AN CHÚIRT UACHTARACH

THE SUPREME COURT

S: AP:IE:2021:000107

BETWEEN/

MacMenamin J.
O'Malley J.
Baker J.
Woulfe J.
Hogan J.

GLANN MÓR CÉIBH TEORANTA, GLANN MÓR CUAN TEORANTA AND

SIOBHÁN DENVIR-BAIRÉAD

Applicants/Respondents

-V-

THE MINISTER FOR HOUSING, PLANNING AND LOCAL GOVERNMENT, AN

BORD

PLEANÁLA, IRELAND AND THE ATTORNEY GENERAL

Respondents/Appellants

JUDGMENT of Hogan J. delivered the 1st November 2022

Introduction

1. These proceedings arise from a decision of Irish Water to seek a Compulsory Purchase Order in respect of certain lands owned by the applicants at Sruffaun Pier, Carreroe, County Galway, in the Connemara Gaeltacht area. The applicants seek to contest the making of that order before An Bord Pleanála. The Board has already decided on 13th March 2019 to hold an oral hearing. It further decided by letter dated 4th November 2019 that this hearing will be heard in Irish in accordance with the provisions of s. 135(8)(b) of the Planning and Development Act 2000.
2. In these circumstances the applicants seek various declarations regarding the availability (or, more accurately, the non-availability) of a variety of statutes and statutory instruments in the Irish language. One can, I think, conveniently break down the relief sought into three distinct categories: first, certain Acts of the Oireachtas; second, statutory instruments made pursuant to s. 3(1) of the European Communities Act 1972 which amend other Acts of the Oireachtas and third, other statutory instruments which might be of relevance. More fundamentally, this appeal raises once again the wider question which was in view in *Ó Murchú v. An Taoiseach* [2010] IESC 26, [2010] 4 IR 484 namely, the extent to which there is a general obligation to translate statutory instruments.
3. I propose to consider all of the issues in turn. But it is first necessary to set out the background to the appeal.

Background

4. For the avoidance of doubt, the applicants in the High Court (and the respondents in this Court), Glann Mór Céibh Teoranta, Glann Mór Cuan Teoranta, and Siobhán Denvir-

Bairéad shall be referred to as "the Respondents", and the respondents in the High Court who are still a party to this appeal, i.e. the Minister for Housing, Planning and Local Government, Ireland and the Attorney General shall be referred to as "the Appellants".

5. The Respondents are seeking to challenge Irish Water Limited making a Compulsory Purchase Order in respect of certain lands located at Sruffaun Pier, Carreroe, County Galway, in the Connemara Gaeltacht area.

6. In accordance with applicable law, any objection to such an order is lodged with An Bord Pleanála. An Bord Pleanála may hold an oral hearing in relation to the matter. In addition, in accordance with section 135(8)(b) of the Planning and Development Act, 2000 (hereinafter "the 2000 Act"), in cases where the development is within the Gaeltacht, the hearing shall be conducted in Irish.

7. The Respondents state that they require official Irish language versions of certain pieces of legislation in order to be able to adequately prepare for, and participate effectively in, the An Bord Pleanála hearing. In these proceedings, they seek, *inter alia*, a declaration stating that the Appellants have a constitutional obligation to provide an official translation of the Planning and Development (Amendment) Act 2018 and of certain Statutory Instruments listed in an Annex to their Statement of Grounds. Initially, they were seeking Irish language versions of 29 such Instruments, however at the High Court hearing they agreed to remove 5 Instruments from that list. The 29 Statutory Instruments that were originally being sought came to approximately 1,200 pages and the reduced number of instruments, i.e., 24 instruments, came to approximately 600 pages.

8. This case concerns the right of the Respondents to conduct their business through the medium of Irish. Pursuant to section 135(8)(b) of the 2000 Act, the Respondents have a

statutory right to a hearing in the Irish language. Furthermore, the Respondents consider that there will be significant difficulties at the oral hearing in the absence of an authoritative version of the relevant Statutory Instruments being available in Irish.

The Judgment of the High Court

9. The reliefs sought by the Applicants in the High Court were as follows;

i. "A Declaration that the first, third and fourth named Respondents have a constitutional duty to issue an official translation in the First Official Language of the Planning and Development (Amendment) Act 2018 and the Statutory Instruments specified in the schedule attached to the Statement and to make same available to the applicants.

ii. That the second-named Respondents are prohibited from commencing an oral hearing, or from taking any further action in relation to the Irish Water (Carreroe Sewerage Scheme) Compulsory Purchase Order, 2019 (Ref. No. ABP-305519-19) until such time as this case is heard and given final determination.

iii. That the second-named Respondent be obstructed from opening the oral hearing or taking any further action in relation to the Irish Water (Carreroe Sewerage Scheme) Compulsory Purchase Order 2019 (Ref. No. ABP-305519-19) until such time as the final hearing and judgment in this matter has been completed.

iv. Any other appropriate order.

v. Costs."

10. O'Hanlon J. decided, having first considering the case law, including *Ó Beoláin v. Fahy* [2001] 2 IR 279, *Ó Murchú v. An Taoiseach* [2010] 4 IR 484, *pel Austria GmbH v. The Commission* (CT- 115/94), and *Skoma-Lux sro v Celni reditelství Olomouc* (C-161/06),

that the State is not entitled to take an unreasonable period of time to prepare Irish translations, which would be directly contrary to the status of the language as the first official language pursuant to Article 8 of the Constitution.

11. O'Hanlon J. stated the following at para. 96;

> "It is therefore clear to this court that the State has a constitutional obligation to make an official translation available as soon as possible, and within a reasonable time. But what exactly does that mean? It is not open to the court to declare a specific time period, but it is clear that a period of 17 months, as in this case, is not at all reasonable. I come to this decision in the context that no evidence has been brought before the court in relation to the resources of Rannóg Aistriúcháin [the Translation Section of the Oireachtas]. However, it is clear to the court that there is a shortage of resources, and that is publicly available information. The court understands that the Act is complex, involving detailed terminology and including complex content. And that increases the need to make the translation available fast. It is the view of this court that the need for official translation starts at the point at which a law enters into force, in one official language only. The negligence on the part of the State increases for the period of time that it takes the State to provide the official translation."

12. The High Court was therefore satisfied that it was necessary to provide an Irish version of the Statutory Instruments specified in the judgment, and it was also urgent at that stage to provide an Irish version from of same with respect to the terminology involved in the material and its content." The court issued a declaration that the first, third and fourth-named Respondents (now the Appellants in this Court) have a constitutional obligation to

provide an official translation of the Planning and Development (Amendment) Act, 2018 in the first official language. Despite the fact that the translation is now available, nonetheless the Respondents breached the constitutional obligation on account of the unreasonable delay in preparing the translation. With regard to the Statutory Instruments, the High Court ordered that an official translation of the Statutory instruments specified in the schedule (other than at xiii, xv, xvii, xviii and xxi, which are not sought by the Applicants / Respondents in this Court) must be made within a reasonable period of time.

Issues in this Appeal

13. It has been determined that the following are the issues to be considered in Court in this appeal:

1) *Was there unreasonable delay on the part of the first, third and fourth-named Appellants in preparing and making available a translation in the national language and the first official language of the Planning and Development (Amendment) Act 2018?*
2) Is there an obligation on the State to provide the translation of statutory instruments in the first official language (and, if so, what is the extent of any such obligation)?
3) Is there a specific constitutional obligation arising from Article 8 being read in conjunction with Article 25 of the Constitution of Ireland, to make Statutory Instruments that amend primary legislation available in the first official language?
4) Did the learned Judge also err in law in granting a declaration that the aforementioned Appellants had a constitutional duty to issue and make available to the Respondents an official Irish translation of the aforementioned statutory instruments as soon as possible, and in any case within six months?

5) Is the State obliged under Article 8 of the Constitution, in circumstances where the Respondents have a statutory right to conduct the oral hearing before An Bord Pleanála in the first official language under section 135(8) of the Planning and Development Act 2000, to provide an official translation of the Statutory Instruments relevant in that case in order that the Respondents may conduct their business in the first official language, in particular in circumstances where the hearing relates to personal rights and property rights?

6) Is the State obliged under Article 8 of the Constitution (and/ or under Article 8 being read in conjunction with Article 40.1 of the Constitution) to make an official translation of the Statutory Instruments specified in the schedule of the High Court Order available to the Respondents in the first official language in order that the Respondents will be able to prepare, devise, administer and conduct an effective objection to the Compulsory Purchase Order in consultation with their legal staff in a hearing before the Board, free from impediment and disadvantage, and on the same terms as if they were willing to proceed in the English language?

Selection of Relevant Law

14. Article 8 of the Constitution of Ireland

"1. The Irish language as the national language is the first official language.

2. The English language is recognised as a second official language.

3. Provision may, however, be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the State or in any part thereof."

15. Article 25 of the Constitution of Ireland;

"1. As soon as any Bill has passed [...] the Taoiseach shall present it to the President for his signature and for promulgation by him as a law in accordance with the provisions of this Article.

[...]

4.4 Where the President signs the text of a Bill in one only of the official languages, an official translation shall be issued in the other official language.

16. Section 135(8)(b) of the Planning and Development Act 2000:

"Where an oral hearing relates to development within the Gaeltacht, the hearing shall be conducted through the medium of the Irish language, unless the parties to the appeal or referral to which the hearing relates agree that the hearing should be conducted in English."

17. Section 62 of the Civil Law (Miscellaneous Provisions) Act 2011;

"(1) As soon as may be after the enactment of any Act of the Oireachtas, the text thereof shall be printed and published simultaneously in each of the official languages.

(2) Subsection (1) shall not operate to prohibit the publication on the internet of an Act of the Oireachtas in one official language only prior to its printing and publication in accordance with that subsection."

18. Section 8 of the Official Languages Act, 2003;

"1. A person may use either of the official languages in any court or in any pleading in any court or in any document issued by any court.

2. Every court has, in any proceedings before it, the duty to ensure that any person appearing in or giving evidence before it may be heard in the official

language of his or her choice, and that in being so heard the person will not be placed at a disadvantage by not being heard in the other official language.

3. For the purposes of ensuring that no person is placed at a disadvantage as aforesaid, the court may cause such facilities to be made available, as it considers appropriate, for the simultaneous or consecutive interpretation of proceedings from one official language into the other.

4. Where the State or a public body is a party to civil proceedings before a court—

a) the State or the public body shall use in the proceedings, the official language chosen by the other party, and

b) if two or more persons (other than the State or a public body) are party to the proceedings and they fail to choose or agree on the official language to be used in the proceedings, the State or, as appropriate, the public body shall use in the proceedings such official language as appears to it to be reasonable, having regard to the circumstances.

5. Notwithstanding any other provision of this section, a person shall not be compelled to give evidence in a particular official language in any proceedings.

6. In choosing to use a particular official language in any proceedings before a court, a person shall not be put by the court or a public body to any inconvenience or expense over and above that which would have been incurred had he or she chosen to use the other official language.

The Appellants' Submissions

Issue 1

19. It is submitted on behalf of the Appellants that a period of 21 months elapsed before an official translation was provided in this instance. These proceedings began on 11th December 2019, i.e., 17 months from the date on which the President signed the English version of the Bill. There was a delay of up to twenty years in the case of *Ó Beoláin v. Fahy* [2001] 2 IR 279.

20. It is said that there are practical difficulties in providing an Irish translation of the large number of Acts that are made each year, many of which are very long and complex, both in terms of language and terminology. In that context, it is worth remembering exactly what this Court said in *Ó Murchú v. An Taoiseach* [2010] 4 IR 484: "*[T]he obligation to make available Irish versions of Acts of the Oireachtas must be fulfilled within a reasonable period of time, or as soon as may be practicable.*"

21. It is their submission that, should the High Court decision be upheld, there would be a risk that this period (17 months), or even 21 months, would henceforth be accepted as the standard period for providing translations of Acts, regardless of their length or complexity. That would not be neither practical or reasonable, given the lack of capacity available to do that work.

Issue 2

22. The early authorities have led to the emergence of an extensive body of case law, largely following the enactment of the Irish Constitution in 1937, that prescribe that a person who wishes to conducting official business in Irish should not be at a disadvantage compared to a person willing to conduct such business through English.

23. They state that more than 8,000 Statutory Instruments were made in the period from 2010 to 2021 inclusive. They claim that all of these may involve various legal proceedings or official business of various different types.

24. They submit that, in the first instance, there is nothing to be found in the text of the Constitution to indicate the existence of such an obligation, and in the second instance, that the translation of legislation from one language to another is work that requires a high level of training and a very high level of language proficiency, especially in the language into which the translation is being made. Of necessity, the resources available to the State for this purpose at any given time will be limited.

25. If there were a constitutional obligation to provide official translations of Statutory Instruments when requested by individuals (as in the present case), regardless of the volume or complexity of the instruments in question, this would be inevitably result in delays, which would likely be considerably long, to the proceedings in respect of which the request was to be made.

26. The State's obligation to facilitate the use of Irish for those who wish to use it for official purposes must be subject to some standard of proportionality and balance.

<u>Issue 3</u>

27. The Appellants submit that it is abundantly clear from both the Irish and English versions of Article 25.4.4 of the Constitution that it applies only to primary legislation, i.e., statutes enacted by the Oireachtas. It is submitted that regardless of how Article 25.4.4 is interpreted, it does not apply, in any way whatsoever, to Statutory Instruments which are never commenced as "Bills" and need never be signed by the President in order to become law.

28. Also raised here is the question as whether Article 25.4.4 may be interpreted as applying to Statutory Instruments made in order to give effect to European Union law and amending primary legislation, as permitted in law. But it is submitted that such an argument is untenable. Firstly, it is strongly opposed on the grounds of the clear wording of Article 25.4.4. Furthermore, if Article 25.4.4 were intended to apply to Statutory Instruments made to give effect to European Union law and to those Statutory Instruments amending primary legislation, there was ample opportunity to make such provision when Ireland first joined the European Economic Community, but no such provision was made, neither by way of amendment to the Constitution, nor by legislative means.

29. Moreover, this Court expressly opposed any such argument. In *Ó Murchú v The Taoiseach* [2010] 4 I.R. 484 at 510, when this Court stated:

> "There is nothing in the Constitution itself to support a conclusion that, even if Statutory Instruments and Acts of the Oireachtas are intertwined, a Statutory Instrument, which has a particular definition and status as subsidiary legislation, could ever be construed as if it were an Act of the Oireachtas, for the purposes of Article 25.4.4, or as being in any way akin to an Act of the Oireachtas so as to permit them to be considered within the ambit of any constitutional obligation arising from that Article."

Issue 4

30. It is submitted that the Respondents did not seek such an order. All that they sought was a declaration that the Appellants in these proceedings had a constitutional obligation to provide official translations of the Statutory Instruments in question.

Issue 5

31. It is submitted that it is difficult to understand how any reasonable limitations can be placed on the scope of a constitutional right in relation to the provision of official Irish translations of Statutory Instruments if such a right is recognized in the context of the present case, and that the learned High Court Judge in this case erred in declaring that the duty to make official Irish translations of Statutory Instruments extends to proceedings before tribunals and other bodies other than the courts of law, as this exception was borne of a recognition of a separate constitutional right of access to the courts, as recognized in *Macauley v Minister for Posts and Telegraphs* [1966] I.R. 345 and in subsequent cases.

32. With regard to the reference made to personal and property rights in Issue (5), it is submitted in the first instance that the non-availability of Irish translations of Statutory Instruments does not appear to prejudice them from availing of any of those rights.

Issue 6

33. As previously stated, the State can provide Irish language translations of other documents (and this is done under the Official Languages Act, for example) but this does not mean that there is a *constitutional* obligation to do so.

The Aarhus Convention

34. The Appellants in these proceedings do not question the importance of the Convention which is essentially deals with an obligation on all States Parties to ensure that members of the public are instructed as to how to seek access to information, to facilitate participation in decision - making and to seek access to justice in relation to environmental matters, but it is submitted that there is nothing in the Convention to indicate that it gives

individuals any right to demand that such information be provided in a language of their choice in circumstances where such information is available in another language which they readily understand.

Competing rights and interests

35. It is the Appellants' view that the order made by the High Court was more mandatory in nature in that it confirmed that it was necessary to prepare such translations within a reasonable period of time, which was specified in the order as a period of six months from the date of delivery of the judgment.

36. Furthermore, public law remedies, including declarations and *mandamus* orders, are of a discretionary nature, meaning that a court is entitled to refuse to grant such a remedy even in cases where the applicant has successfully established an entitlement to such a remedy. It is submitted, in the interests of the local community, that this Court should have due regard to these matters, and it would follow that it not be appropriate to grant an order which would delay the development of Irish Water's proposed development.

Respondents' Submissions

37. The Respondents discussed the case law, and submitted that the principles expressed in these decisions are as follows:

(i) Under Article 8, the State has a binding constitutional obligation in respect of the first official language;

(ii) none of the organs of the State, legislative, executive or judicial, can derogate from the status afforded to the Irish language as the National language of the State without violating the provisions of the Constitution;

(iii) The provisions of Article 8 of Bunreacht na hÉireann are stronger still in terms of giving recognition to the Irish language than was Article 4 of the Free State Constitution;

(iv) Those who are competent and desirous of using it as a means of expression or communication cannot be precluded from or disadvantaged in so doing in any national or official context.

Issue 1

38. An Irish translation of the Planning and Development Act, 2018 was available on the Oireachtas website on 13th April 2020. An Bord Pleanála stated by way of letter dated 21st February 2019 sent to the Respondents' solicitors that the oral hearing would come before An Bord Pleanála on 26 March 2019, i.e., one full year before the Act was made available in Irish. It is submitted that this is not a reasonable amount of time, let alone the *"fairly rapid procedure"* referred to by McGuinness J. in *Ó Beoláin v. Fahy*, and that the Learned High Court Judge was wholly entitled to conclude at para. 105 of her judgment that it was clear "that 17 months, as in this case, is not at all reasonable."

39. As Kelly J. clarified in *O'Donoghue v. Legal Aid Board* [2006] 4 I.R. 204, 213, a right must be effective, but the Act being made available in Irish more than a year after the hearing before An Bord Pleanála had passed would not be effective for the Respondents whatsoever.

Issue 2

40. It is submitted that laws are contained not only in acts of the Oireachtas but also in Statutory Instruments made by the government. As explained by Charleton J., delivering judgment in this Honourable Court in *Náisiúnta Leictreach Conraitheoir Éireann Cuideachta Faoi*

Theorainn Ráthaíochta v The Labour Court [2021] 2 ILRM 1, at p. 65, where he stated as follows: "As those drafting the Constitution of 1937 were aware, laws are to be found not only in parliamentary legislative measures but also in the myriad of statutory rules and orders made by government and in the bye-laws made by local councils and other authorities." it follows, accordingly, that the constitutional obligation to translate the text of Bills covers certain Statutory Instruments.

41. It is submitted that the State is bringing arguments before this Court that were not properly argued before the High Court. The State also appears to be relying on its historic failure to give effect to Article 25 of the Constitution to oppose any obligation to make the Statutory Instruments available in this case. This approach is unsatisfactory where the State is dealing with its obligations under Article 8 or Article 25.

Issue 3

42. The Respondents accept that the obligation to provide Irish translations of the Statutory Instruments arises not only from the text of Article 25 but also from Article 8 being read in conjunction with Article 25, in particular in the case of Statutory Instruments that amend primary legislation. Section 3 of the Act of 1972 is used to amend or repeal Acts of the Oireachtas by statutory instrument. Notwithstanding section 15.2 of the Constitution of Ireland, this practice is permitted under the Constitution when the amendment or repeal necessary is being made for the purposes of the application of European Union law in the State.

43. The following Statutory Instruments (which are listed in the schedule) *inter alia* amend the Act of 2000:

(i) European Union (Environmental Impact Assessment and Habitats) Regulations 2011 (S.I. No. 473/2011);

(ii) European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011 (S.I. No. 584/2011);

(iii) European Union (Environmental Impact Assessment) (Planning and Development) Regulations 2014 (S.I. No. 543/2014);

(iv) European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (S.I. No. 296/2018); agus

(v) European Union (Planning and Development) (Environmental Impact Assessment) (No. 2) Regulations 2018 (S.I. No. 404/2018).

44. As is clear from the decision of this Honourable Court in *Beoláin v. Fahy*, the third-named Appellant had a constitutional obligation to make an official translation of Acts of the Oireachtas available to the public in the first official language when the President signs the text of a Bill in the second official language, and it is clear that Acts of the Oireachtas, and specifically the Act of 2000, are not fully available in the principal official language unless those Statutory Instruments are available in the first official language.

45. Stemming from this duty under Article 25, functioning in conjunction with Article 8, it is clear that the third-named Appellant has a constitutional obligation to provide an official translation of any statutory instrument amending Acts of the Oireachtas when such statutory instrument is made.

Issue 4

46. More than three years after letters from the Respondents' solicitors to the Government Publications Office asking if an official version or an official translation of the Statutory

Instruments specified in the letters were available in Irish, not a single one of the Statutory Instruments sought by the Respondents are available.

47. The Respondents in the High Court (the Appellants in this case) did not suggest any specific timetable for the provision of the Statutory Instruments. There was, for example, no evidence that they could perform the duty within X, Y or Z months. In the absence of a clear declaration (or appropriate *mandamus* order) the Respondents would have to rely solely on the goodwill of the Appellants.

48. At para. 36, the Appellants submit that it is not appropriate to grant an order "which would delay the development of Irish Water's proposed development, in the interests of the local community. "The Appellants made no reference in relation to this in the Statement of Opposition. Irish Water was notified of these proceedings but did not take advantage of the opportunity to participate in the proceedings to challenge the relief sought by the Respondents. There is no evidence whatsoever from Irish Water to support Appellants' submissions in relation to this argument.

<u>Issue 5</u>

49. An Irish translation of the Statutory Instruments specified by the Respondents in order to be able to prepare, devise, administer and conduct an effective objection to the Compulsory Purchase Order in consultation with their legal team, free from impediment and disadvantage, and on the same terms as if they were willing to proceed in the English language.

50. The Appellants accept that the State is obliged to provide an official Irish translation of the rules of court, even notwithstanding that these are Statutory Instruments. They claim this is essentially because of the right of access to the courts, which is an implied constitutional

right, as identified, for example in *Macauley v. Minister for Posts and Telegraphs* [1966] IR 345. According to the Respondents, that right covers these facts, pursuant to section 135(8)(b) of the Act of 2000, which reads as follows; "Where an oral hearing relates to development within the Gaeltacht, the hearing shall be conducted through the medium of the Irish language, unless the parties to the appeal or referral to which the hearing relates agree that the hearing should be conducted in English."

51. In December 2015, at the request of the Irish Government, the European Council decided to increase the content available in Irish in order to gradually achieve full status for the Irish language in the European Union by 2022. The Irish language now has full equal status within the Union accordingly. All European Directives and Regulations are made available simultaneously in Irish and the other official languages. However, the State is arguing that it is not obliged to issue the Statutory Instruments in Irish here and that it is sufficient for them to be drafted and issued in English only.

52. Article 3.2 of the Aarhus Convention provides:

> "Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters."

Stemming from what is demonstrated above, it is submitted that the Appellants are in breach of their obligations under the Convention.

53. In this context, it should be noted that the purpose of most of the Statutory Instruments sought in these proceedings is to give effect to European Union law. At this point, when all European Directives and Regulations are made available, simultaneously, in Irish,

Statutory Instruments should also be made available in Irish, at least when they relate to proceedings before a court or tribunal, to enable the text of European law to be compared with national law being applied, and to enable the citizen to conduct his or her affairs in the Irish language.

Issue 6

54. It is submitted that there is no material difference between a person who is willing to conduct his or her business with the State in the English language and a person who seeks to do so in Irish. The Appellants are providing legislation and Statutory Instruments in a language appropriate to the first group but are failing to produce legislation in a language appropriate to the second group.

55. It is therefore submitted that the Appellants are in breach of Article 40.1 of the Constitution.

Scope of the appeal

56. In my view, it is not necessary to address all of Glann Mór's arguments in any detail, since the case here turns exclusively on a construction of Article 8 and Article 25 of the Constitution. Specifically, I do not see that the access to justice provisions of Article 9 of the Aarhus Convention can be prayed in aid in the present appeal. As this Court confirmed in *Conway v. Ireland* [2017] IESC 13, [2017] 1 IR 53, the Convention does not (yet) form part of the domestic law of the State for the purposes of Article 29.6 of the Constitution. Save for those specific obligations imposed by a variety of EU environmental law instruments which seek to give effect to that Convention as a matter of EU law (such as, for example, Article 6(3) and Article 6(4) of the Habitats Directive) – none of which arise in the present appeal – it follows that as the Convention does not form part of the law of the State, it cannot be relied on in the present proceedings.

57. I now propose to turn to a consideration of Article 8 and Article 25.4.4 of the Constitution which are at the heart of the present proceedings.

Category 1: The translation of Acts of the Oireachtas

58. The first question relates to the extent of the State's obligation to translate Acts of the Oireachtas, specifically the Planning and Development (Amendment) Act 2018. Although this Act was signed by the President on 19th July 2018, the translation of this Act was not made available to the public until the 13th, April 2020, when it was up-loaded onto the Oireachtas's website.

59. It is clear from the express terms of Article 25.4.4 that where an Act of the Oireachtas has been signed in one of the official languages of the State, a translation must be provided for the other official language. Since the overwhelming majority of Acts of the Oireachtas have been passed by both Houses of the Oireachtas in English and are signed into law by the President on that basis, the necessity for a translation within a reasonable period is manifest. As Hardiman J. pointed out in his judgment in *Ó Beoláin v. Fahy* [2001] 2 IR 279 at 324, it is clear from the official publications that Acts of the Oireachtas were published in bi-lingual form until about 1980. Thereafter, the practice changed for reasons which are unclear but are probably related to the acute difficulties of securing the services of the appropriate lawyer-linguists who would be available to do this difficult and challenging work.

60. In any given legal year there are approximately somewhere between 40 to 50 Acts of the Oireachtas duly signed into law: the most recent figures are 53 items of legislation in 2019; 32 in 2020 and 50 in 2021. The uncontested evidence in the present proceedings is that, as

of February 2021, there were some 450 Acts of the Oireachtas awaiting translation. One might say that there is therefore somewhere in the order of between 9 to 10 years of arrears.

61. It is scarcely necessary to say that this state of affairs gives rise to anxious concern. The extent of these delays speak for themselves and reflect a manifest non-compliance by the State with an express constitutional obligation. While it is difficult not to have sympathy for the plight of the Commission of the Houses of the Oireachtas and the acute difficulties in securing the appropriate staff, our judicial duty is nonetheless to uphold the Constitution and the law: see Article 34.6.1. Nevertheless, viewed objectively and in the absence of other evidence, it is hard to say that a delay of this nature in complying with an express constitutional requirement could be regarded as reasonable.

62. The situation might well be different if there was evidence regarding the efforts made by the State to secure the appropriate lawyer-linguists or whether there was a scheme of priority in respect of the translation options so that, for example, preference was given to commonly used or much litigated Acts of the Oireachtas.

63. This issue of non-compliance with constitutionally prescribed time limits was considered by this Court in *Re Article 26 and the Electoral (Amendment) Bill 1961* [1961] IR 169. Article 16.2.4 requires that the constituencies be revised every twelve years. The Oireachtas sought to comply with this requirement when it revised the constituencies with the Electoral (Amendment) Act 1959. That Act had been signed by the President on 26th November 1959 which was just within the 12-year period since the passage of the Electoral (Amendment) Act 1947 which had been enacted on the 27th, November 1947.

64. The 1959 Act was subsequently found to be unconstitutional in *O'Donovan v. Attorney General* [1961] IR 114. The Oireachtas then sought to pass new legislation revising the

constituencies. The President then referred this Bill, the Electoral (Amendment) Bill 1961, to the Supreme Court under Article 26. By the date this matter came before this Court in July 1961 it was clear that the 12-year limit had been breached by some two years and eight months. This Court held that this did not in itself now mean that the new 1961 Bill was unconstitutional. Rather, as there was a "satisfactory explanation" for the delay, the obligation was now to carry out the constitutional obligation "as soon as possible": see [1961] IR 169 at 180, per Maguire CJ.

65. While the context of the *Electoral (Amendment) Bill* reference is very different to the present one, the same underlying principle regarding the issue of compliance with constitutional time limits holds true. It is clear that the State is under a constitutional duty to effect a translation of all Acts of the Oireachtas as soon as possible but the extent to which such non-compliance is excusable will naturally depend on all the circumstances.

66. The delay in translating the 2018 Act was therefore excessive and unreasonable. Depending on the evidence and the extent to which there is a "satisfactory explanation" for any such delay, different considerations may well apply in other cases. I would therefore grant a declaration to this effect. In that respect, I would affirm the order of O'Hanlon J. to the effect that there had been an unreasonable delay on the part of the third and fourth named appellants in complying with their constitutional obligations so far as the 2018 Act was concerned.

67. Given, moreover, that the respondents are now in possession of a copy of the official translation of the 2018 Act, it is unnecessary to consider whether any further relief should be granted in respect of this issue.

Category 2: Statutory instruments made under s. 3 of the European Communities Act 1972 which have the effect of amending other Acts of the Oireachtas

68. I next turn to second category of legislative measures, namely, statutory instruments made under s. 3 of the European Communities Act 1972 ("the 1972 Act") which have the effect of amending other Acts of the Oireachtas in order to give effect to legislation such as Directives emanating from the European Union legislative process. There are five such statutory instruments at issue in the present proceedings.

69. It is unnecessary here to explore some of the complex case-law which has attended this question. It is sufficient to say that this Court has decided that the Oireachtas was constitutionally entitled to provide for the amendment of other Acts of the Oireachtas by means of statutory instrument made under s. 3 of the 1972 Act as this procedure was necessary for the purposes of Article 29.4.6 of the Constitution to give effect to our obligations of membership of the European Union to transpose such legislation in a timely fashion: see, e.g*., Meagher v. Minister for Agriculture and Food* [1994] 1 IR 329 and *Maher v. Minister for Agriculture and Food* [2001] IESC 32, [2001] 2 IR 139.

70. A singular feature, however, of such statutory instruments is that by virtue of s. 4(1) of the 1972 Act they have statutory effect (éifeacht reachtúil). This status was considered by this Court in *Quinn v. Ireland* [2007] IESC 65, [2007] 3 IR 395 at 410 where Denham J. said:

> "The regulations under consideration are not ordinary regulations, they are regulations with statutory effect. It is an unusual form of law - it is a regulation with statutory effect, but it is not a statute.
>
> The regulations under consideration "have statutory effect". Without attempting to give a conclusive definition of "statutory effect", it is clear that such a regulation

has an effect as if it were a statute. It gives a special status to the regulation. A consequence of such status means that it should be dealt with as if it were a statute of the Oireachtas. It has the same status as an Act of the Oireachtas. Therefore, the method by which it may be amended requires to be considered from the perspective of this statutory status. As a consequence of having such status, such regulations may only be amended by the Oireachtas. Regulations themselves cannot amend statutes of the Oireachtas - absent express constitutional provisions."

71. It is clear, therefore, that statutory instruments made under s. 3 of the 1972 Act which amend other statutes have therefore the same status in law as if they were statutes. It is, I think, unnecessary to determine the limits of this particular statutory deeming provision. What is critical for present purposes is that, where such statutory instruments made under s. 3 of the 1972 Act have amended other Acts of the Oireachtas, they have been given for all practical purposes the *same effect* as statutes.

72. It is clear, of course, that a statutory instrument – even one given statutory effect – was never a Bill presented to the President for his or her signature and promulgation as "a law in accordance with the provisions of this Article" for the purposes of Article 25.1 of the Constitution. Nor could it be suggested, for example, that it would be somehow open to the President to refer such a statutory instrument as a Bill to the Supreme Court under Article 26 of the Constitution. All of this means that such a s. 3 statutory instrument cannot be regarded as a Bill which was signed by the President for the purposes of Article 25.4.1. Section 3 does not, in its terms, deem a statutory instrument made under its provisions to be an Act of the Oireachtas, although it is to operate and take effect as if it were a statute so promulgated.

73. In these circumstances, the requirements of Article 25.4.4 requiring a translation of a Bill duly signed by the President in one of the official languages of the State cannot, *as such*, apply to such a statutory instrument: see, e.g., the comments of Macken J. in *Ó Murchú v. An Taoiseach* [2010] IESC 26, [2010] 4 IR 484 at 510:

> "Article 25 was drafted in order to deal with a particular context. It is the scheme or process by which bills, passed by both Houses of the Oireachtas, are presented for the signature by the President, the time limits for same, and the mechanism by which Acts of the Oireachtas are promulgated into law. It is not therefore surprising that delegated legislation in the form of Statutory Instruments is not included within its scope."

74. At the time of the enactment of the Constitution in 1937 there was only one mechanism whereby a measure could achieve the status of the primary law of the State, namely, the passage of a Bill through both Houses of the Oireachtas and its signature by the President. But it seems that the Constitution did intend that all legislative measures – whatever their precise origin – having the same status as an Act of the Oireachtas as representing the primary law of the State must be available in both official languages. Any other view could lead to the absurd or illogical result that there is no obligation to ensure that a correct and updated text of the primary legislation of the State is available in accordance with the constitutional mandate. The proper interpretation of the constitutional provision must therefore be that, if the primary text is altered by secondary legislation made under s.3 of the 1972 Act, then the updated and amended text be available in both English and Irish.

75. Since, however, our entry into the European Economic Community (now European Union) in January 1973, the amendment of primary legislation by statutory instrument

designed to give effect to the requirements of European Union law has become a commonplace. The constitutionality of this special legislative procedure has been upheld as being "necessitated" by the obligations of membership of the Union for the purposes of Article 29.4.6: see *Meagher v. Minister for Agriculture & Food* [1994] 1 IR 329. In effect, therefore, certain provisions of the Constitution – such as, in particular, the requirements of Article 15.2.1, designating the Oireachtas as enjoying the sole, exclusive power of legislation – have been *pro tanto* implicitly amended by Article 29.4.6, in that their original requirements must now yield to the requirements of membership.

76. It is true, of course, that in *Ó Murchú,* Macken J. stated – as we have just seen – that there was no constitutional obligation to translate statutory instruments. While that statement is, of course, correct, it is important to note that that case did not concern the very special case of statutory instruments made under the 1972 Act, which have the effect of amending the primary law of the State – namely, Acts of the Oireachtas – in respect of which there is an express constitutional obligation to effect a translation.

77. All of this, therefore, must be taken to mean that the requirements of Article 25.4.4 must be applied to statutory instruments which amend the primary law of the State, as any other conclusion would jeopardise a coherent interpretation of these constitutional provisions. Another way of putting this is that the underlying object of Article 25.4.4 was and is that the primary law of the State must be available to the public in both of the official languages of the State. If the effect of Article 29.4.6 was to provide a constitutional foundation for a new mechanism, whereby the primary law of the State could be amended by statutory instrument, the corollary must be – if we are to remain faithful to that underlying objective

of Article 25.4.4 – that the State is obliged to provide an official translation of any statutory instruments amending that primary law.

78. I would accordingly grant a declaration that the respondents are obliged to provide a translation of those identified statutory instruments made under s. 3 of the 1972 Act insofar as – but only insofar as – they amend the primary law of the State. This finding in itself, however, should not be a ground for any further relief. Given that the third-named respondent to the appeal is perfectly fluent in English, there is no reason, for example, to restrain the hearing of the oral hearing in this case. In any other future cases where it becomes clear that the State has failed in this constitutional duty, it will be generally sufficient to grant a declaration to this effect at least in the absence of clear and compelling evidence of prejudice on the part of any applicant.

Category 3: Other forms of statutory instruments

79. I now turn to the third category of legislative measures, namely, the other statutory instruments at issue in these proceedings. These are statutory instruments all associated with the compulsory purchase process under a variety of heterogeneous Acts of the Oireachtas and the statutory instruments of which do not amend the primary law of the State. In effect, therefore, the respondents maintain that the appellants are obliged to effect a translation of certain named statutory instruments (other than those made under s. 3 of the 1972 Act and which amend the primary law of the State) which are concerned with the compulsory purchase procedure: examples here include the Housing Act 1966 (Acquisition of Land) Regulations 2000 (S.I. No. 454 of 2000) and the Housing Act 1966 (Acquisition of Land)(Amendment) Regulations 2001 (S.I. No. 320 of 2001).

80. It is clear from the decision of this Court in *Ó Murchú* that there is no *general* obligation on the State to effect a translation of the statutory instruments. In that decision, it was made clear that the specific requirements of Article 25.4.4 apply only to Acts of the Oireachtas (including, as we have just seen, statutory instruments made under s. 3 of the 1972 Act which amend other Acts of the Oireachtas). Moreover, as this Court held, Article 8 does not impose any general constitutional obligation to effect such a translation of this category of statutory instruments.

81. It is true that in *Ó Murchú,* this Court held that there was indeed a constitutional duty to effect a translation of the Rules of Superior Courts. Yet it is perfectly clear that this decision was itself intrinsically bound up with ensuring the constitutionally based right to appropriate access to the courts for the benefit of those (along with their professional advisers) who wished to conduct their litigation in Irish. For my part, I do not think that *Ó Murchú* is of any real assistance to the applicants in the present case. I say this for the following reasons:

82. First, there is no suggestion that the respondents are in fact prejudiced in any appreciable way by the absence of an Irish translation of the relevant statutory instruments. There is no suggestion that the third respondent does not speak fluent English or that her legal advisers would in any real sense be placed at a disadvantage in challenging the compulsory purchase order before the Board at the oral hearing if no Irish language version was to hand for their benefit.

83. Second, counsel for the freagróirí / respondents, Mr. Galligan SC, contended that the true *ratio* of *Ó Murchú* was to the effect that any person with a genuine and *bona fide* interest in doing business through Irish was entitled to have a translation of all relevant statutory

instruments which might be related to that task or interest. If, however, the *ratio* of *Ó Murchú* was as broad as that it would mean, in effect, that Article 8 did, after all, impose such a general duty of translating all statutory instruments – a proposition which this Court expressly rejected – because it would be almost always possible to identify a range of statutory instruments associated with a particular profession or business. It would mean, for example, that a dairy farmer would be entitled to have all the statutory instruments associated with dairying or even agriculture more broadly translated. Much the same could be said, for example, for an entire range of professions, trades, callings and even personal interests.

84. Third, I consider that *Ó Murchú* is instead really a special and exceptional case which is clearly bound up with the administration of justice and access to the courts. Inasmuch as O'Hanlon J. held otherwise, I consider that this goes too far and imposes too great a burden on the clearly stretched translation resources of the State. The true rule is that, some quite special and exceptional cases aside, there is no *general* obligation to effect the translation of statutory instruments, *other* than those which by virtue of having been made under s. 3 of the 1972 Act have themselves amended the primary law of the State.

85. Fourth, I do not think that the statutory instruments at issue can be said to be intrinsically bound up with the administration of justice or of access to the courts. To that extent, therefore, the present case is quite different from the rules of court which were at issue in *Ó Murchú*.

<u>Conclusions</u>

86. In conclusion, therefore, for the reasons just stated, I would affirm the decision of O'Hanlon J. insofar as she concluded that the respondents (in the High Court, herein the

appellants) had delayed unreasonably in providing a translation of the Planning and Development (Amendment) Act 2018.

87. I would also affirm the decision of O'Hanlon J. inasmuch as she held that there was a constitutional obligation to effect a translation of those statutory instruments made under s. 3 of the 1972 Act which also amend Acts of the Oireachtas and thereby as a result, constitute part of the primary law of the State. Absent clear and compelling evidence of prejudice, the mere fact that the State has failed to comply with the requirements of Article 25.4.4 of the Constitution in failing to supply such translations in a timely manner is not in itself a ground to justify the granting of any further relief, such as, for example, an injunction to restrain the proposed oral hearing.

88. I would, however, allow the appeal insofar as O'Hanlon J. held that the appellants were obliged to effect the translation of the other named statutory instruments set out in the Schedule to her order dated the 18th August 2021. Save for the special status of statutory instruments made under s. 3 of the 1972 Act, which amend Acts of the Oireachtas, there is no *general* obligation on the respondents to translate statutory instruments.