

1983 No. 3897P

THE HIGH COURT

BETWEEN:

GERALD ROCHE

Plaintiff

and

IRELAND, THE MINISTER FOR THE ENVIRONMENT  
AND  
THE ATTORNEY GENERAL

Defendants



JUDGMENT of Miss Justice Carroll delivered the 17th day of June 1983

The Plaintiff claims a declaration that the proposal for the Referendum on the Eighth Amendment to the Constitution is not a valid proposal because "it lacks the necessary core of meaning and precision to constitute a variation, addition or repeal of a provision of the Constitution in that it is open to conflicting and divergent interpretations as to its scope and meaning and as to its effects on existing rights guaranteed under the Constitution which render it impossible for the Plaintiff and other registered voters to know which interpretation would prevail and thus to decide whether to vote in

favour of or against it in a Referendum."

He also claims a declaration that the Referendum (Amendment) Act 1983 is repugnant to the Constitution and void. This claim depends on and flows from the claim that the proposal for the Referendum is invalid and is therefore in the nature of ancillary relief.

In order to preserve the status quo, the Plaintiff seeks an Interlocutory Injunction restraining the Minister for the Environment, the second Defendant, from taking steps to hold the Referendum. It is that issue which I have to try.

The Defendants have not controverted the Plaintiff's allegation that the proposed Referendum is ambiguous. They claim that the Plaintiff has no cause of action and that the Court has no jurisdiction to intervene, therefore no Injunction may be granted.

The Plaintiff's argument may be summarised as follows.

1. His right to vote in the Referendum is expressly recognised by Article 47, section 3 which provides: "Every citizen who has the right to vote at an election for members of Dail Eireann shall have the right to vote at a Referendum."
2. In order to vote in the Referendum, the wording must be capable of or susceptible to rational judgment. It is not necessary that a

3.

voter should understand all the ramifications of a proposal to amend the Constitution (e.g., the E.E.C. Referendum) but this issue is unique in that the two Law Officers of the State have expressed doubts about the interpretation and have not resolved those doubts.

3. He does not seek an authoritative interpretation and acknowledges that it is not possible under the law to obtain such interpretation before the Referendum is held.

4. He further claims that other rights under the Constitution, particularly in relation to possible medical treatment for his wife, may be modified by the proposed wording, if passed.

5. He wishes to vote and express a decision but is unable to do so because it is not possible for him or for any ordinary voter to have a clear understanding of the meaning.

6. He claims that if it is not possible for him to decide how to vote on the basis of a rational decision, his only course is to abstain. Therefore he is deprived of his constitutional right to vote under Article 47.

The ultimate effect of the Plaintiff's claim is that the proposal cannot be sent to the people for their approval.

4.

The Articles of the Constitution which are immediately relevant are:-

Article 46, 2. Every proposal for an amendment of this Constitution shall be initiated in Dail Eireann as a Bill and shall upon having been passed or deemed to have been passed by both Houses of the Oireachtas, be submitted by Referendum to the decision of the people in accordance with the law for the time being in force relating to the Referendum.

5. A Bill containing a proposal for the amendment of this Constitution shall be signed by the President forthwith upon his being satisfied that the provisions of this Article have been complied with in respect thereof, and that such proposal has been duly approved by the people in accordance with the provisions of section 1 of Article 47 of this Constitution, and shall be duly promulgated by the President as a law.

Article 47. 1. Every proposal for an amendment of this Constitution which is submitted by Referendum to the decision of the people shall, for the purpose of Article 46 of this Constitution be held to have been approved by the people, if, upon having been so submitted, a majority of votes cast at such Referendum shall have been cast in favour of its enactment into law.

It is clear that a constitutional amendment involves a particular solemn legislative process. There must first be a Bill initiated in Dail Eireann passed by both Houses of the Oireachtas, which is then submitted to the people for their approval. If a majority vote in favour, the Bill is signed by the President and promulgated as a law. It is not a question of there being just a legislative process in the Oireachtas. The people participate in passing an amendment to the fundamental law of the State. They are as much part of the legislative process as are the proceedings in the Oireachtas and the signing by the President.

It is this legislative process with which the Plaintiff asks the Courts to interfere.

I do not accept that the Plaintiff is prevented from exercising his constitutional right to vote in the Referendum. He is not obliged to abstain, as was claimed by his counsel. If he is not certain which interpretation will ultimately be placed on the wording, he can vote against. His vote then signifies that he is against a wording which is capable of an interpretation of which he does not approve. He is able therefore to participate in the democratic process.

6.

I am quite satisfied that the arguments advanced on behalf of the Defendants are correct. There is no allegation that the Referendum has not been validly passed by both Houses of the Oireachta. It now awaits its submission to the people. The wording of the amendment cannot be the subject of scrutiny by the Courts at this stage. The wording, as passed by both Houses, must be submitted to the people for their decision. It would be totally opposed to the separation of powers provided by the Constitution that the Courts could prevent any particular wording, duly passed by the Oireachtas, from being put to the people of Ireland.

The Courts have already refused to intervene in the legislative process provided by Article 20 in Wireless Dealers Association .v. Fair Trade Commission (Supreme Court, No. 16 of 1956, unreported, delivered 7th March 1956).

Similarly, the Courts have no jurisdiction to interfere with the even more solemn process of legislation comprised in a constitutional Referendum, as laid down by the Constitution.

Approved,  
Mella Cunniff.

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Counsel for the Plaintiff:

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Counsel for the Defendant:

Hugh Geoghegan, S.C.  
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Cases cited:

- Ryan .v. Attorney General 1965 I.R. 294
- O'Donovan .v. Attorney General 1961 I.R. 114
- Byrne .v. Ireland 1972 I.R. 241
- Buckley .v. Attorney General 1950 I.R. 67
- Re Criminal Law Jurisdiction Bill 1975, 1977 I.R. 129
- Wirelessdealers Association .v. Fair Trade Commission (Supreme Court 7th March 1956)
- Magee .v. Attorney General 1974 I.R. 284
- Boland .v. An Taoiseach 1974 I.R. 338

Cases cited:

McMahon .v. Attorney General 1972 I.R. 69

G. .v. A.B.U. 1980 I.R. 32

Educational Company of Ireland Ltd. .v. Fitzpatrick 1961 I.R. 323

Cahill .v. Sutton 1980 I.R. 269

Campus Oil .v. Minister for Energy 17th May 1983

State (Ryan) .v. Lennon 1935 I.R. 170

State (D.P.P.) .v. Walsh & anor. 1981 I.R. 412

Dunne .v. Hamilton 1982 I.L.R.M. 290