

Denham C.J.
Murray J.
Hardiman J.
Fennelly J.
O'Donnell J.
McKechnie J.
Clarke J.

Between/

Thomas Pringle

Plaintiff/Appellant

and
The Government of Ireland,
Ireland and the Attorney General

Defendants/Respondents

Ruling of the Court delivered on the 31st day of July, 2012 by Denham C.J.

1. Thomas Pringle, the plaintiff/appellant, referred to as "the appellant", has appealed to this Court the judgment of the High Court (Laffoy J.), delivered on the 17th July, 2012, and the orders made on foot of the said judgment and perfected on the 18th July, 2012.
2. This Court heard submissions on three issues arising in the appeal as a matter of urgency:-

Whether the European Stability Mechanism Treaty, done at Brussels on the 2nd February, 2012, (hereinafter "the ESM Treaty"), involves a transfer of sovereignty to a degree that makes it incompatible with the Constitution, when one applies the principles set out by this Court in *Crotty v. An Taoiseach* [1987] I.R. 713, such that a referendum amending the Constitution is necessary to permit the State to ratify the ESM Treaty on behalf of Ireland.

Whether the Supreme Court should refer to the Court of Justice pursuant to Article 267 of the Treaty on the Functioning of the European Union (hereinafter "TFEU") the question of the validity of European Council Decision 2011/199/EU of 25th March 2011 (hereinafter the "European Council Decision") and the question of whether Ireland, by entering into and ratifying the ESM Treaty, would undertake obligations incompatible with the Union Treaties.

Whether the Supreme Court should grant an interlocutory injunction, pending the final determination of these proceedings, restraining the State from ratifying the ESM Treaty.

3. (i) On the first issue considered as a matter of urgency, the Court is of the opinion that the ESM Treaty does not involve a transfer of sovereignty so as to make it incompatible with the Constitution, when applying the principles set out in *Crotty v. An Taoiseach* [1987] I.R. 713, such that a referendum amending the Constitution is necessary to permit the State to ratify the ESM Treaty on behalf of Ireland. The decision of the Court will be to treat the ESM Treaty as one which does not involve any impermissible transfer of powers from the Executive, but rather as an agreement to pursue a defined policy of the Government. Judgments will be delivered at a later date.

(ii) The Court will make a reference for preliminary ruling to the Court of Justice in the terms set out in the attached document.

(iii) The appeal by the appellant of the refusal of interlocutory relief by the High Court, is now, in all the circumstances, a relief sought pending the determination of the reference for preliminary ruling by the Court of Justice. Consequently, as regards the EU law issues, while a fundamental test is that stated in *Campus Oil Ltd v. Minister for Industry and Energy* (No. 2) [1983] I.R. 88, it should be informed by decisions of the Court of Justice, including the joined cases of C-143/88 & C-92/89 *Zuckerfabrik Süderdithmarschen AG v Hauptzollamt Itzehoe* and *Zuckerfabrik Soest GmbH v Hauptzollamt Paderborn* [1991] ECR I-415 as well as C-465/93 *Atlanta Fruchthandelsgesellschaft mbH v. Bundesamt für Ernährung and Forstwirtschaft* [1995] ECR I-3761. Applying the relevant criteria, the Court is not satisfied that it is appropriate to grant an injunction. In particular, should the appellant be successful that will be an adequate remedy.

Consequently, the Court would refuse the application for an interlocutory injunction restraining the State from ratifying, approving or accepting the ESM Treaty, pending the final determination of the proceedings.

4. Judgments on the matters referred to in paragraph 3(i) and (iii) above will be delivered at a later date.
5. The appeal will be adjourned pending the preliminary ruling of the Court of Justice.
6. Both parties have liberty to apply.