

APPROVED

[2024] IEHC 385



THE HIGH COURT

H.P.2024.0003223

BETWEEN

MICHELLE KEANE

PLAINTIFF

AND

IRISH GOVERNMENT, ATTORNEY GENERAL & ROSSA FANNING

DEFENDANT

Ex-Parte Judgement of Mr Justice Nolan delivered on the 24th day of June 2024

Introduction

1. This is an application brought by the Plaintiff to seek an interim injunction preventing the Irish government and the Attorney General to stop the passing of the EU Migration and Asylum Bill through the Houses of the Oireachtas. The Plaintiff seeks an interim injunction so that the Irish people may be given an opportunity to vote by way of referendum.
2. As part of her submission, she read a 12-page document entitled "*Challenge the unlawfulness and illegality and unconstitutional nature of the EU Migration Act in the High Court and Supreme Court and European Court and International courts*".
3. She alleges that the asylum and migration management regulations, one of the five legislative files that constitute the bill, overrides Ireland's sovereignty enshrined in Article 6.1

and Article 15.2.1 of the Constitution by surrendering power to the EU Commission to determine how many relocated asylum seekers from countries under migratory pressure Ireland must receive and the minimal level of financial contributions per asylum seeker the taxpayer must pay.

4. The submission continued that there is no provision for mandatory deportations, no penalties to enforce deportations. She referred to other matters which went beyond the concept of legal submissions, including reference to terrorism and security. In particular, she referred to the alleged increase of rape and crime in Co. Kerry. By implication, she seems to be contending that this may be the fault of undocumented migrants. There is no evidence whatsoever to support this contention and I reject it.

5. Further she says that the country cannot deal with its own housing, hospital or security crisis. Therefore, she questions how can it deal with further immigrants which will be allowed into the country under the bill. She believes the people should decide.

6. Mr. Fennelly BL counsel for the State, challenges this application on three bases. Firstly, he says that it is defective on its face for two reasons. The Plaintiff seeks interim injunctive relief but no substantive relief. Secondly, he says the application is directed against the government and the Attorney General, but the government (and the Attorney General) and the Oireachtas are separate legal organs of state and therefore the government cannot stop the Oireachtas from carrying out its business.

7. The second ground relates to the issue of separation of powers. In this regard, he relies upon three cases namely, *Wireless Dealers Association v the Minister for Industry and Commerce* (unreported, Supreme Court, 14th of March, 1956), *Slattery V An Taoiseach* [1993] 1 IR 286 and *Callely v Moylan* [2024] IESC 26.

8. All three of these cases are Supreme Court decisions which bind this court. In simple terms, what the Defendants are saying, it is that the High Court does not have jurisdiction or a discretion in relation to the matter. The High Court cannot make the orders sought.

9. The Supreme Court have said that if the court were to grant an injunction, it would clearly be an interference with the process of legislation, which not only is there no warrant in the Constitution, but which would be contrary to its plain intention. In *Slattery*, the Supreme Court said the court has no power to interfere by means of an injunction remedy or otherwise in the operation of legislative and constitutional processes authorised by the Constitution.

10. The third ground which the Defendants seek to defend is the matter is pursuant to Article 29.4.7^o.iii, introduced by the twenty-eighth amendment to the Constitution in 2009 (Twenty-Eighth Amendment of the Constitution (Treaty of Lisbon) Act 2009 [*Allowed the State to ratify the Treaty of Lisbon*]).

11. Under the heading of “*International Relations*”, the Article says: -

“The State may exercise the option or discretion under Protocol No.21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, including the option that the said Protocol No.21 shall, in whole or in part, cease to apply to the State”.

Crucially, this can only be exercised subject to the prior approval of both Houses of the Oireachtas.

12. That is what is happening here. The Seanad has already passed this legislation and the matter is pending before the Dáil tonight.

13. In response, the Plaintiff relies upon the Constitution. She says that the substantial relief she is looking for is a referendum of the people. In relation to the power of the government to stop the legislation going through the Dáil, she asks the court to do that on her behalf. In relation to the case law, she disagrees and states that the Constitution sets out the

matter in black and white. Finally, in relation to Article 29 she relies upon Article 6 of the Constitution which says:-

“1. All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good.

2. These powers of government are exercisable only by or on the authority of the organs of State established by this Constitution.”

14. There are a number of things that I would like to say about this application. Firstly, the proceedings which are presently before the court are the second set of proceedings which the Plaintiff has issued. The first were issued on the 16th of June 2024. That is 9 days ago. The Plaintiff did not seek an injunction at that time. Instead, she has issued a separate set of proceedings. From a procedural perspective, this seems to me not to be permissible and potentially an abuse of process, but to be fair to the Defendants, they have not taken any major issue with this error, but have tried to deal with the application on its merits.

15. The next issue that I should point out is that there is no undertaking as to damages. An injunction will not be granted unless there is such an undertaking as to damages.

16. I now wish to deal with the merits of the application. The Plaintiff has not made any case as to how this legislation would be in breach of the Constitution, other than simply saying it would be. She says that it is her opinion. However, that in itself is not enough, there has to be a legal basis for bringing this application and she has set out no legal basis whatsoever.

17. It seems to me that there are clear deficiencies on the face of the proceedings which in themselves may well be fatal. But to a very limited extent, I am prepared to overlook these

deficiencies since the Plaintiff is a personal litigant. However, if the matter were ever to get to a full hearing, I think they would prove to be fatal.

18. The real problem with the bringing of these proceedings is that the Constitution and the case law are definitive. The High Court does not have the power to stop the Houses of the Oireachtas dealing with its work. It is simply a matter of separation of powers. If the High Court made the orders which she seeks, it would be interfering with the working of the Oireachtas. The whole basis of a constitutional democracy is that there is a separation of powers between the government, the Oireachtas, and the courts. Such an order would breach that separation of powers.

19. The decision in *Wireless Dealers Association and Slattery* says it in terms which could not be clearer, that the court has no power to interfere by means of an injunction with the operation of the legislative and constitutional processes authorised by the Constitution. (See also *Crotty v An Taoiseach & Others* [1987] IESC 4 and *Callely*).

20. This brings me to the last argument, namely the recent amendment to the Constitution. What is going on in the Dáil tonight, is in accordance with the Constitution and indeed authorised by it. Whilst the Plaintiff may not like it, the fact remains that the people have already voted and have given the Oireachtas the power to do what it is doing.

21. In those circumstances, it seems to me there is no basis whatsoever for granting an injunction. And accordingly, I refuse the Plaintiff's application for an injunction.