the appointment of judges be exercised without risking due process, integrity or imperilling justice.
>
> (ii) That the Government fails in its duty if it knowingly or carelessly nominates as a judge a person who falls short of the "model judge" described in a passage by an "Israeli Chief Justice set out in Schedule A." It is claimed that Kelly J. "does not measure up to that model and yet the Government knowingly nominated him pursuant to Article 13.11 of the Constitution". **[2]**
>
> (iii) That a failure by Government to assess on any basis the suitability of a nominee "may jeopardise justice" and is actionable as a breach of constitutional rights – even if the person nominated is suitable. It is similarly a breach for the Government to knowingly nominate a person who is unsuitable. It is no answer to such a claim that an unsuitable judge may subsequently be impeached under the Constitution.
>
> (iv) That an express duty to ensure compliance with the European Convention on Human Rights is imposed on the defendants by virtue of s. 3(1) of the European Convention on Human Rights Act, 2003, and that the defendants failed to comply with the European Convention on Human Rights. **[3]**
>
> (v) That as a judge of the Court of Appeal, Kelly J. was not eligible or qualified to be appointed as President of the High Court under the Courts and Court Officers Act, 1995 (as amended) ("the 1995 Act").
>
> (vi) That as the 1995 Act governs procedures for judicial appointments, the expected vacancy was not the subject of advertisement or consideration by the Judicial Appointments Advisory Board ("JAAB"), and no list of names was submitted to Government, the nomination of Kelly J. was premature and contrary to the provisions of the 1995 Act.
>
> (vii) That although the Government may nominate a sitting judge whose name has not been listed by the JAAB, the decision to nominate an unlisted person can only be valid after the Government has duly considered the listed persons and has decided to appoint none of these and that a JAAB recommendation can only be rejected if there is evidence that the persons selected are not suitable for office or not the best candidates on merit.
>
> (viii) That the decision to nominate is a statutory decision which must be reasonably exercised only after due diligence and after JAAB "peer review", and the Government decision failed to meet the standard of reasonableness required in judicial review.
>
> (ix) That the Government unlawfully delegated the performance of its duty to the Attorney General or the Minister for Justice and Equality.
>
> (x) That the intention to decide to nominate Kelly J. was announced publicly a week before the decision to nominate him was made.
>
> (xi) That Kelly J. was not a suitable candidate for nomination as President of the High Court, or alternatively, if the facts as to suitability were not known to the Government, then the Government erred in its discretion to nominate him. In relation to this allegation, the plaintiff details eight matters which he alleges rendered the nomination unsuitable. The plaintiff adds to this the five further matters pleaded at para.s 16-19 in his Statement of Claim, and relied upon further alleged "Practices" set out in para. 19.
>
> (xii) At para. 15 the plaintiff claims exemplary damages arising out of the claimed commencement of the injunction hearing before Baker J. and its resumption and conclusion before Gilligan J., and pleads that any application to strike out his claim as unstatable or vexatious would be an abuse of the process and deny him his constitutional right to access to the courts.
>
> (xiii) At para. 20 of the Statement of Claim, the plaintiff refers to the "Judges Association" **[4]**, and asserts that it has failed to adopt "the relevant sections of the Bang[a]lore Principles" that he alleges would create clear separation between the Irish judiciary and financial institutions.

13. Accordingly, in the Statement of Claim, the plaintiff claims the following orders:-

> "(a) An order quashing the Government's nomination of Peter Kelly as President of the High Court;

(b) A declaration that Peter Kelly has not been validly appointed and is not the President of the High Court not being a fit and proper person;

(c) Nominal damages for breach of the plaintiff's constitutional rights;

(d) Exemplary damages;

(e) Other order; and

(f) Costs."

14. Against this procedural background, certain uncontested facts should be noted. Kelly J. was appointed an ordinary judge of the High Court in 1996. In 2014 upon the establishment of the Court of Appeal, he was appointed an ordinary judge of the Court of Appeal and he served in that capacity until his appointment as President of the High Court. On 15th December, 2015, the Government nominated Kelly J. for appointment as President of the High Court. Pursuant to that nomination, the President of Ireland appointed Kelly J. President of the High Court on 21st December, 2015. It is also a matter of public record that for a period of time earlier this year, and due to the temporary indisposition of the President of the Court of Appeal (Ryan P.), Kelly J. acted as President of the Court of Appeal as well as being President of the High Court.

The Basis for the Defendants' Application

15. In a grounding affidavit sworn by Mr. Donough McGuinness, a solicitor with the Office of the Chief State Solicitor, sworn on 6th April, 2016, it is asserted that the plaintiff has advanced no grounds to support the relief sought and that the appointment of the President of the High Court is a matter within the discretion of the Executive and that the plaintiff has advanced no basis upon which the courts should interfere in the exercise of that discretion. It is asserted that, in any event, the JAAB has no role in the appointment of the President of the High Court. It is asserted that to the extent that the plaintiff relies on any statutory basis, the criteria in the 1995 Act relate to the appointment of an ordinary judge of the High Court and not to the appointment of the President of the High Court. At para. 9 of his affidavit, it is averred:-

> "Rather than advancing any such grounds or cause of action, I say that, as appears from the pleadings in the Notice of Appeal herein, the plaintiff has instead used the above entitled proceedings as a vehicle to make scandalous and unsubstantiated allegations of bias and impropriety against the Courts in general, and against Gilligan J. and the learned President of the High Court in particular."

16. O. 19, r. 28 R.S.C. provides:-

> "The court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."

17. Mr. McDowell S.C., on behalf of the defendants, argued that within the meaning of O. 19, r. 28 there is no reasonable cause of action, and the action is "frivolous or vexatious". On this basis, the entire proceedings should be struck out. Alternatively, he argued that under its inherent jurisdiction, the court could have regard to the underlying facts, and dismiss it on the merits as it was bound to fail and/or was an abuse of process. He argued that the nomination of the President of the High Court is a matter entirely within the discretion of the Executive arm of Government and that it cannot be challenged by a citizen unless it can be shown that there is ineligibility for appointment as a matter of law. The court cannot review the Executive's exercise of such a discretion merely on the basis of alleged unsuitability. He firmly rejected all criticisms of Kelly J. alleged by the plaintiff in his pleadings, but argued that even if the court took the plaintiff's case at its height, and assumed that the alleged facts could be proved on evidence, this did not warrant interference by the court.

18. Counsel relied upon Article 35.4.1° of the Constitution which provides:-

> "A judge of the Supreme Court, the Court of Appeal, or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal."

He argued that as this is the constitutionally provided procedure, the courts have no jurisdiction to stay or interfere with the appointment of a judge. It is simply not the function of the courts.

19. Mr. McDowell S.C. also relied upon Article 35.1 which states:-

> "The judges of the Supreme Court, the Court of Appeal, the High Court and all other Courts established in pursuance of Article 34 hereof shall be appointed by the President."

While this provides that the judges are *appointed* by the President of Ireland, this function is done on the advice of the Government under Article 13.9 of the Constitution which provides:-

> "The powers and functions conferred on the President by this Constitution shall be exercisable and performable by him only on the advice of the Government, save where it is provided by this Constitution that he shall act in his absolute discretion or after consultation with or in relation to the Council of State, or on the advice or nomination of, or on receipt of any other communication from, any other person or body."

Such nomination and appointment is, therefore, in fact, the decision and act of the Executive, i.e. the Government, and by reason of the separation of powers is not a matter that can be the subject of review by the courts.

20. It was also submitted that the plaintiff's proceedings are an abuse of process because they will and can bring the plaintiff no benefit, and are brought for an improper purpose and solely to damage the defendants and judges concerned. For this reason, counsel did not open the particulars of alleged unsuitability set out in the Plenary Summons and in the Statement of Claim, asserting that they were vexatious and frivolous, unproven and incapable of being proven and recited by the plaintiff for an improper purpose and for achieving publicity in respect of an unstatable claim. Counsel suggested that having regard to the argument that the plaintiff's claims

are an abuse of the process, the plaintiff should not be entitled to give the particulars pleaded any further or unnecessary publicity. The plaintiff opposed this suggestion and wished to read the particulars "into the record" of the court.

21. As the court had already read the particulars in the Plenary Summons and Statement of Claim it was not necessary, in any event, for the same to be read out in open court for the purpose of the court adjudicating on the defendants' motion. For this reason, and in deference to the identified possibility that the court might find the plaintiffs claims to be an abuse of the process, I ruled that it was not necessary for counsel to read same in opening, and indicated that it was not necessary or appropriate for the plaintiff to read them out in the course of his submissions. The court requested the plaintiff not to read them out who, albeit reluctantly, in the course of his submissions did accede to this request. I believe that this was the appropriate approach having regard to the defendants' arguments, and the court's concern that, if the defendant was successful, there should not be unnecessary public dissemination of unproven allegations, and allegations which may never be capable of proof, against judges not party to the proceedings. I would emphasise that I have considered all the relevant particulars and details in considering argument and preparing this judgment.

22. With regard to the claims under the 1995 Act , counsel submitted that the JAAB has no statutory role where the President of the High Court is being appointed, and the only relevant provision was s. 23 of that Act (as amended) which reads:-

> "Where the Government proposes to advise the President on an appointment to the office of Chief Justice, President of the Court of Appeal, President of the High Court, President of the Circuit Court or President of the District Court it shall have regard first to the qualifications and suitability of persons who are serving at that time as judges in courts established in pursuance of Article 34 of the Constitution."

23. It was submitted that the Government only had to "have regard first" to the qualifications and suitability of persons serving at the time of appointment, and no more than that. This was an Executive function that was not subject to review by the courts. Further, the raising of what happens in a cabinet meeting at which the Government takes a decision to nominate an individual to the presidency of a court, is a matter covered by cabinet confidentiality (Article 28.4.3°), and accordingly, the plaintiff could never substantiate this claim or adduce any evidence as to the adequacy or otherwise of the discussion at the cabinet meeting.

The Plaintiff's Reply

24. The plaintiff swore a replying affidavit on 9th May, 2016 to ground his opposition to the defendants' motion, and to ground his own application for judgment in default of defence. At para. 9 of his affidavit, he emphasises the importance to his claim of s. 23 of the 1995 Act, and the requirement that the Government must "have regard first to the qualifications and suitability of persons who are serving at that time as judges in courts" when making its nomination to a presidency. He asserts "I am making a very clear case that the Government did not have regard to Kelly J's qualifications and suitability as to his appointment". In his affidavit, he restates some of his allegations of unsuitability. At para. 12, he asserts that these are serious matters and that he brings the case on his own behalf but also on behalf of "a significant number of citizens sharing my concerns". In oral argument he described his interest as being that of a "watchdog" in relation to the judiciary in the absence of any judicial council. He proceeds:-

> "I believe that the constitutional importance of this case demands that the court hearing this motion should appoint a legal team to assist me in the presentation of my response to this application by the defendants and ask for a decision on this request before the matter proceeds further."

25. At para. 14 of this affidavit, the plaintiff asserts that every citizen is entitled to demand that the Government, "does not appoint to the Bench" a person whose approach to the administration of justice is not as it should be. In argument, the plaintiff did not seek to expand his claim to assert that the original appointment of Kelly J. in 1996 as an ordinary judge of the High Court was in any way flawed, and I did not take this averment to be made in support of any such claim – rather his claim was directed only at the appointment of Kelly J. as President of the High Court.

26. In his affidavit, the plaintiff further elaborates on his assertion that the Government nomination was flawed by reason of non-compliance with s. 23 of the 1995 Act in failing to ensure that the "qualifications and suitability" of the nominee where appropriate.

27. The plaintiff made various oral submissions to the court. At the outset he requested that the court appoint a legal team to assist him in his proceedings, and that this be done under the Attorney General's Scheme. This, the court refused to do. Apart from the fact that the plaintiff had not raised it at the commencement of the hearing, that scheme generally only applies to *habeas corpus* applications, bail motions, judicial reviews concerned with criminal matters where the liberty of the applicant is at issue, extradition applications and European Arrest Warrant applications. It would not cover claims of the nature made by the plaintiff in these proceedings. It is also not within the power of the court to appoint, or direct the appointment of a legal team; at most the court can, in an appropriate case covered by the scheme, make a recommendation.

28. In his oral submissions, the plaintiff concentrated on the requirement for qualified and competent judiciary, and his right to challenge the nomination of a person whom he alleged was not qualified or suitable. He placed reliance on s. 23 of the 1995 Act, and suggested that there was a particular onus on the Government to carry out the nomination correctly, particularly in a case where there was no JAAB involvement. He relied on a number of passages from *Administrative Law in Ireland* (Hogan and Morgan, 3rd Ed.). He relied on a passage of Henchy J. in *The State (Lynch) v. Cooney* [1982] I.R. 337 at pp. 380-381, where it was stated:-

> "I conceive the present state of evolution of administrative law in the Courts on this topic to be that when a statute confers on a non-judicial person or body a decision-making power affecting personal rights, conditional on that person or body reaching a prescribed opinion or conclusion based on a subjective assessment, a person who shows that a personal right of his has been breached or is liable to be breached by a decision purporting to be made in exercise of that power has standing to seek, and the High Court has jurisdiction to give, a ruling as to whether the pre-condition for the valid exercise of the power has been complied with in a way that brings the decision within the express, or necessarily implied, range of the power conferred by the statute. It is to be presumed that, when it conferred the power, Parliament intended the power to be exercised only in a manner that would be in conformity with the Constitution and within the limitations of the power as they are to be gathered from the statutory scheme or design. This means, amongst other things, not only that the power must be exercised in good faith but that the opinion or other subjective conclusion set as a precondition for the valid exercise of the power must be reached by a route that does not make the exercise unlawful — such as by misinterpreting the law, or by misapplying it through taking into consideration irrelevant matters of fact, or through ignoring relevant matters. Otherwise, the exercise of the power will be held to be invalid for being *ultra vires*."

29. In reliance on this passage, the plaintiff argued that he was entitled to claim that the Government, as a pre-condition to the valid

exercise of its power to nominate the President of the High Court, had failed to have regard to the matters prescribed by s. 23 of the 1995 Act. He relied on the decision in *Ambiorix Limited v. Minister for Environment (No. 1)* [1992] 1 I.R. 277, quoted in *Administrative Law* in Ireland at p. 97, for the proposition that the defendants were not entitled to assert cabinet confidentiality over papers relating to the decision to nominate. The plaintiff asserted that he was entitled to claim abuse of a discretionary power in accordance with the "Wednesbury" principles, and he cited from Administrative Law in Ireland, p. 620, an oft cited passage from the judgment of Lord Greene and, in particular, the following:-

> "For instance, we have heard in this case a great deal about the meaning of the word 'unreasonable'…it has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

30. The plaintiff submitted that if the Government did not consider the requisite information under s. 23 of the 1995 Act, then his case was that it was not compliant and the decision to nominate was flawed. On the other hand, if the Government did have regard first to the qualifications and suitability of persons serving at that time, then the decision was "absurd".

31. The plaintiff made further submissions which I have carefully considered along with the eight extracts from *Administrative Law in Ireland*, and "J.M.Kelly: The Irish Constitution" (Hogan Whyte, 4th Ed.) that he submitted in support of his arguments, and a relevant chapter from "Civil Procedure in the Superior Courts" (Delaney and McGrath, 3rd Ed.).

Discussion
Introduction

32. With regard to the defendants' claim under O. 19, r. 28 R.S.C. to strike out the plaintiff's claims for failure to disclose a reasonable cause of action, the court approaches its task on the basis of asking whether the matters pleaded in the Statement of Claim constitute a cause of action known to the law or likely to be established. With regard to the submission that under O. 19, r. 28 the plaintiff's claim is frivolous or vexatious the court again adopts the approach that it should consider the pleadings only, and that the test of what is frivolous or vexatious is that contemplated by Barron J. in *Farley v. Ireland* (Supreme Court, 1st May, 1997, at p. 3) where he stated:-

> "If [a plaintiff] has no reasonable chance of succeeding then the law says that it is frivolous to bring the case. Similarly it is a hardship on the defendant to have to take steps to defend something that cannot succeed and the law calls that vexatious."

33. With regard to the defendants' claim that the proceedings should be struck out under the inherent jurisdiction of the court, the court applies the reasoning of Costello J. in *Berry v. Buckley* [1981] I.R. 306 that this "jurisdiction exists to ensure that a abuse of the courts does not take place", and if the court was satisfied that the plaintiff's claim must fail "then it would be a proper exercise of its discretion to strike out proceedings whose continued existence cannot be justified and is manifestly causing irrevocable damage to the defendant" (*ibid*, p. 308). The court accepts that this is a jurisdiction to be exercised sparingly and only in clear cases. As stated by Costello J. at p. 308 in *Berry v. Buckley*, in considering this jurisdiction "the court is not limited to considering the pleadings of the parties, but is free to hear evidence on affidavit relating to the issues in the case". However, the court accepts that it can only exercise this jurisdiction where, on the basis of the facts as pleaded or admitted, the claims (or one or more of them) cannot succeed and are clearly unsustainable or bound to fail.

Eligibility for Nomination and the Courts and Court Officers Act, 1995 (as amended)

34. With regard to the plaintiff's claim under s. 16 of the Act of 1995, this is clearly misconceived. Section 12 of the 1995 Act, defines "judicial office" to mean:-

> "an office being the office of ordinary judge of the Supreme Court, ordinary judge of the Court of Appeal, ordinary judge of the High Court, ordinary judge of the Circuit Court, specialist judge of the Circuit Court, or judge of the District Court (other than the President of the District Court)."

35. Section 16(1) provides:-

> "A person who wishes to be considered for appointment to judicial office shall so inform the Board [(JAAB)] in writing and shall provide the Board with such information as it may require to enable it to consider the suitability of that person for judicial office, including information relating to education, professional qualifications, experience and character."

36. Section 16 requires that the JAAB then recommend to the Minister, at least seven persons for appointment "to that judicial office". Under subs. (3), the JAAB must provide the Minister "with particulars of the education, professional qualifications, experience and character of the persons whom it recommends under this section". Subs. (6) provides:-

> "In advising the President in relation to the appointment of a person to a judicial office the Government shall firstly consider for appointment those persons whose names have been recommended to the Minister pursuant to this section."

37. Section 17 (as amended) provides:-

> "Where the Government proposes to advise the President to appoint to judicial office a person who is for the time being – (a) a judge of the Court of Appeal, (b) a judge of the High Court, (c) a judge or specialist judge of the Circuit Court, or (d) a judge of the District Court, or who is eligible for appointment to the Supreme Court, the Court of Appeal or the High Court under section 5(2)(b)(amended by section 11 of the Court of Appeal Act 2014) of the Act of 1961, the provisions of section 16 of this Act shall not apply."

38. It is, thus, abundantly clear from these sections that the requirements of s. 16 only apply where a person wishes to be considered for appointment to judicial office *for the first time* and do not *apply* to a person who has already been appointed a judge, and only apply where the judicial office being filled is that of an ordinary judge of the court concerned.

39. As we have seen, s. 23 provides for the special appointment procedure where the President of a court is being appointed, and it bears repeating:-

> "Where the Government proposes to advise the President on an appointment to the office of Chief Justice, President of the Court of Appeal, President of the High Court, President of the Circuit Court or President of the District Court it shall have regard first to the qualifications and suitability of persons who are serving at that time as judges in courts established in pursuance of Article 34 of the Constitution."

40. It is easy to see why this scheme was established by the Oireachtas. The importance of establishing appropriate educational and professional qualifications, experience and character arises at the point before a person is first appointed to any judicial office, and s. 16 governs this. It has no application to the present case. Section 17 applies where the Government proposes that an existing judge be promoted to an ordinary judicial post in a higher court and has no application. Then the only requirement of s. 23, when a President of a court is to be appointed, is that prior to nomination the Government will have regard first to the qualifications and suitability of persons who are serving at that time. The clear effect of this is that the Government must first look at existing judges in order to find a nominee. Only having first undertaken that exercise can it nominate for appointment to the presidency of a court a person who is not an existing judicial office holder. It simply ensures that experienced/existing judges are considered first for nomination for the presidency of a court.

41. It is quite clear from these provisions that the plaintiff's claim that Kelly J. was not eligible to be appointed to be President of the High Court is entirely misconceived. Far from not being eligible for nomination and appointment, as an existing judge he was one of that class of serving judges mentioned in s. 23 to which the Government must first have regard when deciding on nomination.

Section 23

42. The next claim – which may be regarded as the plaintiff's core claim – is based on the allegation that the Government failed to comply with s. 23 before nominating Kelly J.

43. It is important firstly to refer to the status of the Government's decision in this regard. The decision to nominate the President of a court (or indeed any judge) is a decision of the Executive, albeit that the actual appointment is undertaken by the President of Ireland. Thus Article 35.1 of the Constitution provides that:-

> "The judges of the Supreme Court, the Court of Appeal, the whole other Courts established in pursuance of Article 34 hereof shall be appointed by the President".

That function however is exercised by the President on the advice of the Government. See Article 13.9 of the Constitution (quoted above in para. 19). That the nomination of a judge is a "government executive function" is accepted by the plaintiff in para. 2 of the Statement of Claim, and was not contested in his argument before this court.

44. The appointment of a judge is not one of the circumstances in which the President of Ireland is entitled to act in his discretion or after consultation with the Council of State. The President is effectively mandated to appoint the Government's nominee. In *the State (Walshe) v. Murphy* [1981] I.R. 275, Finlay P. presiding over a court of three judges (the other two judges concurred with his judgment) stated:-

> "The President has a very great number of powers and functions which he performs on the advice of the Government, without any discretion on his part. In respect of these matters, apparently, he can not refuse to accede to that advice within the Constitution. Whilst, therefore, such acts require his intervention for their effectiveness in law, in fact they are the decision and act of the Executive."

In that case the applicant challenged the appointment of a District Judge on the basis that he did not have the requisite ten years in practice at the time of appointment. The respondent argued that the appointment of judges by the President was not reviewable by the courts on the grounds that, pursuant to Article 13.8.1° of the Constitution, the President was not "answerable at law" to the courts. That argument was rejected by the court, but as has been seen the court found that it was not a decision based on the President's exercise of discretion, but was in fact a Government decision. It is clear from Walshe that the courts can only intervene in the appointment of a judge where, as happened in that case, an *eligibility requirement* was not complied with. This is very different to questions of *suitability* relating to an existing judge. No claim for lack of eligibility is made or could succeed in the present case.

45. Under Article 35.2 of the Constitution it is provided that:-

> "All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law".

Article 35 goes on at Article 35.4.1° to deal with the only circumstances in which a judge may be removed from office:-

> "A judge of the Supreme Court, the Court of Appeal, or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal."

It is abundantly clear from this that the courts constitutionally have no jurisdiction in relation to any claim that a sitting judge be removed from office for stated misbehaviour or incapacity. This is the preserve of the Oireachtas under Article 35.4.1°.

46. This was emphasised in a case cited by counsel for the defendants of *Lopes v. Minister for Justice* [2008] 4 I.R. 743 that confirms that judges are immune from suit in the carrying out of their judicial duties. There, the court was concerned with a claim under O. 19, r. 28 to dismiss proceedings instituted by the plaintiff against the defendant claiming that he was the subject of racial discrimination by the High Court and Supreme Court. It was held by Hanna J., in striking out the proceedings, that no action was maintainable against a judge for anything said or done by him or her in the exercise of his or her jurisdiction. In reaching this decision Hanna J. quoted with approval the following passage from the decision of Lord Denning M.R. in *Sirros v. Moore* [1975] 1 QB 118 at p. 132:-

> "Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a judge for anything said or done by him in the exercise of a jurisdiction which belongs to him. The words which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not

> liable to action. The remedy of the party aggrieved is to appeal to a Court of Appeal or to apply for *hab[ea]s corpus*, or a writ of error or *certiorari*, or take some such step to reverse his ruling. Of course, if the judge has accepted bribes or been in the least degree corrupt, or has perverted the course of justice, he can be punished in criminal courts. That apart, however, a judge is not liable to any action for damages. The reason is not because the judge has any privilege to make mistakes or to do wrong. It is so that he should be able to do his duty with complete independence and free from fear."

Hanna J. then observed:

> "[21] This was expressly adopted as part of the law in this jurisdiction by Morris P in *Desmond v Riordan* [2001] 1 I.R. 505 (see also *Macauley & Co. Ltd v Wyse-Power* (1943) 77 I.L.T.R. 61).
>
> [22] Since judicial immunity from suit is thus set in stone, it follows that vicarious liability of the government in general and a minister in particular does not arise (see *Deighan v Ireland* [1995] 2 I.R. 56)"

47. Even if one were to assume, for the purposes of this application, that the plaintiff was in a position to prove all or any of the facts and details which he asserts in the Plenary Summons or the Statement of Claim, what he seeks to challenge in these proceedings is clearly an act of the Executive. However, having regard to the separation of powers between the legislative, executive and judicial functions of Government, this is not a claim that is justiciable before the courts. In *Boland v. An Taoiseach* [1974] I.R. 338 Fitzgerald C.J. at p. 362 stated:-

> "Consequently, in my opinion, the Courts have no power, either express or implied, to supervise or interfere with the exercise by the Government of its executive functions, unless the circumstances are such as to amount to a clear disregard by the Government of the powers and duties conferred upon it by the Constitution."

48. In his judgment in *District Judge MacMenamin v. Ireland* [1996] 3 I.R. 100, at p. 130 Hamilton C.J., having referred to Boland, and other authorities stated:-

> "These *dicta* clearly establish that:—
>
> 1. The courts have no power, either express or implied, to supervise or interfere with the exercise by the Government of its executive functions provided that it acts within the restraints imposed by the Constitution on the exercise of such powers.
>
> 2. If, however, the Government acts otherwise than in accordance with the provisions of the Constitution and in clear disregard thereof, the courts are not only entitled but obliged to intervene.
>
> 3. The courts are only entitled to intervene if the circumstances are such as to amount to a clear disregard by the Government of the powers and duties conferred on it by the Constitution.
>
> Having regard to the respect which each of the organs of government must pay to each other, I am satisfied that where it is alleged that either the Oireachtas or the Government has acted other than in accordance with the provisions of the Constitution, such fact must be clearly established."

49. There is no claim made by the plaintiff in the pleadings to the effect that the Government in nominating Kelly J. for appointment as President of the High Court has disregarded its powers and duties under the *Constitution*. The plaintiff is not therefore entitled in these proceedings to challenge before the courts the validity of a decision that is clearly one falling within the constitutional remit of the Government in cabinet.

50. There is a further reason why this particular claim is in the view of this court bound to fail. In order to succeed the onus would be on the plaintiff to prove that the Government failed to "…have regard first to the qualifications and suitability of the persons who are serving at that time as judges". The only means by which the plaintiff could hope to do this would be if he had access to the cabinet discussions or relevant cabinet records. Article 28.4.3° of the Constitution provides:-

> "The confidentiality of discussions at meetings of the Government shall be respected in all circumstances save only where the High Court determines that disclosure should be made in respect of a particular matter –
>
> i in the interests of the administration of justice by a Court, or
>
> ii by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Houses of the Oireachtas to inquire into a matter stated by them to be of public importance."

51. The exception at (ii) does not apply, and it is hard to see how the plaintiff could ever succeed in a claim under the first exception i.e. that the 'administration of justice' warranted the disclosure of cabinet papers, in the circumstances of these proceedings (and no submission to the effect that that exception might apply was made by the plaintiff).

52. I also accept the submission made by counsel for the defendants that Article 28 extends to the contents of any documents arising in preparation for or in the context of the discussions at the cabinet meeting at which Kelly J. was nominated for presidency of the High Court. Were the position otherwise, the 'cabinet confidentiality' envisaged by Article 28 would be meaningless. The plaintiff did seek to rely on the decision of the Supreme Court in *Ambiorix Ltd. v. Minister for Environment (No. 1)* [1992] 1 I.R. 277, but that case does not assist him. While it did decide that the executive arm of Government "cannot prevent the judicial power from examining documents which are relevant to an issue in a civil trial for the purpose of deciding whether they must be produced" (Finlay C.J. pp. 283-284), and that the court can examine any particular document before deciding whether it is exempt from production, it emphasised that the court can "uphold a claim of privilege in respect of a document" (Finlay C.J. p. 284). It is clear from this decision that it upholds the right of a court to examine documents with a view to deciding whether they should be disclosed, but it does not undermine the cabinet confidentiality enshrined in Article 28.

53. I therefore conclude that the plaintiff's pleaded claims to challenge the validity of the appointment of Kelly J. as President of the High Court based on the 1995 Act, or based on any suggested constitutional right, are misconceived and bound to fail.

Delegation of Duty to the Attorney General and/or Minister for Justice and Equality

54. Paragraphs 10 and 11 of the Statement of Claim read:-

> "10. The government unlawfully delegated the performance of its duty to assess the suitability of Peter Kelly to the Attorney General and or the Minister for Justice.
>
> 11. Proof that the nomination was decided upon without any proper consideration is in fact that the intention to so decide was announced publicly a week before the decision to nominate him was even on the government's agenda."
>
> These pleas fall short of asserting that the Attorney General or the Minister nominated Kelly J. for presidency of the High Court. Notably, para.11 merely refers to "the intention to so decide" in relation to the nomination.

Moreover, a Government's intention to make a decision at cabinet, and even the likely content of that decision, may (and frequently does) appear in a public announcement prior to the taking of the decision. There is nothing necessarily unlawful about the publication by the Government of its intentions whether officially or unofficially. In my view this cannot be treated as evidence of delegation of a governmental duty and does not give rise to any cause of action.

Plea at Paragraph 15

55. This plea concerns the hearings before Baker J. and Gilligan J. of the injunction proceedings on 21st December, 2015. Insofar as this is a complaint by the plaintiff about the outcome of the injunction application, as with most decisions of the High Court at first instance, the unsuccessful litigant can pursue an appeal. The High Court is *functus officio* - it cannot permit the issue to be reopened before it.

56. Insofar as this is a complaint about either or both of the High Court judges, for reasons that I have earlier outlined in this judgment, they are entitled to immunity from suit. It is also established in *Lopes* and the caselaw relied upon by Hanna J. to which I have referred earlier in this judgment, that the defendants in these proceedings cannot have any vicarious liability – it simply does not arise. It follows that the plaintiff cannot use these pleas to seek exemplary damages or buttress his other claims, or indeed to oppose the defendants' application to dismiss.

Judicial Council and the Bangalore Principles

57. When one looks at the plaintiff's pleas at para. 4 of the Plenary Summons combined with para.20 of the Statement of Claim, he appears to contend that the absence of a judicial council in Ireland incorporating 'the Bangalore Principles' is contrary to Article 6 of the European Convention on Human Rights (the right to a fair trial). While it is appropriate to give this assertion some brief consideration it is not an aspect of the claim as pleaded that was the subject matter of any oral argument by the plaintiff at the hearing before this court.

58. The Bangalore Principles of Judicial Conduct, 2002 are principles adopted by the United Nations. The Preamble introduces them as follows:-

> "THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge."

The Principles are then set out in detail under the broad headings of independence, impartiality, integrity, propriety, equality, competence and diligence. It is important to emphasise that, while these principles are held in high regard, the Bangalore Principles as adopted by the United Nations do not have the force of law in this jurisdiction. They are not specifically part of our Constitution or domestic legislation, and are not applied or incorporated by the Treaty on the Functioning of the European Union or any European Union legislation.

59. In making this claim what the plaintiff effectively seeks is an order compelling the defendants to set up a judicial council to regulate the judiciary. This clearly could not be done without the introduction and passing of legislation. There is ample authority that, having regard to the separation of powers, this is not a claim that is judiciable. I have already referred to the *MacMenamin* case. At p. 116 Geoghegan J. stated:-

> "Under the clear separation of powers under the Constitution it is not the function of the courts, nor have the courts in my view any jurisdiction, to order that any particular form of legislation at any given time be introduced and, still less, passed."

This claim is therefore unsustainable in law. Moreover if the judicial council that the plaintiff proposes should be in place was to have any power to remove or suspend a judge from office then this would require a constitutional amendment as well as legislation. It may well be desirable that there should be a judicial council in this jurisdiction. Indeed that is a development that I venture to suggest might be welcomed by the vast majority of Irish judges. However, it is not a matter that the plaintiff is entitled to pursue or litigate through the courts.

60. Insofar as the plaintiff articulates in his pleadings or on affidavit a claim under Article 6 of the European Convention of Human Rights, this appears to be based on a right to a fair trial. This is a claim that could only arise from factual circumstances in which it is alleged that a litigant or accused person has not received or will not receive a fair trial. It cannot stand in isolation. While it might be an argument to support the establishment of a judicial council, it cannot form the basis for the cause of action that such a council should be established.

61. It is perhaps also important to point out that, with regard to the first Bangalore Principle, Article 35.2 of the Constitution already mandates judicial independence as follows:-

> "All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law."

Upon appointment a judge must, under Article 34.5.1°, make and subscribe the following declaration:-

> "In the presence of Almighty God I…do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of…without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me."

62. This declaration is made solemnly before the Chief Justice and other members of the Supreme Court in open court. This is no mere formality – it is a matter of great importance to the members of the judiciary. The mere fact that a person is appointed to office, or a judge to the presidency of a court, on the nomination and advice of the executive does not mean that such judge is not independent. This was in fact the subject of some comment by the European Court of Human Rights in a case of Campbell and Fell v. United Kingdom (28th June, 1984) (Appl. N. 7819/77; 7878/77). That case concerned disciplinary action taken by a Board of Visitors in relation to alleged misconduct while in prison. The court commented:-

> "78. In determining whether a body can be considered to be "independent" - notably of the executive and of the parties to the case...the Court has had regard to the manner of appointment of its members and the duration of their term of office…the existence of guarantees against outside pressures…and the question whether the body presents an appearance of independence….
>
> The factors which were relied on in the present case as indicative of the Board's lack of "independence" will be considered in turn.
>
> 79. Members of Boards are appointed by the Chair Secretary, who is himself responsible for the administration of prisons in England and Wales.
>
> The Court does not consider that this establishes that the members are not independent of the executive: *to hold otherwise would mean that judges appointed by or on the advice of a Minister having responsibilities in the field of the administration of the courts were also not "independent"*. Moreover, although it is true that the Home Office may issue Boards with guidelines as to the performance of their functions…they are not subject to its instructions in their adjudicatory role." [Emphasis added].

It seems clear from this that the European Court of Human Rights takes the view that the appointment of judges on the advice of government, in the manner in which it is undertaken in this jurisdiction pursuant to the Constitution and the 1995 Act, does not contravene Article 6 of the Convention. However for the purposes of this judgment it is not necessary to decide this, and it is sufficient to state that the legislation that would be required to establish a judicial council of the sort contemplated by the plaintiff is entirely a matter for the Oireachtas.

Section 3(1) of the European Convention on Human Rights Act, 2003

63. The plaintiff did not make any oral submissions in support of his contention that this plea gives rise to a cause of action. As we have seen, s. 3(1) requires that every organ of the "State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions". Insofar as this is cited in support of his claim that the government has failed to comply with Article 6 of the Convention, which claim I have found to be unstatable, the reliance on s. 3(1) cannot be said to give rise to any identifiable cause of action.

64. Insofar as the plaintiff relies on s. 3(1) in support of his broader claim that the defendants failed to comply with their statutory duty, which I identify as being an alleged failure to comply with s. 16 and/or s. 23 of the 1995 Act, as I have already found that there is no reasonable cause of action under those provisions it follows that s. 3(1) cannot afford him any identifiable cause of action.

Frivolous or Vexatious/Abuse of the Process

65. I am also satisfied that these proceedings should be dismissed on the further ground that they are "frivolous or vexatious" within the meaning of O. 19, r. 28 R.S.C. and/or an abuse of process such that the court should exercise its inherent jurisdiction to dismiss.

66. In *Behan v. McGinley* [2011] 1 I.R. 47, Irvine J. approved what she termed a list of "indicators" of the kinds of action that might be regarded as frivolous or vexatious, and which she held were the same whether it is the court's inherent jurisdiction or O. 19, r. 28 that is being invoked. She summarised these principles as follows (at para. 69):-

> "(a) the bringing up on one or more actions to determine an issue which has already been determined by a court of competent jurisdiction;
>
> (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief;
>
> (c) where the action is brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
>
> (d) where issues tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
>
> (e) where the person instituting the proceedings has failed to pay the costs of unsuccessful proceedings;
>
> (f) where the respondent persistently takes unsuccessful appeals from judicial decisions."

It seems to me that indicators (b) ("the action would lead to no possible good"), and (c) ("action brought for an improper purpose") have application to the present case.

67. I accept Mr. McDowell S.C.'s submission that, even if it were assumed that the plaintiff could succeed on any aspect of the claims that he makes, he would receive no benefit. Firstly, within the matters particularised in the Plenary Summons and Statement of Claim there is no decision of Kelly J., either before or after his appointment as President of the High Court, and no allegation against Kelly J. in respect of which the plaintiff seeks any particular or corresponding relief in the prayers to either pleading. It is hard to see what benefit in any material or personal sense could be obtained by the plaintiff.

68. Secondly, I have come to the conclusion that the proceedings have been launched for an improper purpose. In his own grounding affidavit the plaintiff brings to the court's attention the principles relating to the "Striking Out Proceedings" which are usefully discussed under this heading in Chapter 16 of *Civil Procedure in the Superior Courts* (Delaney and McGrath, 3rd Ed.). Under the subheading "Proceedings Brought for Improper Purpose" at para. 16-39 the authors state:-

> "16-39.Proceedings will be considered to be an abuse of the process of the court where they are brought for an improper or ulterior purpose such as causing vexation or oppression to a party. In Re Majory [1955] Ch. 600 Evershed M.R. explained that there is a –
>
> "…general rule that court proceedings may not be used or threatened for the purpose of obtaining for the person so using or threatening them some collateral advantage to himself, and not for the purpose for which such proceedings are properly designed and exist; and a party so using or threatening proceedings will be liable to be held guilty of abusing the process of the court and therefore disqualified from invoking the powers of the court by proceedings he has abused.""

69. This line of authority was followed by Peart J. in *Barrett v. Beglan* [2007] IEHC 188 where he concluded that the claim advanced was one simply not known to the law and said that it was clear that a great deal of extraneous matters had been included in the pleadings and affidavits. In *Grant v. Roche Products (Ireland) Ltd.* [2005] IEHC 161 Finnegan P. refused to stay proceedings as an abuse of the court, accepting that the plaintiff's concern was to establish that the death of his son had been caused by the defendants and thus was attempting to achieve an objective that was within the scope of the courts' processes. Finnegan P. stated:-

> "If the plaintiff's motive was to excite adverse publicity damaging to the defendants or to punish the defendants for their wrongful act by causing them to incur extravagant costs (as will certainly be the case here) a case for abuse of process could be made out. As the determination of liability is one of the objects of the proceedings and as there is no admission of liability the plaintiff is not acting in abuse of process."

70. Further, counsel for the defendants relied on the decision in *Lopes* as bearing comparison to the present case insofar as the plaintiff there appeared to have a grievance against judges of the High Court and Supreme Court which he sought to air in the proceedings which he had instituted. Hanna J. found the proceedings to be an abuse of the process, stating at p. 750:-

> "[26] In my view, having considered this matter carefully, it seems to me that the plaintiff's proceedings in this case are wholly unsustainable in law or in fact. They are the fruits of a grievance founded on what I regret to say is the fanciful and unsustainable notion that racial bias drove the Supreme Court to treble the damages awarded to him in the High Court…."

71. I am satisfied that one of the plaintiff's motives in bringing and pursuing these proceedings is to damage the reputation of the named judges, and in particular Kelly J., and that he does so out of a misplaced sense of grievance. I am satisfied that a further and related motive is to excite adverse publicity and to thereby damage the judges whom he has named in these proceedings. This latter purpose was borne out by the plaintiff's attempts to "read into the record" the allegations (and they are no more than that) of unsuitability on the part of Kelly J. to be a judge or the President of the High Court. It was further borne out by the plaintiff's protests in the afternoon of the hearing when he pronounced to the court that he assumed that the absence of members of press from the court in the morning was due to the case being assigned from Court 3 to Court 16, and his further statement that he had alerted the press and as a result they were now attending court.

72. Justice must of course be administered in public, and that is enshrined in Article 34.1 of the Constitution (save in such special and limited circumstances as may be prescribed by law). The members of the press are entitled to attend court, are welcome to attend court, and are entitled to report fairly and accurately on court proceedings. But the pursuit of publicity by a litigant in furtherance of a cause or grievance as an end in itself by instituting or prosecuting proceedings, and in the conduct of those proceedings, is altogether another matter. This is particularly so where the parties who may be damaged are judges who by the nature of their office conduct their work largely in the public eye, and where, as in this case, they are not parties to the proceedings, and where – beyond giving reasons for decisions in their judgments – they are not generally in a position to defend the manner in which they perform their judicial function. Accordingly, while the plaintiff has a constitutional right to litigate, in this case I am satisfied that the litigation was instituted and has been conducted primarily for the improper purpose of exciting adverse and damaging publicity. For these further reasons I would dismiss the plaintiff's claim as being vexatious and an abuse of the process.

73. Accordingly, I will make an order pursuant to O. 19, r. 28 of the Rules of the Superior Court or alternatively pursuant to the inherent jurisdiction of the court striking out the Plenary Summons and the Statement of Claim herein on the grounds that they disclose no reasonable cause of action and/or are frivolous or vexatious, and further on the ground that they are bound to fail and constitute an abuse of the process.

74. I will hear the parties further in relation to the plaintiff's motion seeking judgment in default of defence.

---

[1] Article 6(1) of the ECHR provides: "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." The further provisions of Article 6 relate to the criminal process.

[2] Article 13.11 of the Constitution states:- "No power or function conferred on the President by law shall be exercisable or performable by him save only on the advice of the Government."

[3] Section 3(1):- "Subject to any statutory provision (other than this Act) or rule of law, every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions."

[4] I take this to be a reference to the Association of Judges of Ireland.