

THE HIGH COURT

[2021] IEHC 329
[2021/527 SS]

BETWEEN

CHARLENE HEYNS

APPLICANT

AND

TIFCO LIMITED

AND

TIFCO MANAGEMENT SERVICES (IRELAND) LIMITED

AND

THE MINISTER FOR HEALTH

AND

THE ATTORNEY GENERAL

AND

IRELAND

RESPONDENTS

DECISION of Mr. Justice Brian O'Moore delivered on the 17th day of April, 2021.

1. On the 14th of April 2021 I directed an Enquiry pursuant to Article 40.4 of the Constitution of Ireland 1937 into the lawfulness of the detention of Ms. Charlene Heyns by the Minister for Health.
2. The hearing of the Enquiry took place on Friday the 16th and Saturday the 17th of April. I had the affidavit evidence of Ms. Mary Trayers (the solicitor for Ms. Heyns), Dr. Gerald Barry (Assistant Professor of Virology, University College Dublin), Mr. Fergal Goodman (Assistant Secretary in the Department of Health), Mr. Michael O'Leary (Principal Officer in the Department of Health) and Dr. Darina O'Flanagan (Special Advisor to the National Public Health Emergency Team).
3. I have also had the oral evidence of Dr. O'Flanagan, who was cross examined on her affidavits by counsel for Ms. Heyns and re-examined by counsel for the Minister.
4. A range of arguments were made on behalf of Ms. Heyns, with considerable skill, by her counsel. These included the following submissions:-
 - (i) Since the relevant provisions of the Health Act 1947, as amended by the Health (Amendment) Act 2021, do not describe mandatory hotel quarantine as 'detention' (a) Ms. Heyns has been deprived of fair procedures; (b) the appeals officers (or review officers) could not have considered Ms. Heyns' rights or afforded these rights to her; (c) Ms. Heyns was deprived of her right of access to the courts and (d) she has been unable to identify her detainer. It is also argued that Ms. Heyns is disadvantaged as, counsel claims, there are no clear and defined set of rights and obligations 'as between prison and detainee'.
 - (ii) The Certificate of Detention is inadequate in a number of respects.
 - (iii) Section 38 B is repugnant to the provisions of the Constitution.

- (iv) As a result of a failure to follow updated advice from the European Centre for Disease Control and advice from the United States Centre for Disease Control, the Minister has fixed a disproportionately long period of detention.
 - (v) There has been a failure to consider relevant matters, notably the vaccination status of a traveller and the prior infection of a traveller.
 - (vi) The review process established by section 36 B (16) of the Act constitutes the administration of justice, and is therefore repugnant to the provisions of the Constitution.
 - (vii) The review process provides neither the possibility of an oral hearing nor the right to legal representation.
 - (viii) The review process should properly have been carried out by medical professionals, not by barristers.
 - (ix) In the review process, there was no access to previous decisions of reviewers in respect of other travellers.
 - (x) The review process was unsatisfactory and unlawful for a number of other reasons.
5. Having examined the submissions made by both counsel, I have decided that Ms. Heyns is being detained in accordance with law. It follows from this conclusion that I have come to the view that the challenged aspects of the Health Act 1947, as amended, are not invalid having regard to the provisions of the Constitution.
6. When I directed the Enquiry on the 14th of April, and when the hearing of the matter began yesterday, I made it clear to the parties that I would give my decision as soon as I could, but that this would not be accompanied by either my full judgment or a synopsis of the reasons for my decision. There are two reasons why I have taken this approach. Firstly, given the fact that this is an Enquiry into the lawfulness of an individual's detention, the decision should be given as soon as possible. Secondly, the Act provides that a traveller is to be released from mandatory hotel quarantine should a test taken on the 10th day of quarantine not prove positive for the relevant virus. It is therefore entirely possible that Ms. Heyns will be released from quarantine on the 19th of April, as she arrived home to Ireland on the 9th of April. Any delay in giving my decision (which the drafting of a judgment would inevitably cause) could well render the whole Enquiry process meaningless. Counsel for Ms. Heyns and counsel for the Minister agreed that I should proceed in this way.
7. I will list these proceedings for 10.30am on Friday the 23rd of April 2021 to deal with any outstanding matters. That hearing will be a remote one.

POSTSCRIPT

On the 23rd of April 2021 an Order was made striking out the proceedings. The judgment is to be delivered on or before the 24th of June 2021.