

**The Irish Language and The Irish Legal System:-
1922 to Present**

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Abbreviations and Acronyms

ECRML	European Charter on Regional and Minority Languages
ECHR	European Charter on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
J, P, CJ, LJ	Used after a Judge's name to denote a Judge, President, Chief Justice or Lord Justice of a Court. Rank is the rank held by the judge at the time of judgment. Eg Murphy J denotes Mr Justice Murphy. JJ used as the plural form.

Legal Journals – Citation abbreviations and full titles

Bell's Notes	Historic Legal Cases prior to reporting system being in place
ECR	European Court Reports
Eur Ct HR	European Court of Human Rights Series
EHRR	European Human Rights Reports
IEHC	Irish High Court Reports
IESC	Irish Supreme Court Reports
ILRM	Irish Law Reports Monthly
ILTR	Irish Law Times Reports
IR	Irish Reports

IRSR	Irish Reports Special Reports (Special Irish Language Edition)
NICA	Northern Ireland Court of Appeal Reports
NIQB	Northern Ireland Queens Bench Reports
SCCR	Scottish Criminal Court Reports
SCR	Supreme Court Reports (Canada)
US	United States Reports

Summary

This thesis examines the central research questions as to what extent the Irish language plays a significant role in the Irish legal system and how parties seeking to utilise the legal in the legal system fare. The thesis applies standard jurisprudential research methodologies in analysing the key legal developments which have occurred in Ireland from independence in 1922 until today where Ireland is a modern constitutional democracy and member of the European Union. The role of the 1937 Constitution, in particular, is key given the strong legal reliance upon its text in determining the legal status of the Irish language and the extent to which that status can be relied upon in legal proceedings. By interpreting case law from the foundation of the State through until the seminal case of *Ó Beoláin* in 2001 the gradual development of Irish language rights can be charted. The implications of the *Ó Beoláin* decision are examined including many of the cases which came about in the immediate aftermath of the case.

Among the consequences of the *Ó Beoláin* case was the Official Languages Act, 2003 which imposed new obligations upon the State and State agencies as well as notionally providing additional supports for those seeking to access justice through the medium of Irish. The effectiveness of this legislation is examined together with recent developments such as the trend towards legal realism and the implications arising out of the Irish language's interaction with international law. Legal education and training through the medium of Irish is identified as a key factor which contributed to all of areas identified. The provision of services and the ability to access justice through the medium of Irish ultimately depends on there being professionals with sufficient Irish to provide services. The dissonance between the notional status of the Irish language and the reality faced by those seeking to access justice through the medium of Irish is a constant theme throughout the thesis.

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Chapter 1 - Introduction

“If Irish be no longer the language of the court, or the senate, yet the pulpit and the bar require the use of it; and he that would...investigate the claims of justice must be versed in the native tongue if he expects to be generally understood, or to succeed in his researches. It has been said indeed that the use of this language should be abolished, and the English prevail universally. But without entering into the merits of this position, while the Irish exists, and must exist for many years to come, it is surely reasonable and desirable, that every person should be able to hold converse with his countrymen; as well as to tase and admire the beauties of one of the most expressive, philosophically accurate, and polished languages that has ever existed” - Rev. William Neilson (1808)¹

Ireland has existed as a distinct nation and Irish as a distinct language for thousands of years although the relationship between nationhood and the language is a complex and difficult one. Indeed the very fact that whilst Ireland has long been a nation without enjoying the recognition of an independent state until 1922 causes its own difficulties. The manner in which a state interacts with a language is firmly rooted within the legal system of a state. The legal system of a state allows it to express desires and norms in formalised and coherent manner and shape the united goals and aims of the citizens who confer upon the state the popular sovereignty with which the state can legitimately govern. Indeed it is most often through the legal system in modern constitutional democracies that rights (including language rights) are recognised. This thesis discusses the relationship between the Irish language and the legal system of Ireland from 1922 (when the modern Irish State was founded) until the present. In doing so this thesis examines the nature of the legal status afforded to the Irish language and the practical consequences thereof. Whilst there has been research

¹ Rev. Neilson, W (1808) “An Introduction to the Irish Language (1808)” - Reprint (Iontaobhas ULTACH, Béal Feirste, 1990) Preface at p. xi

investigating the status of the Irish language from a linguistic point of view the legal status of the Irish language and the role of the Irish language within the legal system itself remains underdeveloped.

Chapter 1 gives the reader an introduction to the thesis' research questions and states the reason for undertaking the work. The rationale for such research is examined and a roadmap of the thesis is provided. In order to properly ground the research it is essential to provide the context in which the research has been carried out. To this end a historic and linguistic context is provided in order to establish how the Irish language has found itself in the position it now occupies in Ireland. Furthermore, given the interdisciplinary nature of this work a legal context is provided in order to provide the reader with a number of threshold concepts of Irish law, which in many instances differs greatly from the law of the United Kingdom. Finally a methodology section is included to provide an explanation as to how the research was conducted and which methods were used to order to synthesise and analyse the research data.

Chapter 2 introduces the reader to the historic development of the Irish legal system and how it relates to the Irish language. Save for the odd exception the legal status of the Irish language and the enacting of Ireland's first Constitution are inextricably linked. The period examined by this chapter stretches from the early 1900s through to circa 2003. This period is selected as 2003 represented somewhat of a high water mark in terms of the access to the courts for those who sought to engage with the Irish language. A textual analysis of the constitutional status afforded to the language under the 1922 and 1937 declarations reveals that

the “governmentality” based approach of the Irish State contemplated a bilingual state including a bilingual legal order. A legal doctrinal analysis of the resulting case law which developed initially under the 1922 constitution shows that the constitutions of Ireland (1922 and 1937) have been the primary drivers in promoting language rights and the rights of those who seek to engage with the legal system through the medium of Irish. Very often these rights have been recognised only to be limited to particular narrowly defined instances or in some cases rowed back upon completely. The chapter demonstrates how the *Ó Beoláin*² decision served to alter the perception of language rights in Ireland and how the failure of the State to meet the relatively low standard required by the Constitution could have serious consequences such as declarations that certain legislation is invalid due to unconstitutionality and the failure of major prosecutions which are dependent on such legislation.

Chapter 3 focuses on the development of case law from circa 2003 onwards. A number of factors combine to merit a clear delineation between the cases examined in Chapter 2 and those which are discussed in Chapter 3. In the first instance the provisions of the Official Languages Act 2003, which had particular influence on the legal system, began to enjoy the full force of the law and the practical implications of same became apparent. Chapter 3 demonstrates that during the same period there was an increase in the number of Irish language cases concerning the right of access to the courts through the medium of Irish. The chapter highlights how there was an overall change in the approach from the

² [2001] 2 IR 279

courts from the position previously adopted by the court in *Ó Beoláin*³ towards a new approach which is particularly evident in the *Ó Murchú*⁴ case in the Supreme Court. The increased reliance by the Court on procedural remedies rather than broad recognition of linguistic rights is discussed in light of the developing case law. Chapter 3 analyses which factors drove these changes and what the effect was on those who now seek to access justice through the medium of the Irish language in Ireland. Chapter 3 also focuses on the effect of the operation of the Office of the Coimisinéir Teanga [the Language Commissioner] on the language rights discourse in Ireland.

Chapter 4 is concerned with the international context in which the Irish language operates and what impact international law has on those who seek to engage with the legal system through the medium of Irish. Chapter 4 firstly looks at what relationship international law has with Irish law before elaborating on particular areas of law which are concerned with languages. Of particular interest in this process is the competing claims of a language which is for all factual purposes a minority language but which is also, as demonstrated in Chapter 2 the first official language of a State. The Irish language has struggled to be placed within a sphere of either the official languages such as English, French, German etc or the officially recognised minority languages such as Basque, Catalan, Welsh etc due to the dissonance between the legal status and the linguistic reality of the language's place. Chapter 4 examines this dynamic in terms of understanding how many international law elements focus on the protections afforded to languages such as the Irish language due to their status as minority languages.

³ [2001] 2 IR 279

⁴ [2010] 4 IR 520

The European Charter on Regional and Minority Languages and the role played by European Union Law are analysed. The position of the Irish language in Northern Ireland is of particular interest in this regard whereby Irish speakers in Northern Ireland, have recognition by virtue of the European Charter on Regional and Minority Languages and official status afforded to Irish at EU level but still lack a basic recognition within domestic law. The European Union status of the Irish language is investigated as an example of a sphere where the competing claims of official and minority languages can be reconciled to a certain degree.

Chapter 5 is concerned with an acknowledged key factor in the operation of a bilingual legal order: legal education. Chapter 5 firstly focuses on the general concepts of bilingual legal education and legal education in a second or minority language which brings with it differing demands to traditional monolingual legal education. The historical position of legal education and the Irish language is discussed from the early developments under the ancient Gaelic legal system of Ireland through to the intervention of the Irish State post independence. The effectiveness of the State intervention is evaluated with a focus on all the key stakeholders involved in the legal system including law schools, lawyers, the judiciary and other actors such as the police force and other support services including translation and interpreting. The range of offerings which currently exist for legal education through the medium of the Irish language and the State support for same are discussed in the context of an official minority language which also enjoys official status at a European level.

Chapter 6 offers conclusions and recommendations based upon the research carried out in preparation for this thesis. This conclusion summarises the main threads of the foregoing and assesses their impact upon both the legal system itself and the individual citizen who wishes to access justice through the medium of the Irish language. The juxtaposition of the status afforded to the language with the reality of use of the language in Irish society is assessed with a view to the future viability of a bilingual legal order in both practical and theoretical terms.

In essence the central research questions for this thesis are: what role does the Irish language play within the legal system of Ireland and how has this role developed over time. These questions are set against the specific background of the need to critically analyse issues such as; the dissonance between the constitutional status and the legal reality which takes account of the status of the Irish language as a de facto minority language despite being the first official language; the impact of certain key cases and the Official Languages Act 2003; international legal measures and the impact of legal education through the medium of Irish.

2. Historical, Linguistic and Legal Context

An analysis of the use of the Irish language within the Irish legal system cannot properly be carried out in isolation from its period in history. As Mac Giolla Chríost notes “Almost from its inception as the subject of scholarly concern, the fate of the Irish language and that of Ireland, its people, the land and the State,

have been locked together on a shared trajectory”⁵. Thus, in order to properly assess the full ramifications for the Irish language and the use of the Irish language within the legal system and the provision of language rights in Ireland it is at first necessary to give an overview of the language itself and what context the legal system finds itself within the overall linguistic situation in Ireland. A brief overview of the historic and linguistic situation of the Irish language together with a short insight into the fundamentals of the Irish legal system is necessary in order to properly frame the research in later chapters.

2.2 Historic and Linguistic Context

The Irish language is recognised as a distinct Celtic language of the broad Indo-European branch of languages. The use of Celtic can be seen as somewhat problematic given the various implications (linguistic and cultural) of such a term, Ó Murchú for example notes that

“Irish is a Celtic language. So to describe it is to make an abbreviated statements about its origin and about its historic relationships to other languages and families of languages...[i]t follows that for the discussion of linguistic relationships it is convenient to have a generic term for Irish and Welsh to express their closer affinity when compared with other languages. The term used is Celtic.”⁶

Although there is little if any certainty about when Celtic languages arrived in Britain and Ireland it is widely accepted that a Celtic language arrived in Ireland

⁵ Mac Giolla Chríost, D. “The Irish Language in Ireland: From Góidél to Globalisation” (Routledge, London, 2005) at p. 1

⁶ Ó Murchú, M. “The Irish Language” (Bord na Gaeilge, Baile Átha Cliath, 1985) at p. 7

in and around 500- 300 BC⁷. Irish and Welsh whilst both Celtic languages differ substantially and are usually divided into two classes of Celtic languages being Q and P Celtic respectively, what is uncertain is when and how exactly the split in the branch of Celtic languages occurred. As Ó Murchú notes

“it is not now possible to say whether the language which the Gaels brought with them to Ireland was already a distinctive variety of Celtic, or whether its distinctiveness developed in its subsequent isolation from the rest of the Celtic world...it is at least not improbable that Goidelic evolved as a divergent variety of Celtic in Ireland and, if this is so, is truly indigenous to Ireland.”⁸

What is apparent is that the Irish language became the dominant language on the island of Ireland and was spread to other territories such as the Gaelic speaking areas of modern Scotland and was present in the Isle of Man. As observed by Ó hUiginn “Irish history proper begins in the fifth century AD with the arrival of Christianity, Latin and literacy”⁹. While some form of literacy existed in Ireland prior to the arrival of Christianity it existed in the form of Ogham markings. Ogham was an ancient Irish writing system which used a series of scores or notches on standing stones to represent letters. Such stones were usually used to mark territory or to signify holy sites or burial grounds and thus were of little use in terms of spreading literature and knowledge. Ó hUiginn describes Ogham as an “archaic prestige language for use in monumental inscriptions”¹⁰. Although Latin was the language of the Church the arrival of Christianity in Ireland allowed for the establishment of monasteries and centres of learning where literacy enabled the documenting of the Irish language for the first time. The oral

⁷ Ó hUiginn, R. “The Irish Language” in “A New View of the Irish Language” Nic Pháidín, C. and Ó Cearnaigh, S. Eds) at p. 3; Purdon E “The Story of the Irish Language” (Mercier Press, Dublin, 1999) at p. 9

⁸ Ó Murchú, M. “The Irish Language” (Bord na Gaeilge, Baile Átha Cliath, 1985) at p. 14

⁹ Ó hUiginn, R. “The Irish Language” in “A New View of the Irish Language” Nic Pháidín, C. and Ó Cearnaigh, S. Eds (Cois Life, Baile Átha Cliath 2008) at p. 4

¹⁰ Ibid at p. 5

tradition known as *an seanchas* was (and to a certain extent remains) extremely important in Irish culture whereby stories, folk tales, poems and even laws were passed down from generation to generation orally. With the advent of the centres of learning and study which arrived with Christianity many of these oral histories and traditions were written down by Monks and other religious scholars, often in the margins of the religious texts upon which they were working. As noted by Ó Murchú “omitting ogham inscriptions, the earliest contemporary records to survive are glosses and marginalia in manuscripts which have been preserved on the Continent”¹¹. The spread of literacy allowed for the limited but significant spread of written Irish although the oral tradition remained important due to lack of overall literacy in society. Records of this spread are to be seen in many of the religious texts prepared at the time which often had Irish language text in the margins of the main Latin text. Traditionally, Irish is divided into three separate stages of development namely Old Irish from 600 AD to 1200 AD, Middle Irish from c. 1200 – 1650 AD and modern Irish being the period from 1650 AD to the present. Ó hUiginn suggests¹² that the modern period ought to be divided between the post classical (1650-1880) and the revival period (1880- present). During the Old Irish period the language was the dominant language used almost universally by all classes in Ireland. Latin was used as a language within the Church and in some instances a lingua franca but lacked any substantial population base that used the language as an everyday language. While there were significant contacts with the Norse world during the old Irish period, including the establishment of a number of significant permanent, Norse

¹¹ Ó Murchú, M. “The Irish Language” (Bord na Gaeilge, Baile Átha Cliath, 1985) at p. 16

¹² Ó hUiginn, R. “The Irish Language” in “A New View of the Irish Language” Nic Pháidín, C. and Ó Cearnaigh, S. Eds (Cois Life, Baile Átha Cliath 2008) at p. 4

settlements these settlers intermingled and intermarried with the native Irish and soon adopted the Irish language with remnants of the Norse language adopted into Irish, predominantly words associated with seafaring or marine matters. As Ó Murchú notes that references in annals in the early part of the ninth century give accounts Norse settlements while accounts towards the middle of the ninth century make reference to *Gallghaoidhil* (Norse-Irish) although from the mid to late tenth century onwards there are no further reference to *Gallghaoidhil* as a separate people from the native *Gael*¹³ suggesting that many of their number had assimilated into the native culture. After the Gaelic victory at the Battle of Clontarf in 1014 Gaelic culture and language enjoyed supremacy and the Irish language was without dispute the language of Ireland, a position which would be largely maintain for the next 400 years with some exceptions. As noted by Ó Ruairc¹⁴ all of Ireland could be regarded as a Gaeltacht in 1170 however political developments would soon lead to a certain degree of change with the arrival of the Anglo-Normans to Ireland in the late twelfth century. The Anglo-Normans arrived to Ireland and began to conquest the country settling within the Pale (the Greater Dublin region) and in various rural strongholds. Although the Anglo-Normans brought with them French and later English¹⁵ the vast majority of the population of Ireland continued to use Irish as their everyday language¹⁶. The Anglo-Norman linguistic impact can be primarily seen with the introduction of the Common Law¹⁷ and a strong influence on the development of legal language in the Irish language where many of the terms are borrowings from Anglo-

¹³ Ó Murchú, M. “The Irish Language” (Bord na Gaeilge, Baile Átha Cliath, 1985) at p. 19

¹⁴ Ó Ruairc, M. “I dtreo Teanga Nua” (Baile Átha Cliath, Coise Life, 1999) at p. 7

¹⁵ Ó Murchú, M. “The Irish Language” (Bord na Gaeilge, Baile Átha Cliath, 1985) at p. 21

¹⁶ See legal context below for effect on legal Irish

¹⁷ See generally Chapter 2

Norman although the Gaelic legal system itself continued to exist separately from the Anglo-Norman Common Law¹⁸. While the arrival of the Anglo-Normans brought a linguistic diversity to what was essentially a monolingual society with the exception of the use of Latin in limited circumstances. Although French and later English made some inroads into the dominance of the Irish language with the exception of the Pale, where English remained the majority language, English speaking Normans became isolated in their rural dwellings and eventually adapted to the Irish language. Even in towns established by the Normans which had traditionally been English speaking Irish began to dominate as noted by Ó Murchú “during the 15th century the boroughs, weakened by the Black Death and in economic decline, were gradually becoming Irish speaking as well, *though English was maintained as the vernacular language of law and administration.*”¹⁹. Smyth does suggest however that patronage and even adoption of the Irish language should not be understood as a sign that the Anglo-Normans and the Gael were becoming one people and that clear divides still existed²⁰. The Anglo-Norman authorities attempted to stem this tide by passing measures as part of the Statute of Kilkenny 1366 which according to the text of the Statute itself were brought forward because

“now many English of the said land, forsaking the English language, manners, mode of riding, laws and usages, live and govern themselves according to the manners, fashion and language of the Irish enemies; ...whereby said land, and the liege people thereof, the English language,

¹⁸ *ibid*

¹⁹ Ó Murchú, M. “The Irish Language” (Bord na Gaeilge, Baile Átha Cliath, 1985) at p. 21, emphasis added. Various events, particularly the sustained attempts at the plantation of Ireland meant that a situation never arose where Ireland became fully Irish speaking again and the English language maintained its dominance in the fields and law and administration.

²⁰ Smyth, W.J “The Making of Ireland: Agendas and perspectives in Cultural Geography” in “An Historical Geography of Ireland”, Graham, B.J. and Proudfoot, L.J. (eds) (Academic Press, London, 1993) 399 at p. 417

the allegiance due to our lord the King, and the English laws there, are put into subjection and decayed”²¹

Crowley notes that statute was aimed at the English in Ireland to “ensure that they remained English”²² Mac Giolla Chríost cautions that the mere enacting of the statute should not be seen as evidence of a popular resurgence of the Irish language²³. Ultimately the Statute of Kilkenny failed to have any appreciable impact and the adaption to Irish culture continued apace even if divergent political views still existed²⁴. It was not until political and religious developments in England brought about by the Reformation, the Defeat of the Gaels at the Battle of Kinsale in 1601, the subsequent Flight of the Earls and the plantations of Ireland and Ulster in particular caused a slow and gradual linguistic shift to occur which culminated in the utter collapse of the number of speakers of Irish post the Great Famine (c. 1850 onwards). With the collapse of the Gaelic order in Ireland after the flight of the Ulster Earls the Irish language was devoid of any noble patrons and various English legal enactments and laws served to further diminish the status of the Irish language. The Penal Laws which were an additional corrosive factor were enacted in and around 1695 and provided for legal discriminations against Roman Catholics, the vast majority of whom were Irish speakers. Ó Murchú notes that “when social and economic mobility improved, those of the Irish-speaking community who began to achieve prosperity adopted English as the language associated with, and indeed required

²¹ Statute of Kilkenny, 1366. Translation from Norse in “SOURCE”

²² Crowley, T. “Wars of Words – The Politics of Language in Ireland 1537-2004” (Oxford University Press, Oxford, 2005) at p. 5

²³ Mac Giolla Chríost, D. “The Irish Language in Ireland: From Goídel to Globalisation (Routledge, Oxon, 2005) at p. 76

²⁴ Ó Murchú, M. “The Irish Language” (Bord na Gaeilge, Baile Átha Cliath, 1985) at p. 21

by, their new status”²⁵. Purdon²⁶ reflects this view noting that factors such as increased urbanisation, improvements in communications, “increased bourgeois prosperity”, the decision of the Catholic Church to only provide for English in their seminary built at Maynooth in 1796 and the association of spoken Irish with “drunkenness, idleness and improvidence” as key factors in the ongoing decline of the Irish language. Mac Giolla Chríost notes that “the position of the Irish language was already being eroded by the extension of modes of governance, administration and law which were driven by the English language. Acquiescence in this by the Gaelic Irish and the Anglo-Irish was instrumental in this revolution in governance”²⁷. Although no precise figures exist for the number of Irish speakers prior to 1851 where a language questions was placed upon the census for the first time a clear decline in the number of people who identify as Irish speakers is apparent from 1851 onwards. In 1851 census figures show 1,524,286 people stated that they could speak Irish which on the face of it represented a healthy figure however there was a strong representation of the older demographic within this figure. The signs for the Irish language seemed ominous but developments, which commenced generally among the Presbyterian community in Northern Ireland²⁸ were to have a dramatic impact. Ó Tuathaigh notes that “as census data revealed approaching the end of the nineteenth century, Irish as a living language seemed doomed to extinction within a relatively short interval. The language revival movement established in the final

²⁵ Ibid at p. 25

²⁶ Purdon, E. “The Story of the Irish Language” (Mercier Press, Dublin, 1999) at p. 33

²⁷ Mac Giolla Chríost, D. “The Irish Language in Ireland: From Goídel to Globalisation (Routledge, London, 2005) at p. 107

²⁸ Crowley, T. “Wars of Words – The Politics of Language in Ireland 1537-2004” (Oxford University Press, Oxford, 2005) at p. 6

quarter of the century ensured that this did not happen”²⁹. The Society for the Preservation of the Irish Language emerged as a lobby group and were successful in having the Irish language recognised formally within the education system in Ireland. The success of the Society for the Preservation of the Irish Language encouraged other groups to organise such as the Gaelic Union and perhaps most crucially the Gaelic League. The Gaelic League (now known more widely by its Irish name *Conradh na Gaeilge*) increased the general awareness of the language and set up branches throughout the country charged with running Irish classes and promoting the language which lead to a large increase in the numbers of people with knowledge of the language. Significantly many individuals centrally involved in the struggle for independence were closely linked with Conradh na Gaeilge and as a result the Irish language was given a prominent role within the movement and indeed the Free State which emerged as a result of the Anglo Irish Treaty. As Ó Tuathaigh³⁰ notes many of the leaders of the day in Government and in opposition had “been to school” at Conradh na Gaeilge although he does question the full extent of the commitment of the various political leaders to the cause of the language. The constitutional and legal status granted to the language at this juncture is examined in Chapter 2 of this work however, other considerations other than legal from this period were important in the framing of the development of the language in the early years of the State. In education Irish was made a compulsory subject while recruitment to the general grades of the civil service required knowledge of the language and in 1929 lawyers were required to have some knowledge of the language in order to practice in Ireland.

²⁹ Ó Tuathaigh, G. “The State and the Irish Language: an Historical Perspective” in “A New View of the Irish Language” Nic Pháidín, C. and Ó Cearnaigh, S. Eds (Cois Life, Baile Átha Cliath 2008) at p. 26

³⁰ Ibid at p.28

While many of the policies adopted by the new State, much like the legal status awarded to the language, were aspirational and symbolic, it is clear that significant goodwill existed towards the language. There was, however, little in the way of progress made towards increasing the number of Irish speakers or the restoration of the Irish language as the language of the majority of the people of Ireland. As Lee notes

“A knowledge of Irish was made compulsory for certain state post, but no genuine attempt was made to Gaelicise either politics or the civil service, prerequisites for the success of the revival...the refusal of all governments since the foundation of the state to practise what they preached alerted an observant populace to the fact that the revival was a sham.”³¹

As Purdon³² noted between 1922 and 1939 the number of native speakers of Irish fell from approximately 200,000 to 100,000 and little was done by way of State intervention in an attempt to arrest this. By 1963 a State Commission appointed to investigate the progress made since independence noted that in order for the language to progress there was a need for increased use of it by the State itself and state agencies. However again little action was taken with regard to this recommendation. Ó Tuathail suggests that

“from the 1960s there was a discernable shift in State policy (and attitudes) in relation to Irish. Increasingly the language issue has become less a matter of identity formation for a ‘national community’ ...and more a matter of the state’s dealing with the Irish-language community as a sectional interest, with distinct needs and demands.”³³

³¹ Lee, J. “Ireland 1912-1985” – Politics and Society” (Cambridge University Press, Cambridge, 1990)

³² Purdon, E. “The Story of the Irish Language” (Mercier Press, Dublin, 1999) at p. 54

³³ Ó Tuathaigh, G. “The State and the Irish Language: an Historical Perspective” in “A New View of the Irish Language” Nic Pháidín, C. and Ó Cearnaigh, S. Eds (Cois Life, Baile Átha Cliath 2008) at p. 26

From the early 1970s the State visibly pulled back on various commitments to the Irish language including the removal of the requirement to obtain a passing grade in the Irish language exam in order to attain and overall pass in State examinations, the removal of the Irish language requirement for the civil service, the failure of the State to seek official status for the Irish language when Ireland joined the EU (see chapter 4) and the failure to maintain the translation of acts of the Oireachtas (see chapter 2). Mac Giolla Chríost recognised these trends in what he called the “de-institutionalization of the Irish language from the nation-state”³⁴ while Ó Riagáin described the State’s attitude during this period as “benign neglect”³⁵. Thus Irish language policy became, and to a large extent remains, one where the emphasis is mainly put on bilingualism and the protection of the Irish language as an important expression of nationalism and identity³⁶. Writing on the subject of this gradual neglect and shift in policy in 1994 Ó Riain poses a question as to what is wanted by the Irish people: either an independent nation or a post English-province³⁷. Although it is submitted that such a position is somewhat overly dramatic, Ó Riain’s views highlight the significance of the language and conversely language policy, to Irish identity. Despite this view the focus of the State on bilingualism has been somewhat troublesome and the position of the Gaeltacht in particular a cause for concern. Some scholars, such as Hindley, suggest that the language is dying, noting in 1990 that;

³⁴ Mac Giolla Chríost, D. “The Irish Language in Ireland: From Goídel to Globalisation (Routledge, London, 2005) at p. 122

³⁵ Ó Riagáin, P. “Language Policy and Social Reproduction” (Clarendon Press, Oxford, 1997) at p. 148

³⁶ Mac Giolla Chríost, D. “The Irish Language in Ireland: From Goídel to Globalisation (Routledge, London, 2005) at p. 122

³⁷ Ó Riain, S. “Pleanáil Teanga in Éirinn 1919-1985” [Language Planning in Ireland] (Carbad, Baile Átha Cliath, 1994) at p. 105

“There is no room for honest doubt that the Irish language is now dying. The only doubt is whether the generation of children now in a handful of school in Conamara, Cloch Chionnaola and Gaoth Dobhair, and Corca Dhuibhne are the last generation of first-language native speakers or whether there will be one more.”³⁸.

As shall be examined in Chapters 2 and 3 in particular the State policy towards the Irish language shifted somewhat from 1997 onwards, particularly during the economic boom experienced in Ireland from c. 1997 to 2007.

According to the census data from 2011³⁹ the Irish language is notionally spoken by 1.77 million people who answered ‘yes’ to the question ‘can you speak Irish’. This represented a 7% increase on the previous census in 2006 and equates to 41.4% of all census respondents. This figure is widely accepted to be hugely misrepresentative of the actual number of functional Irish speakers given that it takes account of school goers who undergo mandatory Irish language classes⁴⁰ and those who answer yes for a variety of reasons who lack any level of Irish beyond the most basic of phrases. The manner in which the census question is put is also unhelpful given that no assessment of the level of Irish spoken by the respondent is requested. More helpfully the census does include a question on the frequency of the use of the Irish language outside of the education system. 77,185 respondents replied stating that they use the Irish language everyday

³⁸ Hindley, R. “The Death of the Irish language” (Routledge, London, 1990) at p. 248

³⁹ Census Report “This Is Ireland – Part 1” at p. 40 available at <http://www.cso.ie/en/census/census2011reports/>

⁴⁰ In spite of this mandatory Irish language education 30.9% of those aged between 10 – 19 report being unable to speak Irish at all.

outside of the education system (an increase of 5,037 speakers since the previous census), which represents a figure which can more accurately be relied upon in assessing the functional number of Irish speakers in today's Ireland. A further 110,642 speakers claimed to use Irish on a weekly basis with other speakers reporting as using the language less often. The census data makes clear that the Irish language is very much a minority language in Ireland and it is even noteworthy that Irish has been pushed into 3rd place in Ireland with Polish being spoken by 119,562 respondents. It is within this linguistic context that the Irish language finds itself despite, as shall be demonstrated, the higher status granted to the language by the law.

2.3 Legal Context

The Irish legal system's operations are very much based, by virtue of the shared Common Law history, on the British model. However, the fact that Ireland has a written constitution provides the Irish legal system with some distinct elements. The Courts in Ireland are established by the constitution which requires that there be a High Court and a Supreme Court. The constitution also allows for the establishment of local courts with limited jurisdiction which have been established as the District and Circuit Courts. Each court in Ireland has a different jurisdiction and different thresholds⁴¹ at which they hear cases. The District Court is seen as the first step on the ladder and is primarily concerned with cases in the civil sphere to the value of c. €6,348.69 or less and in the

⁴¹ It should be noted that the monetary amounts used to assess the different jurisdictions of each Court in Ireland are based on Irish Punt values which have been subsequently converted to the equivalent Euro value.

criminal sphere cases known as summary offences which can result in the imposition of a fine of €1,269.00 or a maximum of twelve months imprisonment. Of particular interest to this thesis the vast majority of “drink driving” cases tend to appear before the District Court although it should be noted that the District Court will not hear cases which require a jury. The vast majority of Defendants in criminal cases before the District Court are concerned with minor offences and the overwhelming majority of these Defendants plead guilty. The District Court will also hear matters of family law and licensing applications and can be considered somewhat analogous to the Magistrates Courts in England and Wales. The Circuit Court represents the next step on the ladder and can hear civil cases to the value c. €38,092.00 and all criminal cases, including jury trials except for murder, treason, rape, sexual assault, piracy and certain scheduled offenses (alleged offenses related to organised crime and terrorism) and can impose every penalty up to a life sentence. The Circuit Court also has an appellate jurisdiction to hear appeals from the District Court.

The High Court in Ireland has full original jurisdiction to hear any case of any monetary value or any offence in the criminal law. When sitting on matters of criminal law the High Court is known as the Central Criminal Court and will usually only deal with murder, treason, rape and sexual assault cases, most of which require the empanelling of jury. The High Court also acts as a court of appeal from the Circuit Court. A curious character of the Irish court system is the “case stated” process where a lower Court can ask for guidance on a substantive matter of law from a higher Court. The District Court can refer a case to the High Court for guidance on a particular matter of law, in turn the High Court offers guidance and refers the case back to the District Court for judgment.

Furthermore, the High Court operates the system of judicial review in Ireland where the High Court can review the decision making process and procedures used in administrative bodies and even lower Courts in order to assess that all rules and procedures were correctly followed. As will be seen, many of the cases concerned with the Irish language take the form of judicial review.

The Special Criminal Court is a non-jury criminal court used in Ireland for the trial of certain scheduled offences such as terrorism and organised crime. The original rationale for the Courts was similar to that proposed for the infamous Diplock non-jury Courts in Northern Ireland which were used to try alleged terrorists. It was felt that the normal legal system, particularly jury trial was vulnerable to perverse influence and as a result such trials were to be held without juries. With the advancement of the peace process in Northern Ireland these Courts have in the main fallen out of favour in the Republic of Ireland⁴².

Ireland, unlike the UK, does not have a designated full appellate jurisdiction Appeal Court, however, a Court of Criminal Appeal does exist for appeals in criminal cases from the Circuit, Central and Special Criminal Courts. There is at present no provision for a civil Appeals Court.

The final step on the ladder in Ireland is the Supreme Court. The Supreme Court is established by the Constitution and hears appeals from the High Court and the Court of Criminal Appeal as well as hearing cases through the case stated method from the Circuit Court. The Supreme Court also has jurisdiction to decide whether a bill is constitutional per the reference system provided in

⁴² The Special Criminal Court has not been entirely abolished. The Court is still in use for cases relation to alleged dissident republicans and certain cases concerning high level organised crime.

Article 26 of the Irish Constitution whereby the President of Ireland can request the Supreme Court adjudicate on the matter. The Supreme Court is the final Court of Appeal in Ireland and the ultimate authority when interpreting the Constitution of Ireland.

The Irish Courts operate the precedent system of *Stare Decisis* which requires that the Courts should follow the precedent set in previous cases. While Courts may overrule their own previous rulings Courts are forbidden from overruling decisions of higher courts thus the rulings of the Supreme Court carry much weight in particular. Courts may distinguish cases before them from precedent on the basis that some key factors are different however in general Courts should follow the precedent set by themselves or by a higher Court. Precedents, no matter how old, should be followed, however, precedents from prior to 1922 and in particular 1937, should only be followed provided that they are consistent with the Irish Constitution. Precedents from other jurisdictions, particularly common law jurisdictions, do not carry the force of law but are considered to be of persuasive authority only.

Legislation passed in Ireland by the Oireachtas since 1922 carries the full force of law and is presumed to be constitutional unless it is proved otherwise and such laws are interpreted in such a way bearing in mind that the legislators were aware of the provisions of the Constitution. Prior legislation passed either by the British Parliament or by Ireland's home rule parliament before 1801 does not enjoy the presumption of constitutionality and is only accepted on the basis that its provisions are clearly constitutional and not repugnant to the text. If such laws are deemed to be repugnant to the Constitution it is taken for granted that such laws never were part of an independent Irish legal system and did not survive the

transition to the Irish constitutional order. Legislation from other jurisdiction has no force of law in Ireland with the exception of EU legislation, which is explored in Chapter 4.

The linguistic and legal context in which this thesis is located is very much in the contemporary context of the modern Irish legal system which is a constitutional democratic republic of the liberal tradition taking a common law approach to the administration of justice. Although the substantive chapters each in turn consider different aspects of law with which they are concerned, an outline of the historic operation of the Irish legal system and the role of the Irish language therein is required in order to place the following chapters in their correct legal context. As is noted above the Gaelic order dominated Ireland and Irish culture essentially from c. 600 A.D. until 1200 A.D. although Latin enjoyed some prominence within the Canon Law system in particular. The notion of a bilingual legal system in Ireland is not a recent one and the notion of having two competing languages in the legal sphere in Ireland predates the arrival of the Common Law. The native law of Ireland, the Brehon law, was one of the oldest legal systems in Europe. It consisted of an expansive civil code with an emphasis on compensation for harm done rather than punishment. The arrival of Christianity meant that many Brehon traditions were fused with the Canon law to create a new bilingual legal order in Ireland. The native Irish laws would have been passed down orally and at a later stage recorded in Old Irish where as the Canon Law operated in the Church's lingua franca of Latin. Eventually the Brehon law evolved to include laws in relation to the Church itself⁴³ which would have

⁴³ Pawloski, B. M. 'Gaelic Law in Early and Medieval Ireland: A Bibliography' 79 *Law Library Journal* 1987 305

necessitated translation between Irish and Latin. During the reign of Elizabeth I the Common Law began to fully take hold in Ireland and the English language became the language of officialdom and legal discourse in Ireland actively oppressing and supplanting the Irish language⁴⁴. Whilst the English language has continued ever since as the dominant language in Irish legal discourse independence allowed a role for the Irish language under the terms of Ireland's first written Constitution in 1922. Even in pre-independent Ireland there were battles waged at various stages in relation to the Irish language both on the side of those who wished to use the language in official channels and those who sought to ban it. This situation continued uninterrupted until early in the twentieth century when a young Barrister by the name of Padraig Pearse, who would later become a republican leader and signatory to the Declaration of the Irish Republic in 1916, represented the Defendant in *McBride .v. McGovern*⁴⁵. The case was an appeal to the King's Bench Division from a Magistrates Court in the Donegal Gaeltacht. A prosecution was brought against McBride on the grounds that his horse and trap displayed his name and address in the Irish language and in the Gaelic font which, it was contended did not comply with Section 12 of the Summary Jurisdiction (Ireland) Act, 1851 which required such a sign to be positioned at the rear of each horse and trap. McBride was convicted and fined seeing as his font was deemed not to be legible. It was contended that seeing as the Act applied to a bi-lingual State such as Ireland and that the alleged offence happened in a Gaeltacht area (those areas where Irish is the chosen language of the majority of inhabitants) Irish should suffice, however O'Brien L. J. held that

⁴⁴ *ibid*

⁴⁵ [1906] 2 IR 181

“An Englishman...if knocked down by an Irish cart in any part of the country, whether Connemara or elsewhere, is entitled to have the name and address of the offender in characters that he can read, if Irish letters are used he may be powerless to identify... We think that the decision of the Magistrates was right, not on the ground that the letters were not legible, but on the ground that they were not of the English character or type”⁴⁶

While this decision was clearly a defeat for the Irish language it helped to fuel an increased drive towards the re-emergence of the Irish language as an official language and Ó Tuathail⁴⁷ credits this case and others like it⁴⁸ with the push to afford Irish official status in the Constitution of the Irish Free State when the new institutions of State were established. As Kohn has put it, the enunciation of Irish as the national language “marked the consummation of the process of national emancipation.”⁴⁹

⁴⁶ Ibid at 191

⁴⁷ Ó Tuathail, S. SC “Gaeilge agus an Bunreacht” (Coiscéim, Baile Átha Cliath, 2002) at 8

⁴⁸ See also *Buckley .v. Finegan* (1906) 40 ILTR 76, similar facts, which highlights the political importance of such cases where a Mr. Tim Healy SC acted for the prosecution against Mr. Buckley. Mr Healy went on to become Governor General for Ireland until 1936 when Eamon De Valera replaced him with none other than Mr Donal Buckley, the initial defendant.

⁴⁹ Kohn, L. “*The Constitution of the Irish Free State*” (George Allen & Unwin Ltd, London, 1932).

3. Methodology

This thesis, positioned as it is within both the social sciences and legal field, will use a number of different methodological approaches which are common to both in order to assess how the right of a citizen of Ireland to use the Irish language in formal engagement with the Irish State can be vindicated. In the first instance a jurisprudential approach will be applied with standard positivist methodology and legal reasoning being used to assess the research questions posed. Thus the approach adopted here is wholly consistent with the methods used by legal scholars and practitioners to conduct research and to analyse and synthesise legal sources with a particular focus on case law, legislation and constitutional obligations and rights as they relate to the Irish language. Secondly a number of interviews were conducted (discussed further below) as part of this work in order to obtain the perspective of the various stakeholders in the field. Thirdly, given the often confidential nature of work carried out in the legal professional and in law enforcement it is necessary to consult with grey literature which became available in a number of different ways. In some instances materials were supplied to the author from stakeholders on the basis that their identity not be revealed⁵⁰ or in other instances while the materials were in the public domain they were not available in officially published volumes. While it is accepted that grey literature is by its very nature somewhat of a less satisfactory source during the course of the research such materials were extremely useful in filling in gaps in the officially available literature. Surveys were also used in order to efficiently

⁵⁰ This was particularly the case with materials concerned with An Garda Síochána and the Judiciary

gather information from a significant number of students (c. 50) choosing to study law through the medium of Irish⁵¹.

While it is accepted that certain research methods used within this work do not entirely reflect the normal methods one would expect from a work in the area of language planning or socio-linguistics the methods used are commonly used in standard legal research methods, which due to the nature of this thesis, are considered appropriate when conducting legal analysis.

Any such analysis needs to take into account the competing claims of the various forms of law. In the context of the Irish legal system the Constitution is in most circumstances the highest authority with legislation and case law being lower in the hierarchy of influence to the legal order with the added condition that often legislation or case law may be required in order to better enunciate and interpret the text of the Constitution. The social science aspects of this work do require that due recognition is given to the fact that law is neither a closed normative circuit nor an external force which acts on society⁵². Indeed the same can be said of the study of languages which cannot be confined within one sphere without addressing the ever changing norms and rules which govern and impact upon its use. As a result developments in the law relating to the Irish language (including but not limited to the Constitution, the jurisprudence of the Courts, legislation and regulatory structures) are placed in their social, political and economic and, in particular, linguistic context. The historical context of the Irish nation in so much as an Irish nation can be said to have existed prior to 1922, will be

⁵¹ See Generally Chapter 5 on Legal Education

⁵² McCrudden, C. "Legal Research and the Social Sciences" [2006] LQR 632

highlighted in order to explain how a situation has developed whereby the Irish language has particular challenges to overcome. In recognition that the traditional socio-legal and socio-linguistic approaches offer an opportunity to “study the law in practice...[where] legal institutions...work in society rather than the legal rules existing in a social, economic and political vacuum”⁵³ from an external viewpoint. As was noted by Geoghegan J in the seminal case of *Ó Beoláin v Fahy*⁵⁴ laws sometimes represent the emotions and feelings of the people who have enacted the law rather than having any particular legal significance per se. Conversely Fuller⁵⁵ has recognised that a socio-legal approach recognises that strictly constructed laws and rules which are not enforced or which are loosely enforced are of limited use in ensuring compliance with the law. Whilst approaching the research primarily from a legal perspective, the inclusion of socio-legal (incorporating socio-linguistic) insights grounds the research within a very real linguistic situation. Dörnyei recognises that there is much to gain from carrying out such mixed research albeit with a caveat; “[d]ifferent scholars look at the world through different lenses, regard different things as important to know, and express themselves best within different research paradigms..[t]his multi-coloured research scene is not to be mistaken for an ‘anything goes’ disposition.”⁵⁶

A jurisprudential approach, informed by the foregoing, is also employed in this thesis to contrast the approach of the British Courts to the Irish language (which

⁵³ Ibbetson, D. “Historical Research in Law”, in Peter Crane and Mark Tushnet, ed.s, Oxford Handbook of Legal Studies (Oxford University Press, Oxford, 2003), 863 at 864.

⁵⁴ [2001] 2 IR 279 at p. 356

⁵⁵ Fuller, L. “*The Morality of Law*” (Yale University Press, New Haven, 1969) at p. 35

⁵⁶ Dörnyei, Z. “Research Methods in Applied Linguistics” (Oxford University Press, Oxford, 2007) at p. 166

was by its very nature extremely limited) with the approaches adopted since the independence of the Irish State in 1922 and onwards. Such an approach encompasses the contemporary approach in the 21st Century where we have experienced a further and arguably profound shift in the approach by the Irish Courts. Jurisprudential methods involve the synthesising of raw data in the form of case law and conducting detailed analysis of this data. The operation of the legal doctrine of precedent is crucial to the use of this research method as the doctrine of precedent requires that Courts should follow and build upon decisions of Courts that have gone before them. Thus when the data is collected it is not sufficient merely to analyse the most recent or most relevant case but rather a jurisprudential approach requires a methodical and chronological based analysis of the data from earlier case law in the same area.

In the legal context cases are summarised by specially trained legal reporters and compiled into legal reports or volumes. Traditionally, these reports were compiled by the Courts in order that judges would be able to use the reports as a source of law in order to apply the common law in a uniform manner. Gradually over time these reports have become the main raw material for legal data and are used by practitioners and researchers alike in order to understand the state of the law. The reports, typically, are compiled by private publishing houses and legal information charities. The reports comprise an edited summary of the particular facts in each case as well as the judgment provided by the sitting judge in the case concerned. These reports are, typically, grouped together by year, and depending on the number of reports in each year, often by the additional separator of volume. These volumes reports are then made available in law

libraries and in online legal databases. The referencing system used is uniform and it is used across most jurisdictions. Cases are firstly grouped together by year with square brackets being used to represent the year in which a case is reported although not necessarily the year the case was heard eg a case heard in late 2011 might be reported as [2012] and round brackets which represent the year the case was actually heard usually being used where a case is reported at a much later juncture. The particular law series and volume are represented next with abbreviations used for each different series eg IR represents the Irish Reports series and ALL ER represents the All England Law Reports while the first page upon which a case commenced within the reports would be used as the final element of the citation. Thus the seminal Irish language case of *Ó Beoláin v. Fahy* is cited as [2001] 2 IR 279 which represented the second volume of the 2001 edition of the Irish Reports with the case report commencing on page 279. Traditionally, there was no automatic reporting of cases and it was usually left to the editor of the various reports to decide upon which cases were to be reported. Often cases would only be reported if there was either a commercial demand for the cases or if the cases established a new point of law. This created a particular issue for Irish language cases which were not usually considered to be hugely significant or commercially viable. The lack of such data served as a further barrier to access to justice through the medium of Irish as well as an impediment to research. However, an important development occurred in 2000 when an edited collection of important Irish language cases from 1980-1998 was produced in a special volume.⁵⁷

⁵⁷ The Irish Reports Special Reports Irish Language Cases 1980-1998 published as part of the Irish Reports series of reported judgments.

With the advent of new technology the access to judgments has improved significantly with courts usually publishing their judgments online via their own websites. In the Irish context this process commenced in 2001 and since 2005 most full judgments issued by the High Court and the Supreme Court of Ireland are published, in an unedited form, via the Courts Service of Ireland's website⁵⁸. These cases are cited using the year the judgment was given, the Court and the case number. Thus, the decision in *Ó Murchú v An Taoiseach* which was delivered in 2010 in the Irish Supreme Court and was the 26th judgment issued by the Court in that particular year is cited as [2010] IESC 26. While the judgments issued directly by the Courts themselves are not edited nor uniform in fashion they do benefit from being issued promptly and universally without editorial decisions being taken not to publish the decisions which has resulted in an increased availability of data from c. 2005 onwards.

While the jurisprudential methodology is not a standard research method in socio-linguistics or language planning the approach is a widely used and accepted research method in legal and socio-legal research works. This is not entirely different from standard research methodologies used in other sectors as Van Hoecke notes "it appears that legal doctrine is a scientific discipline in its own right with a methodology that, in its core characteristics, is quite comparable to the methodology used in other disciplines"⁵⁹. Such methods have been used in numerous PhD theses in the Cardiff University Law School⁶⁰ and other Law

⁵⁸ www.courts.ie

⁵⁹ Van Hoecke, M. "Legal Doctrine: Which Method(s)?" "Methodologies of Legal Research" – Van Hoecke, M. (ed) (Hart, London, 2011) at p. 17

⁶⁰ See for example Crowley, Louise, "Financial provision and property allocation on divorce : a critical comparative analysis of the Irish decision-making policy and process" (Thesis (Ph.D.) –

Schools in recent years. The nature of the work carried out in the pursuit of this thesis required that such a jurisprudential method be undertaken in order to most effectively use the available data. As Morris et al⁶¹ note

“[s]ocial science relevant to legal and public policy issues has emerged as a vital part of such behavioural and social science disciplines as anthropology, criminology, economics, linguistics, philosophy, political science, psychology, and sociology. To develop such work properly, the law and legal issues in question have to be fully identified, understood and operationalized. This cannot happen unless the social researcher is able to accurately find the law.”

A table of the case law used and examined in this work is provided as an addendum to the bibliography in addition to a list of the legal reporting journals used and their referencing acronyms which is provided at the start of this work.

A number of face to face interviews were carried out in the course of this research. The rationale for conducting interviews as a method of gathering research data was threefold. In the first instance there was very little, if any, literature available on the engagement of the legal system and the legal professions with the Irish language and thus the need for primary research arose. Secondly there were no attempts on record of such interviews having being carried out in the past even in grey literature and finally given the small size and closed nature of the legal professions in Ireland it is submitted that without a face to face element it would have been very difficult to obtain responses from the key stakeholders through alternative methods such as questionnaires and surveys. The judiciary and an Garda Síochána were identified as the most important

Cardiff University, 2010) and Donnelly, Mary “Autonomy, capacity and the limitations of liberalism : an exploration of the law relating to treatment refusal” (Thesis (Ph.D.) – Cardiff University, 2006)

⁶¹ Morris, R., Sales, BD. and Shunman, D. “Doing Legal Research – A Guide for Social Scientists and Mental Health Professionals” (Sage, London, 1997) Preface

stakeholders to interview given the total lack of any academic literature or other sources available in connection with their professional engagement with the Irish language. It was decided that these stakeholders would be asked questions in line with the various chapters identified with a particular focus on practice for the judiciary and training and policing for the Gardaí given the differing roles they played. Questions focused on their own Irish language competencies, their Irish language training, their professional engagement with the Irish language and their general attitudes to the language. The candidates selected for interview were those personally known to the author and in some instances those known to be active within the Irish speaking community.

Certain difficulties arose with such interviews. A number of key stakeholders were identified with whom interviews would prove useful. Foremost of this number were members of the judiciary however the very nature of the judiciary's role in the Irish legal system and constitutional order frustrated this process on many occasions. The independence of the judiciary is a preciously guarded doctrine in the Irish legal system. The Irish Constitution establishes a separation of powers in a similar manner to the United States whereby each wing of the State is independent from the others in the exercise of their powers. The judiciary for example are the sole body with the power to administer justice and the executive are the sole body charged with governing and exercising the functions one would normally associate with the cabinet. In this light members of the judiciary in Ireland have always been very slow to speak publically in any way which could be seen to be critical of the Government of the day given that any critique could be interpreted by some as an attempt by the judiciary to unduly

influence the executive or legislative powers which vest in other pillars of the constitutional order. Lee has described how “élites, powerful organisations and Governments are often sensitive to the way in which their image is portrayed [in research]”⁶². Whilst a number of the members of the Judiciary were happy to engage as part of the research no judge wished to have their words or indeed their names recorded or to give anything more than a factual statement of the procedures they employ when hearing cases in the Irish language. Lee notes that “privacy, confidentiality and a non-condemnatory attitude are important because they provide a framework of trust. Within this framework, researchers can lead those studied to confront issues which are deep, personally threatening and potentially painful.”⁶³ As a result such research was of limited use but added depth to aspects of case law and interpretation of laws and gave further insight into legal education and training. Similar difficulties were encountered with members of Ireland’s Police Force, An Garda Síochána. Garda rules prohibit individual members of the Gardaí to give interviews and to assist with such research. A number of Gardaí, in a manner similar to the judiciary, were happy to speak about their experience, particularly in the context of their education and training through the medium of Irish however no members were willing to go on record with such details. Such a stance is understandable given the potential disciplinary consequences for Gardaí however some examples of Garda training manuals were provided on an anonymous basis and are available in the Annex to this work.

⁶² Lee, R. “Doing Research on Sensitive Topics” (Sage, London, 1993) at p. 9

⁶³ Ibid at p. 98

Dörnyei recognises that whilst interviews can provide very rich data “the format does not allow for anonymity, there is a chance that the respondent...can be too shy and inarticulate to produce sufficient data.”⁶⁴, unfortunately this reality rings true in the case of the Irish judiciary who find themselves restrained not by a social shyness but rather a silence which is necessitated by the nature of their office. That said the interviews with members of the judiciary did, however, confirm a number of commonly held assumptions with regards to the Irish language capability of the judiciary and judicial attitudes towards the language being generally reflective of the education and upbringing of the judge. These factors, along with further interviews with legal practitioners provided useful data to analyse particularly in the area of legal education and serve to support many of the conclusions reached in this work, particularly with regards to the lack of Irish language legal training. The interviews themselves focused on the nature of the work carried out by judges and lawyers in the legal system through the medium of Irish. Interview candidates were selected on the basis of the author’s knowledge of their Irish language abilities colloquially in some circumstances or a result of the detailed meta-analysis of the Irish language case law conducted as part of this work. Judges and lawyers who regularly appeared in Irish language cases were easily identified through the case reports and a number were contacted. In addition the Law Library of Ireland (the body responsible for the regulation of the barrister’s profession) also helpful have a searchable database of their members with languages spoken included as one of the data fields which aided the identification of barristers in particular. The questions asked of Judges and lawyers focused on their Irish language ability,

⁶⁴ Dörnyei, Z. “Research Methods in Applied Linguistics” (Oxford University Press, Oxford, 2007) at p. 144

their Irish language legal education, the use of the Irish language in the legal system more generally and barriers to access to justice through the medium of the Irish language⁶⁵.

The combination of the various methodologies paints a broad picture and points towards a trend of “governmentality” in the sphere of the Irish language generally and in particular towards the use of the Irish language in official fora such as the legal system coming to the fore when key decisions are undertaken. The concept of “governmentality” places at its heart the idea that the society in which we live becomes influenced and moulded by the institutions and procedures of the State. The State attempts to produce citizens who are best suited to fulfil the government’s policies.⁶⁶ The concept of “governmentality” can thus be used to analyse how the Government in the first place recognised that a particular problem exists, how the State then exercises its various powers (primarily through its various institutions) in order to achieve a particular aim. In the case of the Irish language from the foundation of the State and even prior to that point it is clear that a concept of “governmentality” was present in how the State would deal with the Irish language. It was quickly recognised that a ‘problem’ existed for the language was under severe threat and had been denied any form of official status for centuries. Whilst the particular aim which the Irish State wished to achieve was not entirely clear there was certainly a wiliness to increase the use of the Irish language and give the language recognition in official fora. The establishment of an Irish State was very much seen in terms of

⁶⁵ The questions asked were generic and non controversial although members of the judiciary asked that they not be made public.

⁶⁶ Foucault, M. “Governmentality” in Burchell, G. and Gordon, C., Eds., “The Foucault Effect: Studies in Governmentality (University of Chicago Press, Chicago 1991) at p. 101

a re-emergence of Ireland as a nation in its own right and key to this development was the advancement of the cause of the Irish language. The prevailing attitude which informed the governmentality can be summed up by Michael Collins;

“The biggest task will be the restoration of the language. How can we express our most subtle thoughts and finest feelings in a foreign tongue? Irish will scarcely be our language in this generation, not even perhaps the next. But until we have it again on our tongues and in our minds we are not free, and we will produce no immortal literature.”⁶⁷

The methods and policies which were chosen to achieve this aim were advanced via the institutions of the State. In the case of the Irish language the main institutions which played a role in this development were the legislature (The Oireachtas) and the education system. Irish became a mandatory school subject in the education sphere and the State. The State was attempting to model the citizen to become an Irish speaker through the use of its institutions and policies. In the legal sphere the Oireachtas passed legislation in English and Irish. The Oireachtas required that all practicing lawyers undertake an exam in the Irish language in order that they would be competent to take legal instructions in the Irish language⁶⁸, again with the aim of shaping the legal profession in a particular manner so as to achieve a particular aim. In doing so the State was asserting its sovereignty, demonstrating how the Irish State differed from neighbour states with their “foreign tongue”. In the process there was a strong sense that the State imposed the language upon people in a manner which ironically was counterproductive to their stated aim. As the State moved forward from perceiving itself merely as a new nation there was a recognition that the State needed to govern and administer in a more constructive manner, moving beyond

⁶⁷ Collins, Michael “A Path to Freedom”, Reprint (NuVision, London, 2005) at p. 71

⁶⁸ See generally Chapter 5 Legal Education

governing a mere assertion of authority and sovereignty. In doing so the State became more interested in governing to solve economic and social problems, in making the Irish language relevant and in protecting a preserving the language and the linguistic communities where the language was strongest. Irish was seen as a useful tool for those wishing to enter any position in the public service, Irish was required for entry to many universities and the language was seen (although at times begrudgingly) as a useful skill to have acquired.

The usefulness of analysing governmentality lies in the reality that whilst the Government had particular aims and wished the shape citizens in order to achieve those aims, in the case of the Irish language at least, such steps proved to be predominantly unproductive and unsuccessful initially. Governmentality allows us to chart the State's changing focus with regards to the language in order to better produce Irish speaking citizens within what was hoped to be a bilingual State.

Chapter 2:- The Right of Access to Justice in the First

Official Language 1900s – 2003

1 Introduction

The Irish Constitution (*Bunreacht na h-Éireann* in the Irish language) is the corner stone of the modern Irish legal system. Although the Irish legal system is very much rooted in the Common Law tradition the development of the Constitution of 1922 and the current 1937 Constitution ensured supremacy of a higher law⁶⁹. Whilst the Common Law principle of *Stare Decisis* (the legal principle in common law of adhering to precedent when deciding a legal case)⁷⁰ remains all acts and previous jurisprudence of Irish and British Courts must be consistent with the provisions of the Constitution. Once rights of any sort (including language rights) are recognised by a Court as being of a constitutional nature the State cannot seek to abdicate their responsibility to those who enjoy such rights merely by way of passing ordinary law in the form of legislation. In the United Kingdom the Parliament, in theory, enjoys supremacy and the ability to legislate on any matter unfettered by any other considerations although in practice it is widely accepted that a number of unwritten rules known as constitutional conventions serve to limit the supremacy to a certain extent. In Ireland, however, by virtue of having a strong written constitution, there are clear boundaries established within the Constitution which serve to expressly and

⁶⁹ Further supremacy over the common law has since been established by European Union Law in areas of competence recognised by the various EU Treaties.

⁷⁰ Webster's New Millennium Dictionary of English (Lexico Publishing Group, London, 2003)

unequivocally limit the extent to which legislation can limit any right. Should any legislation be held to be inconsistent with the Constitution the legislation is deemed to be invalid. It is important to note that under the terms of the Constitution itself in (Articles 46 and 47 of the current Irish Constitution) the only method whereby the text of the Constitution itself can be amended is by way of a referendum where a majority of the people have to give their support to any proposed amendment put forward by Dáil Éireann (the Irish parliament) in order for the amendment to become part of the Constitution.

The importance of constitutional law to the Irish language issue is demonstrated by the almost total reliance on the text of the Constitution (primarily Article 8) when dealing with Irish language issues which arose before the Courts prior to 2003. Whilst the situation has changed somewhat since the enactment of the Official Language Act 2003, which expanded the corpus of Irish language law, the Constitution remains the single most important consideration to the Courts when dealing with Irish language issues.

This chapter focuses on the role the Irish Constitution, and the relevant case law arising from same, have had on the development of the rights of those seeking to access the Courts and legal services through the Irish language. The period analysed by this chapter seeks to cover the period from Independence of the Irish State in 1922 through until 2003. Such an analysis allows an examination of the development of the Irish language rights concerning access to the Courts and access to justice in a chronological order including the charting of the varying degrees of recognition given by the Courts to the Irish language. The reason for choosing 2003 as the end date for analysis in this particular chapter is twofold. Firstly in 2003 the Official Languages Act 2003 was finally enacted in Ireland.

This Act represented a high water mark in terms of recognition of the Irish language and of language rights more generally. The Act, which was very much modelled on the corresponding Welsh and Canadian legislation, granted an unprecedented status to the Irish language and helped to copper fasten many of the advances made by the judiciary in the period between 1922 and 2003. The Act contained many wide reaching provisions, but what is of particular interest to this chapter are the various provisions on the rights of Irish speakers appearing before the Courts and the various language schemes which impact upon the key stakeholders in the Irish legal process (the Office of the Attorney General and the Courts Service). Secondly, from 2004 onwards the pronouncements of the Courts on issues relating to the Irish language took a somewhat different approach with the right which had been acknowledged theretofore being somewhat curtailed to certain circumstances and instances. The case of *Ó Beoláin*⁷¹ and its immediate consequences provide a natural break point when analysing such developments. The later cases and developments add greatly to the body of Irish language rights case law due to the staggered nature and differing focus of such developments they deserve analysis in their own right.

2. The 1922 Free State Constitution

Although the 1922 Constitution is no longer in force the interpretation of the various Irish language provisions (which are similar to those of the 1937 Constitution) continues to be important today when interpreting the provisions

⁷¹ [2001] 2 IR 279

which are currently in force. Article 4 of the Free State Constitution provided that

“The National language of the Irish Free State (Saorstát Eireann) is the Irish language, but the English language shall be equally recognised as an official language. Nothing in this Article shall prevent special provisions being made by the Parliament of the Irish Free State (otherwise called and herein generally referred to as the "Oireachtas") for districts or areas in which only one language is in general use.”

This represented the first time in centuries that the Irish Language had been afforded official status within the legal system of Ireland. Article 42 went further insisting that all acts enacted by the Dáil be made available in both official languages. Whilst official status was afforded to the Irish language, its use in the Courts was severely restricted. During the trial of *R(Ó Coileáin) .v. Crotty*⁷² a fine of £50 was imposed against the Defendant when he refused to speak English during his trial. This fine was later overturned by the High Court, however, it was unclear from O’Sullivan J’s judgment whether he relied on a principle of natural law or on a particular constitutional provision. Kelly⁷³ notes that if the case was decided on a principle of natural law then “had the defendant’s native language been any foreign language, and had he been denied interpreter facilities for making his case, the same considerations [would] have applied”. What Kelly does not address however is the situation whereby a party of a legal action makes the conscious choice to choose one language over the other. It appears to be

⁷² (1927) 61 ILTR 81

⁷³ Kelly, J. M. “The Irish Constitution” 3rd Edition, G. Hogan and G. Whyte Eds (Butterworths, Dublin, 1994) at 54

widely accepted that if a party to a legal action was able to fluently speak (by way of example) English and Mandarin Chinese but requested that the proceedings be conducted in Mandarin Chinese such an application would be denied. The key principle which is usually referred to as a right conferred by natural law appears to be whether the party to the action understands the full extent of the action rather than accommodating any particular linguistic choice on the part of the party concerned (see further discussion below). This situation is, however, further complicated when a state has recognised more than one language as an official language. Do parties have the right to request their own language be used at all times? This question was addressed in the case whereby we can say that the rights of Irish speakers were first recognised as having a constitutional element attaching to them in *Attorney General .v. Joyce and Walsh*⁷⁴ where Kennedy CJ held that the text of Article 4 conferred what he termed a double right both in terms of natural rights and constitutional rights;

“The Irish language, however is not merely the vernacular language of most, if not all, of the witnesses in question in the present case, but holds a special position by virtue of the Constitution of the Saorstát, in which its status is recognised and established as the national language... from which it follows that, where it be the vernacular language of a particular citizen or not, if he is competent to use the language he is entitled to do so. Therefore it may be said that *all those who gave their evidence in the Irish language in the present case had, as it were a double right to do so: first on general principles of natural justice as their vernacular language; and, secondly, as a matter of constitutional right*”.⁷⁵

Another issue arose in *Joyce and Walsh* regarding the transcribing of oral evidence given in Irish by witnesses. The trial related to the murder of the

⁷⁴ [1929] IR 526

⁷⁵ *Ibid* at 531, emphasis added

husband of the Second named Accused. The two Accused were tried together on the murder charge on the basis that it was the contention of the prosecution that they were both involved in the poisoning of the deceased. During the trial an interpreter had been sworn in by the Court to translate the evidence given in Irish by nine witnesses and the two co-Accused into English for the benefit of the Jury and the sitting Judge. The two co-Accused were convicted in the Court of First Instance and initiated an appeal to the Court of Criminal Appeal. Due to the nature of appeal Courts in Ireland the transcript of the trial of first instance is of significant importance as a record of the evidence, very often no separate hearings are heard and the appeals often only take the form of paperwork. The only transcript recorded was that of the interpreter's paraphrasing translation of the evidence, no recording was made of the evidence as it was given by the witnesses in Irish. During the appeal trial this issue was raised by Counsel for the Appellant but the point was dismissed by the Appeal Chamber holding;

“that as it is not an essential requisite for the purpose of an application for leave to appeal to have a complete transcript of the evidence before the Court...[T]he Court being satisfied that the transcript of the note of the interpreter's rendering of the evidence was a completely accurate record and fully adequate”⁷⁶

Ó Tuathail⁷⁷ questions whether this part of the ruling was an early attempt, albeit covert, by the Courts to differentiate between the theoretic status of the Irish language as an official language and the reality of a minority language which should not be allowed to become a thorn in the foot of legal reality and court proceedings. Whilst Ó Tuathail's speculation is not without merit and accurately

⁷⁶ Ibid at 527

⁷⁷ Ó Tuathail, Seamus “Gaeilge agus an Bunreacht” (Coiscéim, Baile Átha Cliath, 2002) at 19

reflects the linguistic reality there was, however, no constitutional recognition given to the status of Irish as a minority language in the 1922 Constitution nor is there in the 1937 Constitution and such a judgment has to be construed in that light. Thus, it is submitted that this was the first attempt by either the Judiciary or the State to interpret what the law in relation to the Irish language ought to say, on the basis on the true linguistic position of the language, rather than interpret and apply what the law does say.

The importance of the “double right” principle developed in *Joyce and Walsh* is highlighted by a ruling in the Scottish case of *Taylor v. Haughney*⁷⁸ concerning the use of the Gaelic language in a criminal prosecution by the Appellant who understood and spoke fluent English. It was alleged that the Appellant had carried out criminal damage to a road sign on the Isle of Skye (a Gaelic speaking area) by painting over an English language road sign with whitewash and repainting the words in red paint in the Gaelic language. Despite his full understanding of the English language the Appellant sought to give his own evidence in his mother tongue Gaelic and to have the remainder of the proceedings translated into Gaelic by a Court appointed interpreter. The Court applied a much older Scottish case of *R. v. Alex McRae*⁷⁹ which concerned a criminal prosecution in Edinburgh and held that seeing as English was the language of Scotland the only situation where a Court could appoint an interpreter would be where a Defendant did not speak English. The absence of any special legal status such as that conferred by the 1922 and 1937

⁷⁸ (1982) SCCR 360

⁷⁹ Referred to in (1841) Bell's Notes at p.270

Constitutions lead to the decision of the High Court of Justiciary where the Appellant's case was described as a "hopeless one" by Lord Justice Clerk with Lord Hunter and Lord Dunpark agreeing⁸⁰.

The limits of the provisions of the 1922 Constitution, however, were soon to be highlighted when Kennedy CJ later went on to discuss the meaning of the term "national language" in *Ó Foghludha .v. McClean*⁸¹. The case was a civil case centring on a dispute over rent in relation to a property held by Conradh na Gaeilge (an Irish language organisation) who were suing via the Plaintiff, a trustee of the organisation. The Plaintiff served the civil summons upon the Defendant in Irish. A summons in a civil matter requires a Defendant to enter a defence to the action. In the absence of any such a defence the Plaintiff's claim would normally succeed unopposed. The case concerned Order XXIX, Rule 3 of the Rules of the High and Superior Courts 1929 which provided that all notices served in Irish must be accompanied by an English translation. In this case there was no English translation served with the summons. The Plaintiffs contended that it was unconstitutional that the Rules specifically require a translation of a Irish summons whilst at the same time having no such corresponding rule for summons served in English. The case was heard initially in the High Court and when the High Court rejected the argument, the Plaintiffs appealed the decision to the Supreme Court. In the High Court Sullivan P. stated that rule was consistent with the 1922 Constitution and further elaborated that the rule "does not impose upon the parties affected by it any additional expense or burden, it

⁸⁰ 1982 SCCR 360 at p. 365

⁸¹ [1934] IR 469 at p. 487

facilitates the progress of litigation, and it does not place any obstacle in the way of those who desire to conduct their legal business in the Irish language”⁸². This position is difficult to reconcile with the operation of the rule. Whilst the rule does provide that the summons would be translated by an official interpreter at the Central Office at no cost to the litigant it does require that both the Irish and the English versions be served together. Inevitably there would be some element of delay involved in obtaining any such translation. It is submitted the fact that there are additional steps and delays required for a litigant who wishes to use the Irish language would seem to be very much at odds with the dicta of Sullivan P.

In the Supreme Court Kennedy CJ put a particular emphasis on what he saw as the linguistic competence of the people whereby he remarked that

“the hard fact remains, and must of stern necessity remain for at least a generation, that of the adult population a number...perhaps still a majority...is unable to read or understand a summons or notice written only in the Irish language...[t]hat hard fact imposed, and so long as it continues to be a fact will impose, on the rule-making authority a duty to make special provision to meet it so that justice may nevertheless be done. Not to make such a provision would be, in my opinion, to offend against natural justice.”⁸³

The Supreme Court attached continued special status to the State’s duty towards the Irish language declaring “the State is bound to do everything with its sphere of action...to establish and maintain it in its status as the national language and to recognise it for *all official purposes* as the national language”⁸⁴ however despite this ratio the majority of the Court went on to rule that a Defendant did not have

⁸² [1934] IR 469 at p. 471

⁸³ [1934] IR 469 at p. 486

⁸⁴ [1934] IR 469 at p. 483 –emphasis added

the right to an Irish translation of an English summons issued in a criminal matter. The majority held that the option to use either language before the Court was sufficient to satisfy the requirement of the constitution as to equality between the languages. O’Byrne J in the High Court was the sole dissenting Judge during both hearings and he did note;

“as the rules stand...all summonses and notices in the Irish language must be accompanied by an English translation. There is no such provision with reference to summonses and notices in the English language. In my opinion this amounts to a discrimination in favour of the English language as against Irish and fails to comply with and carry into effect the provision of the Constitution that the two languages are to be equally recognised as official languages”⁸⁵.

Interestingly O’Byrne J felt that a provision in the 1922 Constitution which was similar to the current Article 8.3 (see further discussion below) did not entitle the Rules of the Superior Court to cast aside one language in favour of the other but rather that the provision of the 1922 Constitution allowed the State and the Legislature to take account of special areas such as the Gaeltachtaí. It is submitted that this would be a far more satisfactory reading of the text of the Constitution rather than the narrow interpretation which was adopted in this case to a certain extent and further embraced in the case of *Attorney General .v. Coyne and Wallace*⁸⁶ which is examined below.

It should be noted that difficulties in relation to language in the Courts of the Irish Free State did not flow in one direction only. In the case of *The State*

⁸⁵ [1934] IR 469 at p. 475

⁸⁶ (1967) 101 ILTR 17

*(Buchan) v. Coyne*⁸⁷ Buchan was prosecuted for a low level criminal offence in the District Court in Co. Galway. The established practice in that particular District Court area, which was located within the designated Gaeltacht, was that Gardaí would give their evidence through the medium of Irish. In this particular case the Gardaí concerned duly gave their evidence in Irish. The Defendant was not an Irish speaker, nor was his Solicitor and they issued a strong objection to the Court on the basis that they did not understand what was being said in evidence. It appears from the records that not only did the Judge ignore their protestations he went on to issue his judgment in Irish only. It was only by the intervention of a third party who happened to be present that the Solicitor discovered that his client had been convicted and sentenced to a custodial sentence. Upon appeal to the High Court the conviction was quashed immediately with principles of natural law and constitutional considerations being taken into account. It should be noted that there was no legislative compulsion upon the Gardaí concerned to undertake to give their evidence in Irish only, doing so was merely a custom in the particular district as distinct from *Ó Foghludha .v. McClean*⁸⁸ where the Court Rules specifically required that an English version of a summons would always have to be issued whether an Irish version was also being issued or not. Thus, as a result of the decision in *The State (Buchan) v. Coyne*⁸⁹ it could be argued that a party who did not wish to engage with the Irish language was permitted to do so however a party who wished not to engage with the English language at all was compelled by way of Court Rules

⁸⁷ (1936) 70 ILTR 185

⁸⁸ [1934] IR 469 at 487

⁸⁹ (1936) 70 ILTR 185

to do so. It is submitted that *The State (Buchan) v. Coyne*⁹⁰ was quite correctly decided; it is a well established principle of natural law, international law and what we now understand as human rights law that all parties would understand the charges against them. A questions which remains unanswered however is what the scope of *The State (Buchan) v. Coyne*⁹¹ would have been had it been a civil action. In a civil action there would not be as strong an emphasis placed upon the a Defendant's right to understand the charges against them and until recently it was widely accepted that a party to a civil action could not force their linguistic choice upon the State (this position has since been amended by the coming into force of the Official Languages Act 2003).

3.1 Bunreacht na hÉireann – The 1937 Constitution

The position of the Irish language was strengthened from the Free State Constitutional position by Article 8.1 of the 1937 Constitution which in the English version of the text declared Irish as the first official language and the national language. Article 8.2 outlines how English is “recognised” as a second official language. The Irish language version of both articles are worthy of investigation given that they differ with some significance from the English text. The practical importance of these from a legal point of view remains to be established, however, they point to a fascinating expression of ideology and identity. It should firstly be noted that due to the provisions of Article 25.5.4 the Irish text of the constitution is to take precedence over the English text in the

⁹⁰ (1936) 70 ILTR 185

⁹¹ (1936) 70 ILTR 185

event of any conflict between the two texts. The Irish text for Article 8.1⁹² uses the expression “*príomh*” [primary/foremost] when referring to the Irish language which Ó Murchú notes⁹³ has two important connotations. Firstly it notes a placing or sequences (in this case the placing being first) although it also connotes an degree of importance. Ó Cearúil suggests that the Irish version, if literally translated would read “Since (the) Irish (language) is the national language it is the principal official language.”⁹⁴ Both submissions would appear to give a greater strength and status to the Irish language than that which the English text confers upon it however, as previously stated the full legal ramifications of this remain to be fully explored. The Report of the Constitutional Review Group suggests that the designation of Irish as the national and first official language is of “little practical significance”⁹⁵.

Perhaps of more significance and interest is the treatment that Article 8.2 receives in the Irish text⁹⁶. Whilst the English text uses the word “recognised” the Irish text uses the expression “*glactar leis*” which would be more accurately translated as “accepted as” which would seem to denote a status of perhaps more grudging recognition. In other articles of the constitution where the English word “recognised” is used it is usually reflected in the Irish text by the word “*admhaíonn*” which would more closely reflect the word “recognised”. The

⁹² The Irish text reads “Os í an Ghaeilge an teanga náisiúnta is í an príomhtheanga oifigiúil í.” While the English text reads “The Irish language as the national language is the first official language.”

⁹³ In Ó Cearúil, M. “Bunreacht na hÉireann – A study of the Irish text” (1999, Government of Ireland, Dublin) at p. 82

⁹⁴ Ibid at p. 80

⁹⁵ Report of the Constitutional Review Group (1996, Government of Ireland, Dublin) at p. 11

⁹⁶ The Irish text reads “Glactar leis an Sacs-Bhéarla mar theanga oifigiúil eile.” while the English text reads “The English language is recognised as a second official language.”

reason for the divergence in this Article is not clear but the plain purport of the words involved suggests that “glactar” would be construed as being lower in status to the word “recognised” in the English text although there has been little legal examination of this position and it is possible that such terminology was used for nationalistic or political reasons. The second element of Article 8.2 worthy of inspection is the use of the term “*Sacs-Bhéarla*” to represent the word “English”. In any normal use in modern times the term “*Béarla*” is used in Irish when referring to the English language however in this instance the term “*Sacs*” which would translate as “Sax” precedes it. In the 1922 Constitution and in all subsequent legislation the word English is represented by the term “*Béarla*”. In using such terminology it is submitted that a more emphatic case is being made that the English language is to be treated in second place, to be treated as the language of the Saxon rather than the language of the Gael. The political significance of such a term cannot be overlooked, particularly when the 1937 Constitution was attempting to sever all ties with the United Kingdom which had been enshrined in the 1922 Constitution. Ó Cearúil notes that the term was used on two occasions during the Opening session of the First Dáil by Cathal Brugha who was acting as *Ceann Comhairle*⁹⁷. Perhaps, in trying to analyse the legal implications of the rhetoric filled wording of the Irish text the dicta of Mr. Justice Geoghegan in the famous case of *Ó Beoláin v. Fahy*⁹⁸ can be best used to sum up the situation. The learned judge noted that a constitution is a document which embodies the aspirations and emotional feelings of the people who have enacted

⁹⁷ The Irish equivalent of Speaker of the House although the terms translates closer to “Chairperson”.

⁹⁸ [2001] 2 IR 279

it and not everything within the text is intended to have legal implication⁹⁹. Perhaps an accurate summation of such emotions and feelings can be summarised by reference to contemporary accounts. Writing in 1941, in the immediate aftermath of the coming into force of Bunreacht na hÉireann, Cogan Bromage noted that;

“[T]he Irish are a people to whom independence means not only political sovereignty but artistic and literary individuality as well. The emphasis upon the native tongue has been a sort of leaning over backward, a phase of the withdrawal from all things English. One of the most credible explanations of the style of James Joyce is premised upon his psychological aversion to the English vocabulary, for him "an acquired speech."”¹⁰⁰.

Article 8.3 allows the State to make provision to use either one of the official languages “for any one or more official purposes, either throughout the state or in any part thereof”. This was interpreted narrowly to mean that either Irish or English could be used by the State unless provision had been otherwise made by law in *Attorney General .v. Coyne and Wallace*¹⁰¹. Here two similar cases were forwarded to the High Court using the ‘case stated’ procedure available to Judges in the Irish Courts¹⁰² and subsequently appealed to the Supreme Court. Both cases concerned alleged violations of the Road Traffic Act 1933 with which Coyne and Wallace were being charged. Both men lived in an area where Irish

⁹⁹ [2001] 2 IR 279 at p. 356

¹⁰⁰ Cogan – Bromage, Mary ‘Linguistic Nationalism in Éire’ *The Review of Politics*, Vol. 3, No. 2. (Apr., 1941), 225 at p. 226

¹⁰¹ (1967) 101 ILTR 17

¹⁰² The case stated procedure allows a Judge of the District Court or Circuit seek the opinion on a matter of law from a higher Court (The High Court and the Supreme Court respectively or in rarer instances the European Courts of Justice) before the lower Court issues their judgment. It is not part of the appeals process as it takes place as part of the initial hearing and once the clarification has been issued by the higher Court the case returns to the lower Court for judgment in light of the clarification. Both the clarification and the judgment issued by the lower Court can themselves be appealed to a higher Court.

was widely spoken although they did not speak Irish themselves. The statutory notice of intention to prosecute, a requirement under s. 55 of the Act was issued to both men in Irish as was the custom of the Gardaí in areas where Irish was widely spoken. This was despite the fact that all enquiries and interviews both respondents conducted with the Gardaí were carried out through the medium of English. In light of the fact that neither man understood the language of the summons fully the District Justice was minded to dismiss the prosecutions on the grounds that they had not been served proper notice. Davitt P held likewise in the High Court noting that;

[A Defendant] is entitled to receive the written notice in a form which he can understand. No doubt there can occur exceptional cases where this is not practicable. The alleged offender may be blind, or illiterate, or he may be a foreigner who has no knowledge of either of the official languages of the State.¹⁰³

Upon appeal to the Supreme Court by the Attorney General it was held by the Court that the prosecutions should proceed and that the State was free to choose which ever language it so wished in the circumstances. This would seem to offend the above mentioned principles of natural law, however, the Court did attach some element of significance to the fact that the Gardaí in question were able to orally translate the information in the summons for the respective respondents. The Court's attitude to the meaning on Article 8.3 was put forward by Kingsmill Moore J where he remarked;

“I was at first inclined to the view that 8 (3) meant that an official document to be operative must be both in Irish and English, unless provision had been made by law sanctioning the use of only one of the

¹⁰³ (1967) 101 ILTR 17 at para 3

languages. It was argued for the Attorney General that the true meaning of the Article was that either languages might be used unless provision had been made by law that one language only was to be used for some one or more official purposes. On consideration I consider this construction to be correct. Accordingly, I am of opinion that the decision of the District Justice was not correct and the case should be sent back to him to enter continuances.”¹⁰⁴

It is somewhat curious that a point of law which stemmed from a case where Irish was used instead of English has since been used as a justification for the curtailment of Irish language rights. The narrowness of the construction allows the State to pick and choose which language to use in particular instances where there is no legislation directing them to use a particular language in a particular circumstance. Such a construction as put forward by Kingsmill Moore J effectively allowed the State to forego providing services or fulfilling obligations in the Irish language save in the rare circumstances where there was legislation or a Constitutional duty requiring the accommodation of the Irish language. Examples of such instances include the translation of legislation and the vindication of a citizen’s right to use the Irish language before the Courts of Justice as set out in *Attorney General .v. Joyce and Walsh*¹⁰⁵. The decision did serve to severely blunt the effectiveness of this earlier decision. Nic Suibhne¹⁰⁶ argues that “[i]t is reasonable to suppose, in light of the prevailing attitude to the revival of the Irish language at the time of the drafting of the constitution, that article 8.3 was inserted to facilitate the official use of Irish in Gaeltacht areas.”. Such a suggestion is not without foundation particularly given the practices in

¹⁰⁴ (1967) 101 ILTR 17 at para7

¹⁰⁵ [1929] IR 526

¹⁰⁶ Nic Shuibhne, N. “State Duty and the Irish Language” , Dublin University Law Journal Vol 19, 1997 33 at 41

place within Government departments and state agencies within Gaeltacht areas at the time of enactment of the Constitution where Irish was used almost exclusively. Nic Suibhne goes on to claim that the narrow construction in *Coyne and Wallace* was a “veritable death-knell for the future scope and development of Article 8”¹⁰⁷. Ó Tuathail¹⁰⁸ also interprets the decision as being construed too narrowly, it was in his opinion, an inaccurate representation of the correct meaning. He highlights in particular the lack of explanation from the bench as to where such a narrow construction arises, aside from Kingsmill Moore’s explanation that the argument was put forward by Counsel for the Attorney General. An analysis of the text itself suggests prima facie that the State has to take some affirmative action in order to allow one language or the other being given preference in any particular scenario or region. The expression “provision may be made by law” suggests on a literal interpretation that a particular legal declaration or positive act must be undertaken by the legislature. The text in the Irish language re-enforces this view upon a literal reading where the terms “socrú a dhéanamh le dlí d’fhonn” suggest that an arrangement be made by law for a particular reason or purpose. The corresponding provision in Article 4 of the 1922 Constitution is perhaps more specific where it reads “Nothing in this Article shall prevent special provisions being made by the Parliament of the Irish Free State... for districts or areas in which only one language is in general use.”. The use of the term “special provisions” again suggests a pro-active or positive step been taken by the legislature in order to make provision for one language or the other. In the absence of any elaboration from Kingsmill Moore J on why he was minded to accept an argument put forward by Counsel from the Attorney

¹⁰⁷ Ibid at 42

¹⁰⁸ Ó Tuathail, S. “Gaeilge agus an Bunreacht” (Coiscéim, Baile Átha Cliath, 2002) at p. 35

General it is difficult to speculate as to why he was not prepared to accept either a literal or purposive¹⁰⁹ interpretation of Article 8.3 or in the alternative on what precise basis the argument offered by Counsel by the Attorney General was accepted.

3.2 Mr Justice O'Hanlon

There did briefly appear to be some willingness on behalf of the judiciary to consider a different approach when O'Hanlon J distinguished *Coyne and Wallace* to its own facts in *An Stát (Mac Fhearraigh) .v. Mac Gamhna*¹¹⁰. The case concerned the dismissal of the Plaintiff from his position as an instructor with the State Training Agency. The Plaintiff sought to take action against the State Training Agency by way of the Employment Appeals Tribunal, a quasi-judicial body which hears disputes in connection with employment and enjoys many of the same powers as a Court of Justice. When the Plaintiff sought to have the hearing before the Employment Appeals Tribunal conducted in the Irish language the State Training Authority objected claiming that a number of their witnesses would only give evidence in English. As a solution the Chairman of the Employment Appeals Tribunal put forward a procedure that would allow each witness to give their evidence in the language of their choosing however the Chairman rejected pleas by the Applicant that his legal counsel be allowed cross examine the State Training Authority's witness in Irish, noting that the

¹⁰⁹ As noted above it is widely believed that the primary purpose of the provision was to allow the State make particular provision for the Irish language. Reference to the 1922 text would seem to support such a claim.

¹¹⁰ The Irish Reports, Special Reports 1980-1998 (Irish Language Cases) at p. 99

Applicants Legal Advisors had full knowledge of the English language¹¹¹. The Applicant appealed this decision to the High Court on the basis that his right to use the Irish language was not being vindicated. It is important to note here that the substantive matter of law with which the case concerned itself with was not the issue of the unfair dismissal but rather the decision of the Employment Appeals Tribunal as to the manner in which the proceedings would be conducted. O’Hanlon J stated “it must always be accepted that Irish is the first official language and that it is a citizen’s privilege to demand that it be used for official purposes throughout the State” whilst also elaborating on the status of the Irish language in the 1937 Constitution which he felt was “higher” than the status awarded to Irish under the 1922 Constitution. This could be interpreted as an attempt by O’Hanlon J to distinguish *Coyne and Wallace* on the basis that the Judge failed to take account of the higher duty placed upon Courts to vindicate the rights of Irish speakers from the 1937 Constitution. Whilst that development was noteworthy for the strong tones used by O’Hanlon J, the learned Judge held that;

“Any Time that a party wishes to argue its case to the court of the tribunal, *whether by way of advocacy, through the giving of evidence, through the questioning or cross-examination of witnesses*, I am of the opinion that it is the right of that party under the Constitution to do all of that in the Irish language, should he so desire.”¹¹²

Ó Tuathail claims this reading of 8.3 would be the correct “normal reading”¹¹³. In order to address the issue of a witness or any other party to an action (the Judiciary included, one assumes, although not expressly stated) who failed to

¹¹¹ *ibid* at p.100

¹¹² *Ibid* at p. 107 emphasis added

¹¹³ Ó Tuathail, S. “Gaeilge agus an Bunreacht” (Coiscéim, Baile Átha Cliath, 2002) at p.35

fully grasp the Irish language during the course of a cross examination, the Court held that an independent Court appointed interpreter should be provided. Such an interpretation amounted to a move away from the narrow construction of Kingsmill Moore J in *Coyne and Wallace*, however, O'Hanlon J had, within a year, returned to a much narrower construction in the case of *An Stát (Mac Fhearraigh) .v. Breitheamh Dúiche Neilan*¹¹⁴.

*An Stát (Mac Fhearraigh) .v. Breitheamh Dúiche Neilan*¹¹⁵ serves to highlight the injurious implications of *Coyne and Wallace* for those seeking to deal with the State through the medium of Irish. A Defendant based in the Donegal Gaeltacht was charged with having a television without a licence. A summons to appear at a sitting of the District Court in the Gaeltacht town of An Fál Carrach was issued to the Defendant in the English language only. The Defendant was an Irish speaker in a District where Irish is the everyday spoken language and was dissatisfied to receive such a document in English and he took steps to inform the relevant Minister of his disappointment. The Defendant received a reply containing an undertaking that all future summons issued to him would be in the first official language, however, the Minister stated that he was happy that the Defendant had been correctly and legally served in any event. The initial Court sitting was postponed and as a result a further summons was issued for a new Court date however this further summons was issued in the English language only. The Defendant did not present himself in Court on the day of the Summons and was convicted and fined a monetary sum in his absence. The District Justice

¹¹⁴ The Irish Reports, Special Reports 1980-1998 (Irish Language Cases) at p. 108

¹¹⁵ The Irish Reports, Special Reports 1980-1998 (Irish Language Cases) at p. 108

gave the Defendant seven days in which to pay his fine. As a result of this decision the Defendant sought to have the conviction set aside on the basis that service of a summons in English only in a Gaeltacht area violated the Defendant's constitutional rights. O'Hanlon J attached particular significance to the fact that the Rules of the District Court¹¹⁶ made no particular reference to the use of the Irish in Court forms and documents. In contrast the Judge noted that the Rules of the Superior Courts and the Rules of the Circuit Court make reference to the Irish language. The Rules of the Superior Courts in particular prescribe that any Court document which is being served upon a party in the Gaeltacht in English must also be served in the Irish language¹¹⁷. Accordingly the Judge held that the Minister "has a legal right to use a summons in the English language if he so wishes and that there is no constraint upon him either in ordinary law or under the Constitution to provide an Irish version to the Defendant even if requested to do so." The Judge noted that Article 8 allows for provision to be made for the exclusive use of either language for one or more official purposes but his own logic seems prima facie contradictory. In highlighting the fact that the District Court Rules made no provision either way for the use of either official language the Judge seemed to contradict his own brief summation of Article 8 (including Article 8.3). The plain purport of the Article suggests that a positive step is needed in order for the State to favour one language over another; something which the Judge clearly recognises does not exist. The Judge does not offer *Coyne and Wallace* as a justification for his decision nor does he offer any insight as to what coloured his interpretation of

¹¹⁶ The Rules of the various Courts in Ireland take the form of secondary legislation and as a result could be considered to fall within the ambit of 'by law' as envisaged in Article 8.3.

¹¹⁷ Order 106, Rule 5 of the Rules of the Superior Courts

Article 8. The only particular justificatory element from his decision is the aforementioned and seemingly contradictory reliance on the absence of a particular provision in the Rules of the District Court. The Judge does, however, restate the undisputed point of natural law that if the Defendant did not understand English he would have a right to have the summons explained to him in his own language although this would apply equally to Irish and Mandarin Chinese or any other language. It is submitted in the absence of any justification for this position on Article 8.3 that O’Hanlon J failed to give any recognition to the special status (or any status even) afforded to the Irish language by Bunreacht na hÉireann. Nic Suibhne notes how O’Hanlon J. had “ignored his own pronouncement” from *An Stát (Mac Fhearraigh) .v. Mac Gamhna* within one year¹¹⁸ although interestingly O’Hanlon J makes no reference whatsoever to his earlier decision despite the relative similarity of the cases and the binding nature of the doctrine of precedent. A further issue arises whereby the Judge has acknowledged that certain Court Rules correctly make provision for the Gaeltacht but the Constitution itself at no point makes a differentiation between Irish speakers who live in the Gaeltacht or the Galltacht¹¹⁹.

3.3 Creeping Constitutionalism

Even though the question of whether a party to a legal action has the right to use the Irish language appeared to have been long settled in the affirmative there persisted a number of issues around the remit and limit of Article 8 when it came

¹¹⁸ Nic Shuibhne, N. “State Duty and the Irish Language” , Dublin University Law Journal Vol 19, 1997 33 at 41

¹¹⁹ Collective term used for English speaking areas – literally meaning area of foreigners

to its application by the Courts. In *Ó Murchú v Registrar of Companies*¹²⁰ the Applicant sought to have a declaration that the State, through the relevant office (the Respondent) was obliged to provide her with an Irish language version of a form required to register paperwork associated with the formation of a limited company. The English language version of the form appears in a statutory instrument however there was no corresponding Irish language version. Unlike Acts of the Oireachtas there was no constitutional nor legislative obligation upon the State to provide translations of statutory instruments. The Applicant based her claim upon Article 8 of the Constitution. Before the case came before the Court the Respondent did provide an Irish version of the form, however, they claimed they did so not on foot of a legal obligation but rather as a ‘favour’¹²¹. O’Hanlon J held that the Applicant did indeed have a legal right to the translation stemming from Article 8 and further awarded her an order for her costs. At no stage in the judgment does O’Hanlon J mention his own earlier judgements in *Neiland* nor *Mac Gamhnia*. Such a pronouncement is difficult to reconcile as again, unfortunately, O’Hanlon J failed to provide any clear justification for his decision other than the fact that he felt the provisions of Article 8 of the 1937 Constitution were “stronger” than Article 4 of the 1922 Constitution. The limits of Article 8 were perhaps most clearly delimited in *In Delap .v. The Minister for Justice*¹²² which was again heard by Mr Justice O’Hanlon. The case concerned a Solicitor who carried out a significant element of his practice though the Irish language. A number of his clients wished to take proceedings in the Superior

¹²⁰ The Irish Reports, Special Reports 1980-1998 (Irish Language Cases) at p. 112

¹²¹ Ibid at p. 114

¹²² Ibid at p. 116

Courts¹²³ through the Irish language but the Rules of these Courts were only available in the English language. The Applicant sought a declaration that the Respondents were obliged by the provisions of the Constitution to issue him with an official copy of the Rules of the Superior Courts in the Irish language. The Rules in question had been in operation for four years without any Irish translation having been provided. Interestingly O’Hanlon J notes in his Judgment that Delap’s case has echoes of both *Ó Murchú* and *Mac Gamhnia*. O’Hanlon J notes that he “consider[s] the position of the Applicant in this case similar, in many ways, with the position of [Ó Murchú] and that at first sight that same relief would be to the Applicant as was available to [Ó Murchú]”¹²⁴. Although O’Hanlon J went on to discuss the impact of the dicta of Kingmill Moore J in *Coyne and Wallace*, which prima facie seems irreconcilable with the decision he came to in *Ó Murchú*, in this instance O’Hanlon J provides some further elaboration which might serve to explain his earlier reasoning. O’Hanlon J held that Kingmill Moore J’s dicta in *Coyne and Wallace* vis a vis Article 8.3 applied and that;

“[T]he Committee appointed...had the power in conjunction with the Minister for Justice to make rules...in the English language only (as in fact happened) and that there was no violation of Article 8 of the Constitution when the Committee and the Minister chose one only of the official languages to make the rules (and the forms accompanying them), without at the same time providing them in the other official language”¹²⁵.

¹²³ The Superior Courts consist of the High Court and the Supreme Court with the addition of the Court of Criminal Appeal in criminal matters. The Rules of the Courts determine elements such as the manner in which proceedings must be brought, the rules on evidences and the rules and procedures for the running of cases in those Courts. Similar rules exist for the Circuit Court and the District Court. These rules are compiled by a Committee of Senior Judges and Lawyers appointed by the Minister for Justice.

¹²⁴ The Irish Reports, Special Reports 1980-1998 (Irish Language Cases) 116 at p. 118

¹²⁵ *ibid* at p. 120

Whilst he had not expressly done so in *Ó Murchú* it could be argued that in *Delap* he distinguished the case from *Coyne and Wallace* by reference to the Constitutional right of every citizen to appear before the Courts. This right has been recognised as a right arising in a general sense from Article 40.3.1 and from Article 34.3.1 which grants full and original jurisdiction to the High Court in all matters. This general right was recognised in the case of *McCauley v Minister for Posts and Telegraphs*¹²⁶ where Kenny J famously remarked that “it must follow that the citizens have a right to have recourse to [the] Court...for the purpose of asserting or defending a right given by the Constitution for if it did not exist, the guarantees and rights in the Constitution would be worthless”¹²⁷. The validity of such a right is not disputed, however, the use of such a right to guarantee the rights of Irish speakers wishing to access the Courts is somewhat troublesome. If, as, O’Hanlon J claims that right of *Delap* and his clients to use Irish before the Courts comes not from Article 8 but from elsewhere, the justification for the recognition for that right is entirely unclear. In his judgement O’Hanlon J mentions that he does not believe “it is necessary for the Applicant to invoke the provisions of Article 8 of the Constitution”¹²⁸ and proceeds to grant *Delap* a full translation of the Rules on foot of the aforementioned right of access to the Courts. Without invoking Article 8 it is hard to understand how the Judge can come to one conclusion or the other on the basis that it is under Article 8.1 that the Irish language is given its Constitutional status whilst Article 8.3 has been used to curtail and limit the effect of Article 8.1 and 8.2 where official purposes

¹²⁶ [1966] IR 345

¹²⁷ Ibid at p. 358

¹²⁸ The Irish Reports, Special Reports 1980-1998 (Irish Language Cases) 116 at p. 120

are concerned as per *Coyne and Wallace*. Without invoking either Article 8.1 or 8.3, the recognition of the right of *Delap* to a translation by reference to the right of access to the Courts alone would seem to be without a solid basis.

In the later case of *Ní Cheallaigh v. Minister for the Environment*¹²⁹ O’Hanlon J referred back to his judgment in *Delap* and distinguished the case as an exceptional one noting that;

“it could be said I was dealing there with an exception to that normal rule. Certainly, an official purpose of the State was in question, but in addition to what was in question was the right which every citizen has under the Constitution to have access to the courts in order to assert and defend his rights.”¹³⁰

O’Hanlon J’s own interpretation, it is submitted, suggests that he granted *Delap* the right to a translation on the basis of both the general implications of Article 8 and the recognised right of access to the Courts. By referencing the status of the Irish language and the ‘official purpose’ O’Hanlon J is giving recognition to the fact (albeit retrospectively) that Article 8.1 and 8.3 were indeed invoked in *Delap*, despite his own earlier pronouncement that this was not necessary. At the very least it is submitted that Article 8.1 would need to be invoked to grant *Delap* a right to translations of the Rules with the right of access to the courts perhaps overriding the considerations of Article 8.3

Whilst this order was granted, the decision to grant the order based on the right of access to the Courts rather than Article 8 showed a continued unwillingness on

¹²⁹ The Irish Reports, Special Reports 1980-1998 (Irish Language Cases) 122

¹³⁰ Ibid at p. 125

behalf of O’Hanlon J to overrule Kingsmill Moore J’s dicta in *Coyne and Wallace* despite the deviation from it in *Mac Gamhna*. He reiterated a commitment to Kingsmill Moore’s comments yet again in *Ní Cheallaigh .v. The Minister for the Environment*¹³¹ where the Appellant was convicted for using the Irish language version of “Dublin” [“Baile Átha Cliath”] on her car registration plate. The scheme in operation by the Minister used a series of letters representing the English language names of counties. The scheme was operated under powers granted to the Minister by the Roads Act of 1920 and further developed by SI 441 and SI 446 of 1986. The Appellant sought to have the two Statutory Instruments declared unconstitutional and struck off as invalid. O’Hanlon J. turned down the application distinguishing *Ní Cheallaigh* from *Delap* and applied *Coyne and Wallace*.

In terms of a practical outcome from *Delap* the Minister for Justice was required to prepare a version of the Rules of the Superior Courts in the Irish language by order of the Court. Such a document was indeed prepared and put into print. Practitioners were impressed with the quality of the document and the effort taken to produce it and commented favourably on the document’s use of clear language. Unfortunately and somewhat farcically, however, a limited print run of the document was produced and the master copy of the document was lost or not saved. Eventually the document was only recovered after one practitioner, who

¹³¹ The Irish Reports, Special Reports 1980-1998 (Irish Language Cases) 122

had ordered the document in the immediate aftermath of the *Delap* case, allowed his copy to be scanned and put back into print.¹³²

Whilst in *Delap* there had been some recognition given to the rights of Irish speakers and the Court took steps in order that any infringement of the rights of Irish speakers be redressed there is a marked difference apparent from the case law in instances where Defendants took proactive steps or made deliberate omissions in order to assert their rights. In *The Minister for Posts and Telegraphs v. Cáit Bean Uí Chadhain*¹³³ the Defendant refused to pay her television license on the basis that there was insufficient Irish language programming available. Counsel for Bean Uí Chadhain highlighted the constitutional position of the Irish language in addition to a statutory obligation upon the Broadcasting Authority to make particular provision for the Irish language¹³⁴. It was her contention that the Authority failed to take account of this obligation and failed to pay due deference to the constitutional status of the Irish language.

¹³² See transcript of interview with Diarmaid Ó Catháin, Solicitor which is contained in the Annex A attached to this work. The rules are now available bilingually on the Courts Service Website <http://www.cuirteanna.ie>

¹³³ The Irish Reports, Special Reports 1980-1998 (Irish Language Cases) 56

¹³⁴ The statute in question s. 17(1)(A) of the Broadcasting Authority (Amendment) Act, 1976 reads; “in performing its functions the Authority shall in its programming be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that programmes reflect the various elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements that distinguish that culture and in particular for the Irish language”

3.4 Judiciary and the Irish Language

It has long been accepted that that parties to proceedings have an inalienable right to deliver their own evidence in Irish as per *Crotty*¹³⁵, however, the issue of compelling others to use the language has been in dispute. In *Ó Monacháin .v. An Taoiseach*¹³⁶ the Appellant was prosecuted for a planning violation in relation to a property in the Donegal Gaeltacht. He requested that his case be heard through Irish, it emerged that the District Judge appointed to hear the case would require the assistance of an interpreter during the course of the trial. The Appellant sought to have the trial postponed to such a time as a Judge with the ability to hear the case through Irish without the need for an interpreter could be appointed. The High Court and the Supreme Court dismissed the Appellant's application. Although both Courts accepted that there was a general obligation on the State arising from s.71 of the Courts of Justice Act 1924 to appoint Judges with an ability to carry out their duties without the help of an interpreter to areas where the Irish language is in general use, this obligation was not absolute. Instead the obligation hung on the caveat "so far as may be practicable having regard to all relevant circumstances". Henchy J.(with Griffin J agreeing) held; "Although a witness may give evidence in his native language, no authority can be found in s.71 or any other provision for compelling a judge to hear the case without the assistance of an interpreter to make the evidence intelligible to those who need to understand." Ó Tuathail notes that in his opinion the Judges missed the real point, Ó Monachain was not objecting to the appointment of an interpreter but rather objecting to the appointment to the Gaeltacht District Court

¹³⁵ (1927) 61 ILTR 81

¹³⁶ The Irish Reports, Special Reports 1980-1998 (Irish Language Cases) 71

of a Judge with no knowledge of the Irish language or insufficient knowledge so was to enable him to carry out his duties in the Irish language. He further maintains, and it is hard to disagree with him, that this is a clear breach of s. 71 of the Act which states;

“So far as may be practicable having regard to all relevant circumstances the Justice of the District Court assigned to a District which includes an area where the Irish language is in general use shall possess such a knowledge of the Irish language as would enable him to dispense with the assistance of an interpreter when evidence is given in that language.”

Hamilton J in the High Court noted that there was no “absolute duty”¹³⁷ placed upon the Government to appoint a District Judge with knowledge of the Irish language. Hamilton further highlighted the fact that the language of the section does offer a number of saving clauses and provisos with language such as ‘as far as may be practicable’ and ‘having regard to all relevant circumstances’ as a justification to “place a limit on the obligation”¹³⁸. In the Supreme Court Walsh J was somewhat critical of the Executive in their failure to appoint a Judge with knowledge of the Irish language pointing out that “there was fifteen years in which to find a suitable person. There is no evidence to demonstrate that it was not possible to appoint a suitable Judge to the district in question. Accordingly I am satisfied that the Government and the Minister for Justice failed to fulfil their statutory duties under s. 71 of the Act.”. Henchy J and Griffin J both held that the saving clause is sufficient to discount any breach of s. 71. Somewhat bizarrely Griffin J remarked that the section was invoked in 1924 in light of the absence of communication and transport from outside the Gaeltacht so as to enable people in

¹³⁷ The Irish Reports, Special Reports 1980-1998 (Irish Language Cases) 71 at p. 77

¹³⁸ Ibid at p. 78

the Gaeltacht to understand the English language. Whilst such a line of thinking is interesting from a socio-linguistic point of view the validity of the remarks in legal discourse are somewhat questionable. If, as is the implication from Griffin J's remarks, communication and transport had improved to such an extent so as to enable the people of the Gaeltacht to better understand the English language, one might expect that s. 71 would have been repealed by the Oireachtas, however, the section continues in force today. Griffin J also adopted the practicable line in deciding that no breach of s.71 had occurred. As Henchy J remarked (with Griffin J concurring); "on examination of the section in its entirety, it is clear that it is not an unconditional duty. That section cannot be invoked in every case"¹³⁹. Whilst the plain purport of the wording of the section make it clear that exceptions of a practical nature can be made the invoking of such a clause it is somewhat unusual in the context of a legislative duty which also has strong constitutional connotations. It has long been the inclination of the Irish Courts across a broad genre of cases to be very slow to use such exceptions or clauses with regards to the limitation of recognition of rights and obligations generally within the body of Irish law. By way of example personal rights under the Irish Constitution which stem from Article 40.3.1 are also subject to the "as far as practicable" clause however, there has been little sign of a judicial willingness not to recognise rights on the basis of practicality. Indeed Article 40.3.1 has been used on many occasions to strike down legislation enacted by the Oireachtas on the basis that the legislation was repugnant to the Constitution, which by any construction would have to be considered at the very least impractical for the legislature and the Executive and in many cases had lead to

¹³⁹ The Irish Reports, Special Reports 1980-1998 (Irish Language Cases) 71 at p. 85

the imposition of additional duties and obligations upon the State which could not be considered practical. With this in mind, it is submitted that perhaps there was a different motivation at work in the case of *Ó Monacháin* in that the judiciary were faced with a dilemma of the competence of the legal system and the legal professions to deal with the dichotomy of what was in theory a bilingual legal order but in all reality an almost exclusively monolingual system. Whilst every lawyer practising in the State up and until 2009 had passed two Irish language exams deeming them competent to carry out their practice in Irish in reality it was widely accepted that this was not the case in reality¹⁴⁰. A frank admission of same was not forthcoming at any stage during the judgments issued in *Ó Monacháin*.

3.5 Idealism versus Reality

Nic Shuibhne¹⁴¹ notes the dilemma facing the judiciary where in theory, according to the Constitution, the Irish language is the first official language, however, the reality shows that it is in fact a minority language. She notes that the absence of legislative guidelines has hindered the process. Whilst she was writing before the Official Languages Act 2003 was passed, to a large extent, despite the improvements brought about by the Act few of them related to the topic at hand and the Act provides no real guidance in terms of the inherent conflict between the status and the linguistic reality. The Constitutional Review

¹⁴⁰ See further discussion in Chapter 5

¹⁴¹ Nic Shuibhne, N. "The Constitution, the Courts and the Irish Language"- 253 at 256 in "Ireland's Evolving Constitution", T Murphy and P Twomey (Eds) (Hart, Oxford, 1998)

Group¹⁴², reporting in 1997 recommended that the position of the Irish language be addressed. They proposed that English and Irish be equally recognised as official languages rather than Irish having the special constitutional position which it now enjoys. They further suggested that with a view to recognising the minority status of Irish the following be inserted into the Constitution as a new Article 8.2 “Because the Irish language is a unique expression of Irish tradition and culture, the State shall take special care to nurture the language and to increase its use.”¹⁴³ . Even if such an amendment were to be passed it would not serve to address the issue as highlighted by Nic Shuibhne. There would still be a burden upon the State to at least treat Irish and English equally. Any recognition of the minority status of the Irish language from such an amendment would seem to only facilitate positive discrimination towards the language particularly in the promotion of its use and it is difficult to envisage any particular legal ramifications of the proposed new Article 8.2. Whilst there might be some temptation to dilute the constitutional status of Irish in order to allow the Government take a more focused approach towards the promotion of the language Roddick has cautioned with regards to the Welsh language in Wales that “[a] minority language which depends on the whim and the priorities of government and of the executive and on concessions rather than on equal rights for its status enjoys only a permissive status.”¹⁴⁴ Parry notes that ;

“[p]art of the problem was that whereas the language was raised by the Constitution to an elevated position, speakers of the language were not afforded practical mechanisms to enable them to access services through

¹⁴² Report of the Constitutional Review Group (Rialtas na hÉireann, Baile Átha Cliath, 1997)

¹⁴³ Ibid at p. 11

¹⁴⁴ Roddick, W. CB QC “One Nation – Two Voices? The Welsh Language in the Governance of Wales” in “Language and Governance”, Williams, Colin H. Ed. (University of Wales Press, Cardiff, 2007) at p. 267

the language. The linguistic culture within the courts was to remain firmly Anglo-centric, and despite sporadic efforts to create sources of Irish legal terminology, there was an absence of a concerted policy designed to address the situation by way of long-term planning.”¹⁴⁵

Ó Conaill suggests¹⁴⁶ that a twin track approach could be taken whereby the language is recognised as a minority language which deserves to be protected and maintained but that its status as a language which is on par with English be maintained and indeed ensured. An official minority language could be afforded both equality and accommodation. The Welsh language for example has been recognised in Wales as both an official language and as a minority language worthy of protection¹⁴⁷. Despite the rhetoric there is very little practical evidence that those seeking to access justice through the medium of the Irish language are being best served by the current wording of the Constitution.¹⁴⁸

3.6 Other Constitutional Provisions

In addition to the importance of Article 8 to the Irish language and those who have sought to vindicate their right to use Irish before the Courts Articles 25.4.4 and 25.5.4 of the Constitution are of particular significance. Article 25.4.4 requires the State to prepare an official translation of every Act enrolled in both official languages. In practice it was the tradition that the vast majority of Acts

¹⁴⁵ Gwynedd Parry R “An Important obligation of citizenship’: language, citizenship and jury service”, *Legal Studies*, Vol 27 Issue 2 188 at p. 197

¹⁴⁶ Ó Conaill S. “An Ghaeilge mar Theanga Oifigiúil seachas Teanga Mhionlaigh; An Dearcadh Mícheart?” in ‘Súil ar Dlí’ (FirstLaw, Dublin, 2009) at p. 47

¹⁴⁷ This recognition takes a number of forms including legislation such Welsh Language Protection Act, 1993 and the National Assembly for Wales (Official Languages) Act, 2012 and policy focused initiatives such as including Welsh as a language for the purposes of the European Charter on Regional and Minority Languages

¹⁴⁸ See Chapter 6

were drafted and enacted in English only and subsequently translated to Irish. Somewhat more controversially perhaps is Article 25.5.4 which provides that any in conflict between the texts of the Constitution the Irish language version shall prevail.¹⁴⁹ This Article in particular was criticised by the late Prof. J M Kelly, widely regarded as Ireland's foremost constitutional scholar. Prof. Kelly described the article as an "irrational irritant"¹⁵⁰ as well as a "situation pregnant with annoyance and timewasting for the Courts"¹⁵¹. In practice it is rare that such differences exist (or at least exist to such an extent to have any real legal significance) and as Budd J noted in *O'Donovan v Attorney General*:

"Both texts of the Constitution are authoritative. It is not to be thought that those who framed or enacted the Constitution would knowingly do anything so absurd as to frame or enact texts with different meanings in parts. It could only happen by inadvertence...if in fact the words used are not in form really found to correspond the Irish text must prevail"¹⁵²

It should be recognised that in many instances where the English text is perhaps unclear or unsatisfactory the Courts have tended to look towards the Irish text to better elucidate the English text¹⁵³. Perhaps two of the most prominent examples of use of the Irish text occurred in case law concerning the Bill of Rights portion of the Irish Constitution (generally regarded as Articles 40-44). In *Crowley v. Ireland*¹⁵⁴ the Supreme Court turned to the Irish text of Article 42.4 in order to better understand the obligation the Article places upon the State with regards to

¹⁴⁹ The most obvious example of such a conflict exists in relation to the minimum age of a President, Art 12.4.1 which states in English "Every citizen who has reached his thirty fifth year (ie 34 years old) where as the Irish text say "Gach saoránach ag a bhfuil cúig bliana tríochad slán [Every citizen who has pasted his 35th year (ie 35 years old)]"

¹⁵⁰ Kelly J. M. "The Irish Text of the Constitution", Irish Student Law Review, Hilary 1966 7 at p. 10

¹⁵¹ *ibid*

¹⁵² [1961] IR 114 at p. 117

¹⁵³ See Generally Kelly, J.M. "The Irish Constitution" (Tottel, Dublin, 2004) p. 205 to p. 211.

¹⁵⁴ [1980] IR 102

free primary education. The Plaintiffs in the above action were seeking that the State would provide the special education which the Plaintiffs' son required. The Supreme Court turned to the Irish text which contained the phrase "socrú a dhéanamh chun" which translates more closely as make provision for rather than "provide" as the Plaintiffs had alleged. The second prominent (and it is submitted misapplied) occurrence of the Irish text occurred in the infamous "X-Case"¹⁵⁵ where McCarthy J noted that there was some difference between the English and Irish text of the Constitution which could perhaps have a bearing on the right to life of the unborn but dismissed this on the basis that "[h]istorically the Irish text is a translation of that in English". It is submitted that the learned Judge erred firstly in his contention that the Irish text is a translation of the English text¹⁵⁶. Secondly, even if it were to be the case that the Irish text was merely a translation of the English text the provisions of Article 25.5.4 are quite clear that the text in the Irish language is to prevail in the event of a conflict. It is not the contention of this work that a different judicial approach to the Irish text of the Constitution would have resulted in a different outcome to this particular case. It does, however, follow that had there been a greater understanding of the Irish text and its status, future developments in relation to difficult adjudications on the law could have had a somewhat different outcome. It is submitted that the case law in relation to conflicts between the texts remains, to a large extent, unexplored and underdeveloped. Whilst earlier erroneous interpretations did not fully shut the door on future developments and use of the Irish text it has been

¹⁵⁵ Attorney General v X [1992] IR 1

¹⁵⁶ The oft repeated claim that the Irish version of the Constitution is a mere translation of the English version has been forcefully dismissed in recent times, see generally Ó Cearúil, M. "Bunreacht na hÉireann – A study of the Irish text" (Government of Ireland, Dublin, 1999)

largely used to re-enforce a position arrived at by reading the English text¹⁵⁷ rather than highlighting conflicts in the text.

4.1 Ó Beoláin v. Fahy

More than other previous case the judgment in *Ó Beoláin v. Fahy*¹⁵⁸ served to highlight the extreme importance of the constitutional status of the Irish language and represents a high watermark in terms of recognition of the status of Irish by the Courts. The Judgment in *Ó Beoláin v. Fahy*¹⁵⁹ was delivered by the Supreme Court on 4th April 2001 but the protracted course of events which lead to the case reaching the highest court in the land commenced in September 1997 when Seamus Ó Beoláin was before the Dublin District Court to answer a charge of drink driving under Section 49(3) and (6) (a) of the Road Traffic Act 1961 as inserted by Section 10 of the Road Traffic Act 1994. The charge is not an unusual one; but in this case the fact that the Defendant is an Irish speaker ensured the case would have far reaching consequences and have a profound impact on the future development of language law and policy in Ireland. The majority judgment was one which was significant in many aspects, particularly in the forceful nature in which the failings of the State in this area were addressed. The majority verdict has had a lasting impact on the rights of Irish language

¹⁵⁷ Mr Justice Hardiman in particular is often keen to use the Irish text of the Constitution to draw a clearer meaning from the text. In the case of *Sinnott v. Minister for Education* [2001] 2 IR 545 Mr Justice Hardiman highlighted the differing translations of ‘child’ in the Irish text in order to rule that free primary education could not continue indefinitely, the English text used child repeatedly where as the Irish text differentiated between off-spring and a young child. In the recent high profile case of *Roche v. Roche* [2009] IESC 82 Hardiman J and Murray CJ both turned to the Irish text in order to adjudicate whether the right to life of the unborn as protected by Article 40.3.3 applied to frozen embryos.

¹⁵⁸ *Ó Beoláin v. Fahy* [2001] 2 IR 279

¹⁵⁹ *ibid*

speakers and has given the State a stern warning about the consequences of its failings.

Perhaps even more significant than the majority verdict in *Ó Beoláin* was the minority verdict of Geoghegan J. which was extraordinary for a number of reasons. The learned Judge approached the issue from a very different perspective to his fellow brethren. Many of the issues he highlighted in his judgment have been subject to drastic change in the years that have passed since, other issues, however, remain unresolved. The *Ó Beoláin* judgment itself, the significant developments since, such as the Official Languages Act 2003 and the new found official status of Irish as an EU language, have resulted in a seismic shift in Irish language policy and law.

4.2 Background

Séamus Ó Beoláin was summoned to appear before the District Court in Dublin in September 1997 to answer an allegation of drink driving against him¹⁶⁰. All his dealings with the Gardaí had been conducted in Irish including the report of the analysis by the Medical Bureau of Road Safety. He stated before the District Court that he wished to have his case conducted in the national language. A series of adjournments followed due to a number of reasons. Firstly Ó Beoláin's solicitor sought that certain materials be made available to his client in the Irish language namely The Road Traffic Acts of 1994 and 1995 and the Rules of the

¹⁶⁰ A full summary of the facts is provided by Hardiman J -[2001] 2 IR 279 at p. 333

District Court¹⁶¹. The District Justice allowed time for each side to prepare submissions as to whether Ó Beoláin was entitled to such materials in the Irish language. Ó Beoláin's submission went unopposed and the case was again adjourned to allow the Director of Public Prosecutions an opportunity to produce the materials required. Ó Beoláin was at this juncture furnished with a partial, unofficial translation of the 1994 Road Traffic Act. The case was then further adjourned on a number of occasions because a Judge with sufficient knowledge of Irish to hear the case was not available. Eventually Ó Beoláin, through his counsel, sought an order from Fahy J to direct the DPP to furnish him with the materials in question. The District Justice Fahy declined to grant such an Order. In March 1998 Ó Beoláin was granted leave to seek relief by way of judicial review proceedings. The Applicant sought a declaration that there was a duty upon the State to provide him with the materials in question and sought a prohibition order on the charge of drink driving due the State's failure to provide such materials¹⁶². Laffoy J, whilst recognising that there was a duty on the State to translate Acts under Article 25.4.4 of the Constitution, refused to grant the declaration or prohibition sought. The learned Judge held that a reasonable period to allow such translation had not, at the time of the High Court proceedings, yet lapsed. The Applicant appealed to the Supreme Court. The Court hearing the case consisted of McGuinness J, Hardiman J and Geoghegan J.

¹⁶¹ Prior to 1979 Acts of the Oireachtas were published in bound volumes containing the text of the Act in both official languages however this ceased to be the case thereafter whereby Acts were only published in the language they were enacted in. Secondary legislation translation was not always as comprehensive as primary legislation but even the limited amount of translation ceased around this time too.

¹⁶² Official versions of the two Acts in question were provided to the Applicant shortly before the High Court hearing however the issue was still commented upon at both the High Court and the Supreme Court and a general declaration was sought by the Applicant that all Acts of the Oireachtas be published in Irish.

4.3 Majority Judgment

The majority judgments delivered by McGuinness and Hardiman JJ represented a new beginning for Irish language rights. Previously, as Nic Shuibhne notes “[j]udgments on this question have tended, typically, to grant individual redress without pronouncing on State duty in general terms”¹⁶³. The language adopted in both majority judgments and in particular that of Hardiman J is candid and extremely critical of the failings of the State to fulfil its duties. Both judgments granted the declaration sought with regard to the translation of Acts of the Oireachtas and the Rules of the District Court. They refused the order of prohibition sought although the issue was not dismissed outright.

McGuinness J, who cited with approval the dicta of Denham J in *D. v. Director of Public Prosecutions*¹⁶⁴ regarding the community’s right to have cases prosecuted, refused to grant the prohibition order on the grounds that there was no “real risk that the applicant would not get a fair trial”¹⁶⁵ despite the fact that she had already found that the State had failed in its duties. Hardiman J was somewhat more sympathetic to the Applicant’s argument in attempting to obtain the prohibition but he concluded “[w]ith considerable hesitation...that the applicant should not be granted the relief sought”¹⁶⁶. In doing so, he emphasized that the District Judge who would eventually hear the case would, if necessary,

¹⁶³ Nic Shuibhne, N. “The use of the Irish language for official purposes – Ó Beoláin v. Breitheamh na Cúirte Dúiche Mary Fahy” [2001] ILT No 11 at p. 174

¹⁶⁴ [1994] 2 IR 465 at p. 474

¹⁶⁵ [2001] 2 IR 279 at p. 311

¹⁶⁶ [2001] 2 IR 279 at p. 354

be empowered to strike out the proceedings if the rights which had been recognised were not readily forthcoming from the State.

4.4 Consequences of Future Failings

The lasting effect of the majority judgment in *Ó Beoláin* remains to be explored at a judicial level¹⁶⁷ thus far. At numerous stages throughout the majority judgment the State was left in no doubt as to the nature of their previous failings. The State's failure to carry out an express constitutional duty (Article 25.4.4) to translate Acts of the Oireachtas, in particular, drew criticism from McGuinness and Hardiman JJ. McGuinness J described translation as "not a matter of insuperable difficulty" and pointed to the international experience in Europe where translation was carried out daily. She also referred in particular to Canada where "despite the fact that only a minority of Canadians are francophone, all official documents, including court documents, notices, forms and signs are provided in both French and English"¹⁶⁸. Hardiman J was more forceful still;

"No doubt *it would normally be otiose* for a court to make a declaration confirming the plain purport of a constitutional article. But I think this Court should do so here because of the undeniable failure to comply with this mandatory constitutional provision, and in the hope that by so declaring this duty will at last be taken seriously."¹⁶⁹

¹⁶⁷ Geoghegan J repeatedly expressed concerns over a Supreme Court only comprising of three Judges making any pronouncements on the issues raised in *Ó Beoláin*.

¹⁶⁸ [2001] 2 IR 279 at p.308. Wales, a devolved legislature with a smaller population than Ireland, manages to publish all legislation including annexed forms and notices etc therein passed by the National Assembly bilingually in English and Welsh. Whilst the legislation in Wales is all in the form of secondary legislation the complexity of the material to be translated and the challenges in the provision of the translation services would be similar to the Irish situation.

¹⁶⁹ [2001] 2 IR 279 at p. 353. Emphasis added

The tone of the judgment of Hardiman J gave an insight into the possible future ramifications in the form of a stern warning to the State ; “It would be gravely mistaken...to assume that the considerations which lead to the refusal of an order of prohibition in this case would apply to any similar case in the future.”¹⁷⁰ Hardiman J further explained that if the declarations were not acted upon in this particular case or in general any future trial of Mr. Ó Beoláin or any other criminal prosecution could result in an emergency or embarrassment for the authorities which could arise in “a case more urgent or sensitive than the present one.”¹⁷¹ The prospect of someone accused of a far more serious crime, with a greater impact on potential victims, being acquitted due to State failure to translate legislation looms large on the horizon. Smith¹⁷² points to a Canadian authority in *Re Manitoba Language Rights*¹⁷³ which could usefully illustrate the future direction of another case similar to *Ó Beoláin*. Acts of the legislature in Manitoba were governed by section 23 of the Manitoba Act 1870 which required, in a similar vein to Article 25.4.4 of the Irish Constitution, for all Acts to be published in both official languages (in this case English and French). From 1890 onwards this ceased to be the case and legislation was published exclusively in English. The Canadian Supreme Court held that whilst the acts published in English only were *prima facie* invalid they were given the status of being temporarily valid for a minimum time period to allow for translation and publication. However any new acts which were not published bilingually would

¹⁷⁰ [2001] 2 IR 279 at p. 354

¹⁷¹ *ibid*

¹⁷² Smith, John BL “Legislation in Irish – A lot Done, More to Do” [2004] Bar Review – June p. 91 at p. 93

¹⁷³ *Re Manitoba Language Rights* [1985] 1 S.C.R. 721

be considered invalid *ab initio*.¹⁷⁴ Smith¹⁷⁵ argues convincingly that the pronouncement of Hardiman J¹⁷⁶ offers a similar type of warning to the Irish State although at no point does Hardiman J cite *Re Manitoba Language Rights* in his judgment. Even a cursory glance at the numbers of Acts published in Irish since *Ó Beoláin* reveals a still significant backlog of Acts awaiting translation and publication although much progress has been made in recent years in addressing the backlog. Newer Acts, for now, seem to be under control with versions in both official languages being published simultaneously¹⁷⁷. If a criminal charge were to be brought under an Act which was yet to be translated there is a strong possibility that a prohibition order could be granted given the dicta of Hardiman J in *Ó Beoláin*.

4.5 Minority Judgment

Perhaps the most remarkable aspect of *Ó Beoláin* was the minority judgment of Geoghegan J. Nic Shuibhne¹⁷⁸ describes the judgment as “legally flawed” which

¹⁷⁴ Similarly in the Cypriot case of *The Attorney General of The Republic v. Mustafa Ibrahim and Others*, [1964] Cyprus Law Report 195 at para 210, an Act which had been published exclusively in one of two official languages (Greek and Turkish) was only upheld due to the “law of necessity” as a result of a military conflict on the island at the time in question. No such extenuating circumstance could be said to exist in Ireland at the time of *Ó Beoláin* or since.

¹⁷⁵ Smith, John BL “Legislation in Irish – A lot Done, More to Do” (2004) Bar Review, June 91 at p. 94

¹⁷⁶ [2001] 2 IR 279 at p. 287

¹⁷⁷ From 1st February 2008 the main source for the publication of the Irish language version of newer Acts is on the <http://www.oireachtas.ie> website. The <http://www.achtanna.ie> website, which was launched as a bilingual website where Acts could be published in English and Irish, has significant gaps in when it comes to the amount of Acts translated. No Irish versions of Acts from 2004 onwards appear and the years from 1990 until 2003 only have a small minority of translated Acts published with no Acts at all being published in Irish for 1991. The only Act which appears in Irish for 2003 is the Official Languages Act which was drafted and passed bilingually. The Official Languages Act (discussed below) now requires that acts in both official languages be published simultaneously.

¹⁷⁸ Nic Shuibhne, N. “The use of the Irish language for official purposes – *Ó Beoláin v. Breitheamh na Cúirte Dúiche Mary Fahy*” (2001) ILT No 11 at p. 178.

“cannot be reconciled with the predominant views of the judiciary on the question of language rights and duties.”. The first and perhaps most remarkable aspect of the judgment is the language which it was delivered in. Geoghegan J delivered his judgment in English notwithstanding the fact the entire case, including the appeal to the Supreme Court and the judgments of the other two Judges were delivered in Irish. Geoghegan J did hope to provide an Irish version of his judgment as “a matter of courtesy”¹⁷⁹. He was satisfied that there was nothing which precluded him from doing so, although he did note that if a litigant was unable to understand English then there would be a requirement under natural justice to translate into a language that the litigant understood. This right is already enjoyed by accused throughout the country involving a number of foreign languages which do not have the benefit of any constitutional status in the jurisdiction.

4.6 Natural Law or Special Status?

In declining both the declaration and the prohibition order Geoghegan J repeatedly refers to the Applicant’s assumed ability to understand English. In determining that the Applicant is not making any natural justice point Geoghegan J ruled that the Applicant was not entitled to translations (and certainly not what could be termed official translations). In making such a ruling Geoghegan was distinguishing a series of previous rulings which held that a Court has no entitlement to inquire as to the English language competence of an applicant

¹⁷⁹ An Irish translation of the Judgment of Geoghegan J was published along with the English language version in the Irish Reports.

once they wish to conduct their case in the national language¹⁸⁰. Geoghegan J's reasoning (although he does not cite the case) is more inline with the Scottish judgment of *Taylor v. Haughney*¹⁸¹. Scotland, however, lacked any equivalent of Article 8 of Bunreacht na hÉireann and based on the fact that the Appellant spoke fluent English the appeal was refused. It is submitted that such a line of reasoning in Ireland would be flawed given the special constitutional status of the Irish language which Geoghegan J elaborates upon. Geoghegan J interprets Article 8 "as meaning that for all legal and official purposes the Irish language and the English language are in an *equal position*"¹⁸² and thus he dismisses the argument that the Constitution gives the Irish language any special position citing the absence of any legal implications for the special position previously enjoyed by the Roman Catholic Church (previously Article 44.1.2) prior to the 5th Amendment. Ó Tuathail¹⁸³ notes that the comparison between the special status of the Roman Catholic Church and that of the Irish language is not a safe one. The previous Article 44.1.2 did not have any equivalent in the 1922 Constitution of the Irish Free State however Article 8 of the 1937 Constitution had a corresponding article in the form of Article 4 of the Constitution of the Free State 1922. Indeed one wonders if the special position of the Irish language was not intended by the framers of the 1937 Constitution to have any legal meaning attached to it why then was it not expressly stated as such in a similar manner to the directive principles of social policy outlined in Article 45. Geoghegan J alludes to the Constitution as embodying the aspirations and

¹⁸⁰ First enunciated in *Ó Monachain v. An Taoiseach* reported in Irish Reports Special Reports 1980 – 1998 at p. 71

¹⁸¹ [1982] SCCR 360

¹⁸² [2001] 2 IR 279 at p. 356. Emphasis added.

¹⁸³ Ó Tuathail, S. "An Ghaeilge agus Bunreacht" (Coiscéim, Baile Átha Cliath, 2002) at p. 69

emotional feelings of the people who have enacted it, where not everything is intended to have legal implication¹⁸⁴. Such a claim is not without foundation especially when one considers the rhetoric and language of the preamble and the final text in the Constitution¹⁸⁵. It is submitted that a similar claim in relation to the Irish language is somewhat misplaced. References to the special status of the Irish language occur more than once. In Article 8.1 Irish is described both as the national language and the first official language, furthermore in Article 25.4.4 the Irish version of the text of the Constitution is given priority over the English version of the text in case of conflict. The very fact that an Irish version of the Constitution was prepared side by side with an English version solidifies the recognition of the special status attached to the Irish language therein.

4.7 Equality

Despite his earlier pronouncement that “for all legal and official purposes the Irish language and the English language are in an equal position” Geoghegan J does state that he is unconvinced by the equality argument. He questioned whether the rights to obtain translations of documents and to conduct proceedings in Irish, which were accepted by the majority verdict, existed at all. He further explained that even if a right to acquire a translation of an act did exist then there had to be scope to allow such translations to be made within a reasonable time and he deemed that such a period of time had not elapsed by the time the case came before him (over 1000 days after the initial District Court

¹⁸⁴ [2001] 2 IR 279 at p. 356

¹⁸⁵ This, interestingly, appears only in Irish in both texts of the Constitution.

date). This reasoning appears to contradict his own declarations as to whether a Defendant who is conducting his case through Irish is entitled to an interpreter, where Geoghegan J claimed that such a right may not be an absolute one if there were “insuperable difficulties about obtaining an interpreter *within a reasonable time scale*”¹⁸⁶. Geoghegan J notes that the failing of the State to prove translation from 1980 onwards “would seem to be a gross breach by the State of a direct constitutional obligation”¹⁸⁷, although he further notes that the issue of cost could delimit the alleged right to translation where he stated;

“If for instance there were reasons of cost involved in the delaying of the translations the Court would have to carefully consider whether it should order the State to incur expenditure in relation to one particular obligation albeit an express constitutional one when the State would be under numerous other obligations, some constitutional, in relation to health, education etc. that would also involve expenditure”¹⁸⁸

The very fact that the issue of costs was raised during a discussion on an alleged constitutional right is striking, as Nic Shuibhne notes, “[w]e are usually unwilling to discuss the right to use Irish for official purposes in such blatantly non-ideological terms: but this may have caused more harm than good, side stepping for too long that anomaly that we were always dealing with a minority as well as a national language”¹⁸⁹ however it is submitted that the view taken by McGuinness J with regard to translation not being “a matter of insuperable difficulty” is a more satisfactory one.

¹⁸⁶ [2001] 2 IR 279 at p. 358 – emphasis added

¹⁸⁷ [2001] 2 IR 279 at p. 362

¹⁸⁸ [2001] 2 IR 279 at p. 363

¹⁸⁹ Nic Shuibhne, N. “The use of the Irish language for official purposes – Ó Beoláin v. Breitheamh na Cúirte Dúiche Mary Fahy” [2001] ILT No 11 at p. 178.

Finally in declining the order of prohibition Geoghegan J expressed concern that if such an order was to be granted then defendants facing serious charges could seek to have their trials postponed pending the translation of the Act in question. His concern that justice be administered promptly, whilst admirable, is misplaced. Perhaps the real issue of concern should be why such Acts had not been translated in the first place.

5. Ramifications and Consequences of the Ó Beoláin decision – State Action

The ramifications of *Ó Beoláin* are numerous and far reaching both in legal terms and in re-igniting the Irish language debate. Hardiman and McGuinness JJ both reaffirmed the duty on the State to issue translations of Acts and certain documents required for the administration of justice in the Irish language. Hardiman J in particular gave the State firm warnings to get its house in order post haste, even the manner in which the State conducted itself in the proceedings drew his ire;

“the State has taken up some positions which are narrow, legalistic, petty fogging and reductionist. Ironically, legal submissions with these attributes are often described in shorthand as “*drunk driving points*”. It is disedifying to see them taken by the State.”¹⁹⁰

The State’s response to *Ó Beoláin* has been significant and goes much of the way to addressing the severe criticism of the majority verdict. The Official Languages Act was enacted in 2003, although this cannot be directly attributed to *Ó Beoláin*. The case for an Official Language Act had been put forward in various forms for

¹⁹⁰ [2001] 2 IR 279 at p. 352. Original emphasis

decades before. The issue was brought firmly into focus by inclusion in the Fianna Fáil manifesto in 1997 and during the course of the Fianna Fáil led administration a draft Bill was put forward. The Bill lapsed due to an impending election but the return of Fianna Fáil to government saw the bill reintroduced as The Official Languages (Equality) Bill 2002¹⁹¹. The circumstances which lead to *Ó Beoláin* commenced in 1997 and came to a head in 2001 and it is reasonable to infer that the issues raised in *Ó Beoláin* had a bearing on the provisions of the Act which was eventually published as The Official Languages Act 2003. Section 7 of the Act addresses the primary issue in *Ó Beoláin* whereby it requires “as soon as may be after the enactment of any Act of the Oireachtas, the text thereof shall be printed and published in each of the official languages *simultaneously*”¹⁹². Furthermore Section 8 (2) guarantees the right to give evidence in either official language and ensures that nobody should be placed at a disadvantage because of the choice in official languages. Section 8 (3) allows for Courts to make simultaneous translation available in order to ensure that nobody is placed at a disadvantage. The doubts raised by Geoghegan J¹⁹³ in *Ó Beoláin* as to whether such rights existed have now been settled. In addition Section 8 (4) allows for the first time for a party to compel the State or a public body to conduct their case in Irish. This provision only relates to civil matters and as Bohane notes;

“[a]n amendment to extend this right to criminal proceedings was refused on the basis of the sudden nature of the cases and because it would

¹⁹¹ Nic Shuibhne criticises the use of the word ‘equality’ in the title of the bill as being irreconcilable with Article 8 of the Constitution which recognises Irish as both the national language and the first official language (2002) ILT No. 13 at p. 199. The word equality was eventually dropped from the title.

¹⁹² Emphasis added

¹⁹³ [2001] 2 IR 279 at p. 304

require Irish speaking Gardaí, solicitors etc. A fear of the abuse of this system in criminal cases was also a relevant factor in the decision.”¹⁹⁴

Perhaps the principal legacy of the decision in *Ó Beoláin*, particularly the judgment of Geoghegan J, was to refocus and reignite the Irish language debate in Ireland. Two longstanding issues which were often highlighted have since been addressed. The Irish language has become a full official EU language (Irish had previously enjoyed the status of a working language) on the back of the very public and vocal ‘Stádas’ campaign. In becoming an official EU language the Irish language has found a new role going forward in the Europe of the future, with elevated status and opportunities for those who wish to use the language. At the same time moves were afoot to remove the Irish language competency requirements for lawyers wishing to practise in Ireland. The Competition Authority recommended that the Irish competency requirements be removed as they operated as a restraint on competition in the legal sector¹⁹⁵. In addition many felt that the requirements were doing more harm than good¹⁹⁶ where tokenism was causing resentment among those who had to sit the exam and where even those who wished to avail of the legal services through the medium of Irish had little faith in the integrity of the exam. An ability to translate a passage from *An t-Oileánach* does not generally prepare a lawyer for the rigours of legal argument conducted in the Irish language. The compulsory competency requirements have been replaced with a short series of lectures in the professional law schools and

¹⁹⁴ Bohane, K. “The Official Languages Act 2003” (2005) Cork Online Law Review VIII available at colr.ucc.ie

¹⁹⁵ 2008 Competition Authority Report in Competition in Professional Services – Solicitors and Barristers at p. 64 available at <http://tca.ie/publications>

¹⁹⁶ See generally Nic Shuibhne N, “First among equals? Irish language and the law”, (1999) vol 93:2 Law Society of Ireland Gazette, pp 16-19

an optional further qualification which focuses on specific Irish language issues in legal practice is also available rather than the previous extremely basic and farcical general language test.

The decision by the majority in granting clear declarations regarding Irish language rights was long overdue and is warmly welcomed. The duties imposed upon the State to provide translations of materials required by the administration of justice in a bilingual State will, as noted by Geoghegan J. have cost implications. However such expenditure should rank high in the order of priority of Government expenditure to attain their stated aim of a bilingual State. Whilst the judgment delivered by Geoghegan J has been the subject of criticism it has nevertheless facilitated pragmatic discussion of an emotive issue that often suffered from a tokenistic approach. Such a development is to be welcomed.

6. Language Schemes under the Official Languages Act 2003 – Implications for Access to Justice

The implications of the Official languages Act 2003 are discussed elsewhere in this work. As is noted in Chapter 3 Sections 7 and 8 of the Official Languages Act 2003 go a long way to addressing some of the issues raised in *Ó Beoláin* and other cases which came before the Courts. In addition to the provisions discussed above the 2003 Act also contained provision for statutory language schemes which govern how various public bodies intend to provide services in English, Irish and bilingually. Two such schemes which are of interest with regards to the

Court system are the language schemes of the Courts Service¹⁹⁷ and the language scheme of the Office of Attorney General¹⁹⁸. The first scheme of the Courts Service covered the period of July 2005 to July 2008 whilst the scheme of the Attorney General covers the period June 2007 to June 2010 inclusive. The two schemes differ significantly in form, substance and general quality. The first scheme of the Courts Service could be best described as minimalist and extremely basic. In addition to the Courts Service's scheme being weak and reductionist, the Courts Service was already operating from a very low base prior to the passing of the Act. Many of the services which were offered by the Courts Service are available in English only, such as switchboard operation¹⁹⁹, IT systems²⁰⁰, visitor tours²⁰¹ and press office²⁰². The Scheme commits to limited updating of these systems to be able to accommodate the Irish language within the life time of the first scheme, however some the limited updates proposed are "[s]ubject to planning and budget considerations" and "subject to considerations of compatibility and cost"²⁰³. Other provisions proposed in the first scheme include basic Irish language training for frontline staff on the basic greetings. Walsh and McLeod²⁰⁴ argue that this is inadequate as it "does not provide a real language choice to the customer at the first point of contact and does not lead to an adequate 'supply of ...service in the language' in the first place.". A further weakness of the first scheme of the Courts Service relates to the services that

¹⁹⁷ Available at <http://www.courts.ie/publications/>

¹⁹⁸ The scheme of the Office of the Attorney General includes the Office of Parliamentary Counsel to the Government and the Chief State Solicitor's Office.

¹⁹⁹ Language Scheme of the Courts Service at p.19

²⁰⁰ Ibid at p.13

²⁰¹ Ibid at p.15

²⁰² Ibid

²⁰³ Ibid at p. 17

²⁰⁴ Walsh, J. and McLeod, W. "An overcoat wrapped around an invisible man? Language legislation and language revitalisation in Ireland and Scotland" *Language Policy* (2008) Vol 7 21-46 at p. 31

they do propose to offer fully in Irish. Walsh and McLeod²⁰⁵ further note that many of these services, such as the publication of documents bilingually and a commitment to reply to correspondence in Irish where the initial correspondence from the service user was also in Irish are already incumbent upon public bodies by virtue of Sections 9 and 10 of the Official Languages Act 2003. Restating the obligations of 2003 Act under the guise of a language scheme is at best inefficient and illogical and at worse only amounts to page filling and padding of what is an already sparse document. Some minor concessions to allowing staff to attend Irish language training courses are made although such concessions lack any overall coherent strategy²⁰⁶. Walsh and McLeod note that there is more of an emphasis on training and language classes for existing staff rather than recruitment of bilingual staff which, they argue, may be less likely to contribute to the bilingualism of the organisation, however they do accept that delays in recruiting new staff would be inevitable due to personnel management issues²⁰⁷. The day to day monitoring of the scheme of the Courts Service is the responsibility of the various line managers in different sectors whilst the Senior Management Group of the Courts Service are to keep the scheme under review. No one person or group of persons with specific Irish language experience or qualifications is appointed to oversee the scheme. Whilst the Courts Service's own scheme prescribes that the scheme was to expire either in July 2008 or at such a point when a new scheme has been confirmed by the Minister pursuant to Section 15 of the Act, whichever is the earlier no new scheme had been

²⁰⁵ Walsh, J. and McLeod, W. "An overcoat wrapped around an invisible man? Language legislation and language revitalisation in Ireland and Scotland" *Language Policy* (2008) Vol 7 21-46 at p. 30

²⁰⁶ Language Scheme of the Courts Service at p. 21

²⁰⁷ *Supra* note 195 at p. 33

published and confirmed as of July 2012²⁰⁸. The Minister did, however, direct the Courts Service to prepare a draft scheme on or before 20/12/2007. The progression, if any, of this draft scheme is unknown. A further stumbling block which has no doubt hindered the Courts Service in the pursuit of the commitments made in their scheme is the moratorium on public service recruitment which has been in place in Ireland since 2009. Many of the commitments made in the scheme would require the recruitment of additional staff which is no longer possible due to the economic conditions that exist in Ireland.

The scheme of the Attorney General offers a different perspective on how a key stakeholder in the Courts system can go about fulfilling their responsibilities under the Official Languages Act 2003. Firstly it should be noted that unlike the Courts Service the Office of the Attorney General has very little, if any, direct contact with members of the public. The Office of the Attorney General (AG) deals with various other Government bodies and represents the Government in legal proceedings. The Office of the AG had a strong base of linguistic competence before the passing of the Official Languages Act and has for many years had staff capable of carrying out their duties through the medium of Irish²⁰⁹, with the use of the language and training therein actively promoted within the Office. When providing advice to the Government or representing the Government in Court where legal proceedings have been issued in Irish, the

²⁰⁸ As per the Coimisinéir Teanga's website <http://www.coimisinéir.ie/> under the Draft Language Schemes section.

²⁰⁹ Language Scheme of the Office of the Attorney General at p. 19

Office of the AG provides advice in Irish and retains Counsel who are fluent in Irish and capable of representing the Office and the Government before the Court through the medium of Irish.²¹⁰

In 2005 the Office of the AG established a voluntary “Coiste Gaeilge” (Irish Committee) which facilitated the promotion of the Irish language in the Office generally and provided an opportunity for those with Irish to improve their levels of spoken Irish²¹¹. The Office of the AG also has established a coherent strategy with regards to Irish language training for staff members through a Language Training Policy which “establishes a framework to increase the efficiency and effectiveness of language training, including Irish language training provided to staff”²¹². Perhaps the most effective and innovative method adopted by the Office of the AG to deal with Irish language was the establishment of the post of Irish Language Officer in 2002²¹³. Prior to the drafting of the language scheme the Irish language Officer’s role was primarily concerned with creating awareness of the Irish language in the Office of the AG²¹⁴. The language scheme sees the creation of an additional Irish Language Officer in the Chief State Solicitors Office who will collaborate closely with the incumbent Irish Language Officer with the aim of enhancing the level of service provided through Irish²¹⁵. The Irish Language Officers will be charged with providing advice with regards to the various Irish language training requirements of staff which they identify from

²¹⁰ Ibid at p. 20

²¹¹ Ibid at p. 21

²¹² Ibid at p. 22

²¹³ It should be noted that at the time there were no legislative demands on the Office to establish such a post nor was the Official Languages Act 2003 in force. The creation of the post demonstrates the significant goodwill which exists in the Office of the AG towards the Irish language generally.

²¹⁴ Language Scheme of the Office of the Attorney General at p. 29

²¹⁵ Ibid

time to time whilst also providing backup assistance and a point of reference to staff dealing with communications in Irish. The language scheme also requires the Irish Language Officers to prepare a bi-annual report (Tuarascáil na Gaeilge) which is to be furnished to various levels of management within the Office of the Attorney General. The bi-annual reports are charged with identifying steps which have already been taken towards meeting the Office's comments under its language scheme and providing recommendations with regards to further provision of training and resources²¹⁶. The scheme places an onus on the various levels of management to meeting the requirements identified by the Irish Language Officers in the bi-annual reports.²¹⁷ Such reports ensure that the operation of the scheme of the Office of the AG will be monitored sufficiently while the scheme offers a further safeguard by requiring the Irish Language Officers to liaise with the Head of Administration keeping the operation of the scheme under review²¹⁸.

The importance of both schemes to those who are seeking to use the Irish language in legal proceedings rests on the fact that any legal action will be undertaken in the Courts which are administered by the Courts Service. In the vast majority of cases which have an Irish language element the State will be represented by the Office of the Attorney General. In theory the Chief State Solicitor's Office instructs the Office of the Attorney General however in practice the expertise which is present in the Office of the Attorney General means that they will take the lead in cases which have an Irish language element.

²¹⁶ Language Scheme of the Office of the Attorney General at p. 30

²¹⁷ Ibid

²¹⁸ Ibid at p. 34

The schemes that are prepared under the Official Languages Act represent a binding promise to deliver the services as are outlined therein. In the case of the Courts Service, as has been highlighted, the commitments are of such a limited nature so as to make it difficult for an Irish speaker (or indeed his/her legal team) to fully engage with the Courts Service through the medium of Irish from an administrative point of view. Fortunately such problems tend not to exist once the legal arguments commence as the Office of the Attorney General have implemented a comprehensive scheme which ensures that the State is at least capable of being represented to the highest standards before the Courts in either official language.

Conclusion

Whilst the development of constitutional rights occurred in a stuttering manner from 1922 to 2003 it is clear that the Constitution has been the primary source for the justification of such rights. The fact that Irish speakers can insist on being allowed to use their own language before the Courts in Ireland is key. The full extent to which this right extends has been subject to much judicial debate. In real terms very often those who seek to assert their rights as Irish speakers find that in reality the vindication of such rights is difficult to achieve in a system which only notionally gives such a strong recognition to the Irish language. The chronological development of case law in the area up until the *Ó Beoláin* case suggests that Irish speakers' rights were recognized merely as paying some element of lip service to the status which the Constitution conferred upon the language and that the interpretation settled upon for article 8.3 offered legal

justification to such a position. The developments in *Ó Beoláin* however have served to highlight that, even with the somewhat disappointing interpretation of article 8.3 having been adopted, there remained scope for judicial intervention particularly where the plain purport of a constitutional obligation imposed upon the State was ignored. Armed with the decision in *Ó Beoláin* and the high watermark of Irish language rights development afforded by the enactment of the Official Languages Act 2003 Irish speakers were able to point to the status of the Irish language as an important legal imperative. Prior to these developments it is submitted that the Irish legal system had somewhat lost sight of the legal reality of a bilingual order in favour of adopting an approach of granting a certain permissive status to the Irish language based upon the linguistic reality which faced the language rather than the legal reality. It is argued that the *Ó Beoláin* decision was a loud wake up call to the State in terms of highlighting the obligations that do plainly exist in an official bilingual order rather than the position which had been adopted whereby the State was reading into the constitution what perhaps ought to be there based on the language's real world status as a minority language. The relative success of the *Ó Beoláin* action encouraged a number of further cases, which are examined in Chapter 3, which sought to built upon the perceived success of the Applicant.

Chapter 3:- The Shifting Paradigm – Language Rights in Ireland: Development from 2003 to Present

1 Introduction

As has already been noted in Chapter 2, the primary source for legal guidance in connection with the Irish language always has been, and indeed remains to this day, the Irish Constitution. Such an assertion should not be taken to mean that the law in relation to Irish language rights and the rights of those who seek to access justice through the medium of Irish has remained unchanged since 1937 when Ireland's current Constitution was enacted. Whilst the text of the articles which have concerned the Irish language have not changed the Irish Constitution itself is regarded as a living document, the interpretation of which changes from generation to generation. What was understood to be an interpretation of provision of the Constitution by a Court in 1937 does not always imply that the same interpretation would hold true in 2011, despite the generally accepted principle of precedent in the Irish legal system. Added to the scope that the Courts have to alter the interpretation of rights is the ever shifting dynamic of the Oireachtas which can, and very often does, legislate in areas of law which concern issues which are addressed in the Constitution. As Mr. Justice Kenny noted in *Ryan v. Attorney General*²¹⁹ :

“None of the personal rights of the citizen are unlimited: their exercise may be regulated by the Oireachtas when the common good requires this. When dealing with controversial social, economic and medical matters on

²¹⁹ [1965] IR 294

which it is notorious views change from generation to generation, the Oireachtas has to reconcile the exercise of personal rights with the claims of the common good and its decision on the reconciliation should prevail unless it was oppressive to all or some of the citizens or unless there is no reasonable proportion between the benefit which the legislation will confer on the citizens or a substantial body of them and the interference with the personal rights of the citizen.”²²⁰

When the above passage is considered in light of the views adopted by the Courts when interpreting Article 8.3 of the Constitution²²¹ it is clear that when assessing the rights of those who seek to engage with the legal system they are faced with a moving target. As we have seen with the cases examined in Chapter 2 the law in this area had developed slowly and, until the *Ó Beoláin*²²² case at least, in a consistent manner where the Courts recognised the rights of those wishing to engage with the legal system in an ad hoc and often reductionist manner. As has been discussed, the *Ó Beoláin* case created waves at a time when Irish language rights were also under examination by the government of the day with a view to extending those rights. With the passing of the Official Languages Act in 2003 a certain high watermark in relation to the language and its status had been reached. This chapter will examine the years from 2003 onwards where, initially at least, some of the rhetoric which was present in the *Ó Beoláin* decision manifested itself in the form of increased recognition of the rights of Irish speakers and those who sought to use the language in official contact with the State. The judgment of the High Court in *Ó Murchú* and the State’s willingness to secure recognition for the Irish language as an official EU language were noteworthy in that they advanced the cause of the Irish language rights. A deeper

²²⁰ [1965] IR 294 at pp 312-313

²²¹ See generally Chapter 2

²²² *Ó Beoláin v. Fahy* [2001] 2 IR 279

examination of these two events in addition to the other legal developments since points to a downgrading of the rights of Irish speakers coming from both the bench in terms of case law and the legislature via reassessment of the Official Languages Act, 2003. Due to the nature of the Irish legal system, where the Constitution enjoys supremacy over legislation, the jurisprudence of the Courts in examining the extent to which there exist constitutional language rights will be examined in detail. A limited number of legislative enactments have had some bearing on the right of access to justice and language rights more generally will also be investigated. Furthermore there is a specific role in language rights internationally for language commissioners and ombudsmen. The role of Ireland's language commissioner, An Coimisinéir Teanga, which was established by the Official Languages Act, 2003, is worthy of investigation in this regard.

2.1 Delay and the development of the right of access to justice - Ruairí Mac Carthaigh

More so than any one individual the trial and various applications of Ruairí Mac Carthaigh demonstrate the challenges and delays faced by Defendants who wish to conduct their cases in Irish. Although this case commenced many years ago it has lingered within the legal system for a numbers of years, subject to many applications, reviews, delays and adjournments. Ruairí Mac Carthaigh is an Irish speaker who was reared in Dublin bilingually. Irish is his everyday language. Mac Carthaigh was charged three separate offences concerning an alleged theft of £11,252.50 worth of sweets and confectionary. The specific offences were robbery under Section 23 of the Larceny Act as amended by the Criminal Law

(Jurisdiction) Act, 1976; unlawful seizure of a vehicle by threat or force contrary to Section 10 of the Criminal Law (Jurisdiction) Act, 1976 and, finally, knowingly receiving stolen goods contrary to Section 33 (1) of the Larceny Act, 1916. All of the offences above are alleged to have occurred on 28th May 1990. Mac Carthaigh's trial has been delayed on a number of occasions due to legal argument. As a result of the many points raised by Mac Carthaigh there now exists a clearer understanding of the rights to the Irish speaking Defendant.

2.2 Irish Speaking Juries

Initially, Mac Carthaigh sought an order by way of judicial review and subsequent appeal to the Supreme Court²²³ directing that the jury in his Circuit Court case would be comprised of people who had the ability to understand Irish without the assistance of an interpreter. Mac Carthaigh wished to conduct his side of the case through Irish. Mac Carthaigh, through his counsel, claimed that points made on his behalf would not have the same effect if they had to be translated into English first and he thus claimed that unless all members of the jury were Irish speakers his rights would be violated. The legislation governing the area of juries in Ireland is The Juries Act 1976. Section 6 provides that every citizen aged over 18 and below the age of 70, whose name appears on the electoral register, is entitled to sit on a jury, however, the legislation does not stipulate any requirement as to language proficiency (either in English or Irish). Section 11 does further stipulate that the jury panel should be assembled in a manner which is random and non-discriminatory.

²²³ [1999] 1 IR 200

Article 35.5 of the Irish Constitution says “Save in the case of the trial of offences under section 2, section 3 or section 4 of this Article, no person shall be tried on any criminal charge without a jury.”²²⁴ The exact meaning of what constituted a jury was examined by the High Court. O Hanlon J quoted²²⁵ Griffin J’s reasoning in the earlier case of *de Burca .v The Attorney General*²²⁶ approvingly saying “the jury should be a body which is truly representative, and a fair cross-section of the community”. To further elaborate on the issue at hand as to whether the jury could be drawn from a pool of fluent Irish speakers only O’Hanlon J quoted the American case of *Taylor v. Louisiana*²²⁷ which stated “Restricting jury service to only special groups or excluding identifiable segments playing major roles in the community cannot be squared with the constitutional concept of a jury” and held that if he were to grant Mac Carthaigh the order sought that he would be excluding a very large segment of the community (both English speakers with insufficient knowledge of Irish and Irish speakers who did not have a sufficient knowledge of legal terms in the Irish language). He also highlighted the practical difficulties that would be involved in assembling such a panel of jurors given the low percentage of Irish speakers in the population generally (citing census data) and the absence of any list of known Irish speakers²²⁸. On appeal the Supreme Court affirmed O’Hanlon J’s judgment. Carey highlights²²⁹ how the decision fails to elaborate why Article 8, which clearly recognised Irish as the first official language of the State, is

²²⁴ Sections 2, 3 and 4 relate respectively to minor offences and court martial trials and trials in the Special Criminal Court which usually relate to terrorism/organised crime offences.

²²⁵ [1999] 1 IR 200 at p. 204

²²⁶ [1976] IR 38 at p. 82

²²⁷ (1975) 419 US 522 at p. 530

²²⁸ [1999] 1 IR 200 at p. 207

²²⁹ Carey G, “Criminal Trials and Language Rights: Part II” Irish Criminal Law Journal Vol 13 No. 2 2003, 5 at p. 8

prevailed over by ideas which are not expressly stated in the Constitution such as having a representative jury which comprises of a fair cross section of the community. Carey argues²³⁰ that a proper balance needs to be found between representativeness and language rights and suggests that even if the decision is to be upheld in the future he hopes that a “more convincing” explanation justifying it would be forthcoming. Parry has argued that “The result of this judgment is that, despite the purported provisions of Art 8, there can be no serious argument that there exists in Ireland the sort of institutionalised bilingualism that is to be found in Canada.”²³¹ In Wales similar arguments have been advanced that a panel of bilingual juries should exist so as to allow a Defendant who wished to use the Welsh language to be tried by a panel of jurors who would understand the language without the need for an interpreter²³². It would appear however that such suggestion have been dismissed for now²³³ on similar grounds to the refusals in Ireland, where it was noted that to do so would exclude at least four fifths of the total population of Wales²³⁴.

By the time this aspect of the legal argument had concluded it was July 1998 and over eight years had passed since the time of the alleged offence, however, Mac Carthaigh had a serious of further obstacles to overcome yet.

²³⁰ Ibid

²³¹ Gwynedd Parry, R. “An Important obligation of citizenship’: language, citizenship and jury service”, *Legal Studies*, Vol 27 Issue 2 188 at p. 199

²³² The Honourable Mr Justice Roderick Evans ‘Bilingual Juries’, *The Centre for Welsh Legal Affairs’ Seventh Annual Lecture*, National Library of Wales, November 25th.

²³³ Announcement of the Justice Minister 9 March 2010.

²³⁴ Lloyd Jones, Sir David ‘The Machinery of Justice in a Changing Wales’, *The Wales Office Annual Lecture*, available at <http://www.lawsociety.org.uk/documents/downloads/wales-office-annual-lecture-eng10.pdf> at p. 21

2.3 Translating and Recording

Once the Courts had ruled that Mac Carthaigh was not entitled to a jury drawn from fluent Irish speakers only it became apparent that some form of translating and interpretation service would be required. The exact nature of this service was the subject of further legal argument which caused the trial to be delayed once more and the issue was examined in the High Court by Finnegan P on 14th May 2002²³⁵. Mac Carthaigh sought an order to require that a proper transcript of what was said by himself and his legal team in Irish be taken. In addition Mac Carthaigh wanted a proper recording system of submissions made in Irish during the trial and simultaneous translation of the proceedings (a system of sequential interpreting was in use at this point where each sentences/paragraphs would be translated one after another). Mac Carthaigh wished for his trial to be postponed until such time as a proper recording system and simultaneous translation were provided. Prior to the hearing of the challenge in the High Court a Lanier system of recording was put in place whereby everything spoken in the trial in English or in Irish could be recorded. With this in mind Finnegan P held that a system where the stenographer recorded the sequential translations of submissions whilst the Lanier system recorded the original Irish spoken was sufficient to safeguard the rights of the Applicant. Finnegan P did, however, rule that the previous system whereby the stenographer only recorded sequential translation of submissions made in Irish “did not adequately safeguard [Mac Carthaigh’s] rights”²³⁶. In doing so Finnegan P cited the Canadian case of *Mercure v. Attorney*

²³⁵ [2002] 4 IR 8

²³⁶ [2002] 4 IR 8 at p. 11

*General Saskatchewan*²³⁷ approvingly which stated “when proceedings are required by law to be recorded, a person using one or the other official language has the right to have his remarks recorded in that language”²³⁸.

Finnegan P then examined the issue of translation and the pros and cons of simultaneous and sequential translation. Drawing on the experience of the International Criminal Tribunal of Yugoslavia (ICTY), he noted that simultaneous translation saves the Court a great deal of time although he did warn that this should not be a primary concern²³⁹. He attached a particular importance to the body language of a witness and noted that even with the most experienced of interpreters there would always be a slight delay which could lead a judge or jury to associate the facial expression or body language with the evidence then being translated rather than the evidence being given at the time which would be translated very shortly afterwards²⁴⁰. He contended that such a difficulty would not arise with sequential translation. A further difficulty Finnegan P highlighted in relation to simultaneous translation in criminal trials was the steps taken by interpreters to prepare for trials. Finnegan P noted that the ICTY’s experience showed that if the interpreters were furnished with papers and outlines of the arguments to be made ahead of time the translation would be far more satisfactory and more accurate but he held that “this is not appropriate to a criminal trial, insofar as the defendant is entitled to reserve his position”²⁴¹. Finnegan P decided that the interests of justice were not better served by

²³⁷ (1988) 1 SCR 234

²³⁸ (1988) 1 SCR 234 at p. 237

²³⁹ [2002] 4 IR 8 at p. 14

²⁴⁰ Ibid

²⁴¹ [2002] 4 IR 8 at p. 15

simultaneous translation as opposed to sequential translation and refused to grant the orders sought by Mac Carthaigh.

The ruling was appealed to the Supreme Court, which heard the case with the assistance of simultaneous translation. The Supreme Court suggested that Mac Carthaigh may have a right to simultaneous translation²⁴² and the trial has once more been adjourned, some eighteen years after it is alleged that the offence was committed. The Supreme Court suggested that in light of the increased powers available to the Courts under Section 8(3) of the Official Languages Act 2003 which allows Courts to make provision for simultaneous and/or consecutive interpretation as the Court sees fit, the Circuit Criminal Court could reconsider Mac Carthaigh's request for simultaneous interpretation. The Circuit Criminal Court considered the issue²⁴³ in some detail.

Counsel for the Applicant suggested that Section 8 of the Act was inspired by the majority verdict in *Ó Beoláin*²⁴⁴. Counsel also noted that Section 8 of the Act made no discrimination between criminal and civil cases. Counsel for the Applicant suggested that simultaneous translation rather than sequential translation would best satisfy the right of his client to have the proceedings of the Court translated from one official language to another. However he did accept that both methods had their advantages and disadvantages. He stressed that the Court, under the Act, has the complete discretion to decide these matters on a case by case basis and that there was no need for a general pronouncement which would set a precedent. He contended that if a case was only to last for a few

²⁴² Supreme Court 6th March 2008, Irish Times 7th March 2008 at p. 6 – Full judgment not published.

²⁴³ Unreported Judgment of the Circuit Court 30 June 2008. Circuit Criminal Court Bill No. 333/92. Report drafted by the author is available in the Annex B attached to this work.

²⁴⁴ [2001] 2 IR 279

hours or one day then sequential translation would be acceptable. He estimated, however, that the present case would last at least six or seven days and that simultaneous translation would be a much quicker method and thus lead to a shorter trial. In addition, he expressed concern that if sequential translation was to be used the jury could become agitated with the length of the trial especially because they would know that the Defendant has full knowledge of English. There was a risk that the jury could become biased against the Defendant whom they might blame for the extended length of the trial should sequential translation be used. Some reference was also made to the Canadian case of *R v. Beaulac*²⁴⁵ which, as was submitted by Counsel for the Applicant, was a more forceful decision than the Irish jurisprudence and in that light should be considered a persuasive authority.

Counsel for the State responded by pointing out that in Section 8 Subsection 3 of the Official Languages Act 2003 the Court has the complete discretion as to whether to choose simultaneous or sequential translation. In addition Counsel for the State highlighted some of the difficulties that can be associated with simultaneous translation. In support of this argument they highlighted a Canadian authority in the case of *R v. Tran*²⁴⁶ where Lamer CJ accepted that there were problems with simultaneous translation such as an increased chance that errors in translation could be made given that the work was being carried out at speed.

²⁴⁵ [1999] 1 SCR 786

²⁴⁶ [1994] 2 SCR 951

The Court held that the various affidavits and legal precedents which were offered to the Court, whilst informative were not of primary importance. The Court held that the key consideration he had was Section 8 of the Act which allowed the Court to choose between simultaneous and sequential translation.

The Court expressed clearly that nowhere in the Act was the Court permitted to take account of the difference in costs between simultaneous translation and sequential translation and in that regard the decision of the Court was based solely on how the Applicant would best receive a fair trial. The Court rejected the submission by counsel for the Applicant that the jury would become biased against the Applicant if sequential translation were to be used. The Court held that the key consideration in this case was the question of whether the jury would understand clearly exactly what the Applicant and his counsel would say at trial. With this in mind the Court felt that sequential translation, given the fact that it is a slower process would be less error prone and result in the jury gaining a better understanding of what exactly was being said. In some *obiter dictum*²⁴⁷ remarks the Judge expressed some reservations as to whether the Applicant would be entitled to a translation to Irish of evidence given in English given the fact that the Applicant understood the English language although this matter was not being raised during the application in question. Such utterances are similar to those of the minority judgment of Geoghegan J in *Ó Beoláin*.

²⁴⁷ Remarks made by the judiciary in the course of any judgment which are not directly related to the matter at hand and thus, tend not to be legally binding but rather of persuasive authority

Despite the ongoing process and various applications Mr Mac Carthaigh has yet to have a full trial for the alleged offence, some twenty two years after it is alleged that the offence was committed. Whilst the reasons for the delays are numerous, the vast majority of them are connected to Mac Carthaigh's wish to have his case heard through the medium of Irish. Notwithstanding the fact that the delays have been caused by Mr. Mac Carthaigh's own applications, it is submitted that any such delay in the case of an English speaking Defendant would not arise nor would they be tolerated in a legal system which recognised that all Defendants have the right to justice in a prompt and efficient manner. It is submitted that the delays, regardless of which party initiated the proceedings which caused the delays, should by themselves be enough to ensure that no prosecution should be brought.

3. State Obligations and Language Rights

The case of *Ó Gribín v. An Comhairle Mhúinteoireachta & cuid eile*²⁴⁸ is significant in that it was the first in a series of more recent cases where the direction taken by the Courts in relation to the recognition of Irish language rights could be seen to be taking certain steps backwards from the position established in *Ó Beoláin*, or at the very least where the Court did not carry forward with the judicial momentum of *Ó Beoláin*.

The case concerned an Irish speaker who wished to apply for a position with the National Teachers Council, an organisation under the remit of the Department of Education. The Respondents advertised for the vacancy in the print media

²⁴⁸ [2007] IEHC 454

through the medium of English and Irish. The advertisement made particular reference to the Irish language stating that “[t]he ability to perform written and oral business tasks through the medium of Irish would be an advantage.”²⁴⁹ The Applicant wished to apply for the position and as an Irish speaker sought to do so through the medium of Irish. Upon telephoning the Respondent’s office he was unable to reach anyone with sufficient Irish but a member of staff at the Respondent’s office subsequently contacted the Applicant and was able to communicate with him in the Irish language. The Applicant explained that he wished to apply for the position through the medium of the Irish language and asked to be furnished with the requisite materials to enable him to do so. The applicant subsequently only received the English copy of the application form and none of the supporting documentation required to fill out the application form. The supporting documentation included an Irish translation of the Teaching Council Act, 2001 and an Irish translation of an official report concerning the establishment of the Council²⁵⁰. Extensive knowledge of both documents was required in order to complete the application form. The Applicant was able to eventually find an Irish translation of the job application on the internet. Despite persistent attempts to secure the supporting documents from the Respondent (which continued right up until the deadline for the receipt of applications) no such documents were ever furnished to him. As a result the Applicant was not in a position to apply for the job. On foot of the above circumstances the Applicant issued proceedings seeking a number of reliefs from the Court. Firstly, the Applicant sought a declaration that he had a Constitutional

²⁴⁹ As per Murphy J [2008] 3 IR 281 at p. 282

²⁵⁰ This official report was issued prior to enactment of the Official Languages Act, 2003 which would have required any such report to be issued in both official languages.

right to conduct his business with the State through the medium of Irish. Secondly, he sought a declaration from the Court that there was a duty to translate the Teaching Council Act, 2001, which was not at the time of the application (2005) yet available in the Irish language. Thirdly, the Applicant sought an order from the Court requiring the translation of the official report concerning the establishment of the Council. In doing so the Applicant was making the sort of applications which one would expect to be the natural progression of the Court's rulings in *Ó Beoláin* where the nature of Irish language rights were enshrined as constitutional in nature and placing a strong burden upon the State.

The Court addressed each of the points in turn but there was a noticeable reluctance to adopt the sort of ratio employed by Hardiman J in *Ó Beoláin*. On the issue of the availability of the Teaching Council Act, 2001 in Irish, the Court held that there existed a right for the Applicant to have such legislation translated by virtue of the plain purport of Article 25.4.4 in addition to Section 7 of the Official Languages Act, 2003 (which was enacted post *Ó Beoláin*) which requires simultaneous translation of legislation. As the Court noted “[t]o put it bluntly, it cannot be said that a delay of 4 years between the publication of the [Act] in English and in the first official language constitutes a ‘simultaneous’ process”²⁵¹. While at first glance such a ruling would seem to be offering due recognition to the legal status of the Irish language it is submitted that the Court had little option. When one considers the judgment in *Ó Beoláin*, Article 25.4.4 and s. 7 of the Official Languages Act the only reasonable conclusion any Court could come to recognise was a right to translation. The true implications for the

²⁵¹ [2008] 3 IR 281 at p. 293

recognition of the legal status of Irish speakers are to be seen in the other elements on the judgment. The Applicant sought a declaration from the Court that he was entitled to conduct his business through the medium of Irish with the State. Such a right had been recognised on previous occasions prior to this case and *Ó Gribín* represented one of the first chances for the Court to do so since the passing and commencement of the Official Languages Act, 2003. The Court held that

“[a]ccording to constitutional obligations, according to statutory obligations, according to the Official Languages Act 2003 and according to High Court precedent, the Applicant has the right to conduct his business with the State through the medium of the Irish language without impediment and to do so on the same basis as someone who chooses to conduct his business through English”.²⁵²

Despite the Court arriving at such a position the Court went on to hold that the applicant had no right to a translation of the official document which concerned the establishment of the Teaching Council. In doing so the Court relied heavily on the Official Languages Act, 2003 which did not cover such a document. As the Court itself had pointed out however there exist other sources (most pertinent of all being the Constitution and the Court’s interpretation of it in cases such as *Ó Beoláin*) of law for the recognition of the rights of Irish speakers to conduct their business through the medium of Irish. It is hard to rectify the logic of the Court in the above passage whereby the Court stressed that the Irish speaking citizen had the same rights as the English speaking citizen to conduct their business through the medium of Irish with the conclusion of the Court that the

²⁵² [2008] 3 IR 281 at p. 291

Applicant was not entitled to a translation of the official report. It is submitted that the failure to supply a key document in the Irish language can only be described as an impediment to a person who wished to apply for the position through the medium of Irish. Furthermore such a failure fails to ensure that an Irish speaker is treated at least on an equal basis to an English speaker. An Irish speaker who wished to apply for the position and fill out the application form would have lacked the most basic supporting materials which were freely available to a candidate who was applying in the second official language.

The other remarkable aspect of the judgment in *Ó Gribín* was the shift in emphasis from the rights discourse which was evident in *Ó Beoláin* towards framing the obligations with regards to the Irish language in the context of a declaration. Murphy J notes that “Article 8 of the Constitution provides no rights with regard to the status of the Irish language – it is phrased in the form of a declaration. This declaration of Irish as the first official language, however, places implicit duties on the State”²⁵³. Such a narrow interpretation of Article 8 runs contrary to the prevailing international context in which we now envisage language rights²⁵⁴. Furthermore this interpretation would be contrary to the substance and tone of the *Ó Beoláin* decision and perhaps most crucially of all would suggest that Irish language rights are not to be treated on an equal footing with other rights where the Courts have held that an obligation upon the State creates a right for citizens. By way of example with reference to education which

²⁵³ [2008] 3 IR 281 at p. 291

²⁵⁴ See generally Chapter 6. See also Hohfeld, W. N. “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning” 23 Yale Law Journal 16 (1913) where the author examines the correlative relationship between duties and rights.

takes a similar form whereby the State's duty is implied by virtue of the declaration in Article 42.4 the (then) Chief Justice O'Higgins stated that

“the imposition of the duty under Article 42, s. 4, of the Constitution creates a corresponding right in those in [sic.] whose behalf it is imposed to receive what must be provided. In my view, it cannot be doubted that citizens have the right to receive what it is the State's duty to provide for under Article 42, s. 4.”²⁵⁵

Thus rights and duties and the relationship therein have been to the forefront of the recent jurisprudence of the Court.

It is submitted that there was an early but significant attempt to define the relationship between rights and obligations in the case of *Ruairi Mac Carthaigh No. 2 v. Éire*²⁵⁶. The case concerned the same Defendant mentioned above, albeit on a different charge of drink driving. During the course of the trial Mac Carthaigh requested certain documents be made available in Irish on the basis of language rights of the sort recognised in *Ó Beoláin*. The Court refused to grant the application on the grounds that not all the documents were “procedurally relevant” to the case and further held that the State had no obligation to provide such documents arising from some notion of language rights. Whilst the particular element of the judgment was not central to the case it would be further developed in the more recent case law.

²⁵⁵ Crowley v. Ireland [1980] IR 102, at p. 122

²⁵⁶ [2008] IEHC 158

4. Emerging Trends

As tends to be the case with many of the Irish language right cases the case of *Ó Gríofáin v. Éire*²⁵⁷ concerned an Irish speaker who was contesting a prosecution for drink driving under Section 49 of the Road Traffic Act, 1994. The Applicant, a native Irish speaker originally from the Gaeltacht region in Connemara, Co. Galway was stopped by a member of An Garda Síochána at a check point. The Garda formed the opinion that the Applicant may have been drinking and conducted the road side test which indicated the Applicant had consumed a level of alcohol in excess of the legal limit. Under the legislation in such instances suspects are brought to the local Garda station where a sample of their breath can be taken by the more accurate intoxilyzer which is required by Section 17 of the Road Traffic Act, 1994. The Applicant was arrested and was dealt with in this manner and spoke with the arresting Garda in English initially. Subsequently whilst talking to the Garda the Applicant switched to his native Irish and the Garda dealt with him in Irish from that point onwards. The Applicant provided his breath sample to the intoxilyzer machine which indicated that his alcohol level was in excess of the legal limit. As is required by s. 17 of the Road Traffic Act, 1994 the intoxilyzer machine prints off a certificate confirming the level of alcohol in the sample which the Garda and the suspect must sign. Failure to sign this certificate after having given a sample is an offence of itself. When the Garda produced the certificate and requested that the Applicant sign it the Applicant refused on the basis the certificate printed by the intoxilyzer machine was in English only. The Applicant was subsequently charged with two offences, one of drink driving and the second offence of failing to sign the certificate. The

²⁵⁷ [2009] IEHC 188

Applicant sought to injunct the State from bringing the two prosecutions on the grounds that the statement from the intoxilyzer which was in English only impinged his language rights. In doing so the Applicant forced the Court to address the matter of language rights as a key element of a case.

In a section of his judgment entitled “Language Rights” Mr Justice Charleton examined the extent to which language rights were recognised within the Irish Constitution as opposed to the framing of some constitutional obligations in the context of the official languages of the State. As an introduction Charleton J pointed out that the Applicant was fully entitled to present his defence through the medium of the Irish language and stressed that “there is nothing...which leads me to even a hint of a suspicion that the Applicant is in any way being treated in an abusive or discriminatory fashion by reason of the assertion of those rights.”²⁵⁸ Whilst *prima facie* the opening statement from Charleton J is a restatement of the law as has been understood since the recognition of the “double right” principle in Ireland, it is submitted that Charleton J is pre-empting to a certain extent the case at hand. The entire matter for adjudication in the case concerned whether the Applicant had been discriminated against on the grounds that he wished to fully engage with the State through the medium of Irish and that he wished to assert such rights. The tone was set for the rest of the judgment which continued in much the same vein. In summing up the case of the Applicant the tone was surprisingly un-judicial, bordering on the informal whereby Charleton J noted “in effect what the applicant seeks is that every scrap of paper relevant to the case...should be in Irish. It may be that the applicant would say

²⁵⁸ [2009] IEHC 188 at para 7

that this is an exaggeration of his submission. It hardly is.”²⁵⁹ Charleton J went on to distinguish the Canadian case of *Beaulac v. R* ²⁶⁰ as being different from Irish cases on the grounds that it was “based on aspects of the Canadian Charter of Fundamental Rights and Freedoms, which do not have a parallel, in my view, in our constitution.”²⁶¹ Charleton J did not discuss the Canadian case or the Canadian Charter in further detail and it is submitted that if he had done so his line of reasoning would have been difficult to maintain.

Beaulac concerned a Defendant who had been convicted of murder but who had been denied the right to a trial in French on the basis that a Judge felt he had sufficient English. The Canadian Supreme Court overturned the conviction and argued that language rights should be interpreted purposively and liberally. In doing so the Canadian Court relied upon s. 530 of the Criminal Code of Canada which asserts that Defendants may choose which ever language they wish in criminal trials. Although this particular element had not been codified in Irish law it has been recognised since the Courts first considered it post independence in *Joyce and Walsh*²⁶². Secondly, the Canadian Court relied upon Section 16 of the Canadian Charter of Rights of Freedoms concerning the official languages of Canada and which is extremely similar to Article 8 of the Irish Constitution wherein the two official languages of the State are recognised²⁶³. Whilst it is not

²⁵⁹ [2009] IEHC 188 at para 9

²⁶⁰ [1999] 1 SCR 768

²⁶¹ [2009] IEHC 188 at para 9.

²⁶²

²⁶³ Section 16 in full reads; 16. (1) English and French are the official languages of Canada and have the equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

submitted that the Irish and Canadian situations are entirely analogous, indeed there are some key exceptions such as the right to a French speaking jury under Section 530 in Canada which was rejected in Ireland in *Mac Carthaigh*, there exist strong similarities which would have been at least worthy of deeper investigation by Charleton J. When, in his concluding remarks in *Beaulac*, Batarache J held that language rights were a particular kind of right distinct from the principles of fundamental justice he was not reasoning from raw materials gleaned from Canadian law entirely different to those which would have been available to him had he been deciding a case in Ireland.

When presented with Bastarache J's reasoning in *Ó Gríofáin* Charleton J simply stated "I do not accept that"²⁶⁴. The Judge then discussed the nature of rights and how no right was absolute. By way of defence for his position the Judge noted;

"were the argument of the applicant to succeed, then any person stopped in his and her vehicle and suspected of drunken driving would only have to greet the Garda in Irish for the entire process to be made to grind to a halt, unless the Garda happened to be highly competent in Irish."

Such reasoning does not stand up to any serious scrutiny on a number of grounds. As the Judge himself noted earlier in his own judgment²⁶⁵ there are procedures in place within the Garda Síochána which enable the Gardaí to carry out their duties through the medium of Irish. As an entry requirement the vast majority of Gardaí (there are a number of minor exceptions made for Gardaí coming from diverse cultural backgrounds) are required to have a certain, albeit

²⁶⁴ [2009] IEHC 188 at para 10

²⁶⁵ [2009] IEHC 188 at para 3

relatively basic, understanding of the Irish language²⁶⁶. Furthermore, established practice within the Gardaí dictates that if the arresting Garda lacks sufficient Irish the suspect is either detained for a short period until such time as an Irish-speaking Garda can come upon the scene or assistance is given to the suspect over a phone connection with an Irish speaking Garda elsewhere. Nowhere in Ó Gríofáin's application did he ask the Court to throw out his prosecution on the basis that the arresting Garda did not initially speak Irish to him. There is a significant and appreciable difference between oral statements made at the time of the alleged offence and the production of written evidence which is prepared in a uniform manner. The Applicant was seeking the latter be made available in this case. It is submitted that Charleton J's statement above is somewhat of an exaggeration of the real life situation which is not supported in either law or practice. Charleton J's referred to the case law of *Ó Beoláin* when coming to his decision in the case. He focused strongly on the right to a fair trial which was mentioned in *Ó Beoláin*, however, the Applicant in *Ó Gríofáin* did not seek to fully rely upon the right to a fair trial, but rather on the very notion of language rights arising from the nature of the Constitution. It is submitted that the two cases were in fact very different and seeking to achieve similar results on completely different grounds. In the closing remarks of his judgment the Judge correctly pointed out that he, as a High Court Judge would be bound by a decision of the Supreme Court in a similar application however the issue here is exactly how similar the two cases are. When referring to the portion of the judgment in *Ó Beoláin* concerning the right to fair trial Charleton J held;

²⁶⁶ See generally Chapter 5 on Legal Education

“I am bound by these pronouncements. I can find no possibility that a real risk of an unfair trial has been established by the applicant merely because a machine has produced a statement which he fully understands in a language that he would, on occasion, prefer not to use.”

The tone and language used in the above passage are interesting. The famous ‘double right’ principle enshrined in the case law of cases concerning the Irish language since the early days of the Irish Free State suggests that once one of the two languages concerned is Irish or English a Court should not concern itself with language choice²⁶⁷. While the issue in *Ó Gríofáin* concerns the issuance of a certificate in Irish rather than the overall right to conduct one’s defence in Irish, it could be argued that the certificate itself being in English hinders the Applicant’s right to fully conduct his defence through the medium of Irish. The tone used by Charleton J is significant, whereby he focuses on the fact that the Applicant can fully understand English but chooses not to use it, would seem to be a very much at odds with the spirit and tone of precedents which have been established. Charleton J refused to grant any of the orders sought by the Applicant and dismissed his entire case. In doing so Charleton J had continued much of the momentum initiated in *Ó Gribín* and *Mac Carthaigh*, where a creeping, but nevertheless clear, trend was beginning to emerge which placed a lesser emphasis on language rights and where State obligations towards the Irish language have been interpreted narrowly. This contrasts strongly with the Canadian case of *Beaulac v. The Queen*²⁶⁸ which was referred to by Charleton J. In *Beaulac* the Supreme Court of Canada unanimously set aside a conviction for

²⁶⁷ The double right principle refers to the notion that if a party to a legal action wishes to conduct their trial through the medium of the Irish language it should not be of concern to the Courts what level of understanding the party wishing to assert those rights has in the English language.

²⁶⁸ [1999] 1 SCR 768

a much more serious offence, murder, on the basis that the language rights of the Defendant not been vindicated by the criminal process. The dissonance between the two cases highlights the importance not so much of laws (there is not a huge gulf between Ireland and Canada in the area of constitutional obligations and language legislation²⁶⁹) but rather on the role taken by the judiciary in enforcing and interpreting such laws when they come before them in the Courts.

In a further case with many similarities to *Ó Gríofáin*, known as *Ó Conaire v. Mac Gruairc*²⁷⁰ the nature of language rights and language obligations was further developed. The case concerned a native Irish speaker who was charged under s. 49 of the Road Traffic Act 1994 which deals with the law on drink driving. The Applicant, Ó Conaire, sought many of the same reliefs as Ó Gríofáin and given Ó Gríofáin was decided before Ó Conaire the Court applied the rulings in Ó Gríofáin to the similar set of facts that it was presented with in Ó Conaire. This is very much in line with the doctrine of precedent which operates in common law jurisdictions such as Ireland and would have been expected by all sides. There was one additional key issue in Ó Conaire which was not raised in Ó Gríofáin upon which Mr Justice Ó Néill had to adjudicate. In his submissions Ó Conaire indicated that he wished to conduct his defence through the medium of Irish, as was his right. In order to do so he requested a number of documents to be furnished to him in Irish and the majority of these documents

²⁶⁹ Indeed much of the Irish legislation was based on the Canadian experience. The Official Languages Act 2003 for example borrows very many features from the equivalent Canadian legislation of 1969 and in particular 1988 including the right to use either official language in Courts, the obligation for certain state companies to publish all reports bilingually, the establishment of a Language Commissioner etc etc.

²⁷⁰ [2010] 3 IR 30. It should be noted that this case concerned a challenge taken against a decision of Judge Uinsin Mac Gruairc who was interviewed in the preparation of this work.

were furnished to him (although there were some disputes as to the quality of the translations). He was not, however, furnished with a translation of the witness statements in the case which were given in English. On foot of the State's failure to furnish him with a translation of these documents in Irish he took his action by way of judicial review. Ó Conaire framed his case entirely around the concept of language rights and as Ó Néill J noted "[a]t the hearing the applicant did not make the case that he would not receive a fair trial in the absence of the translated witness statements. The case therefore is solely concerned with "language" rather than "fair trial" rights"²⁷¹. With this single focus to the case Ó Néill J considered the exact implications of Article 8 of Bunreacht na hÉireann. In a section of his judgment entitled "A right or a duty" Ó Néill J cited the judgment of Murphy J in *Ó Gribín* approvingly where it was held that Article 8 does not afford language rights to Irish speakers but rather imposes a duty upon the State. Ó Néill further elaborates that "therefore, it is clear that Article 8 of the Constitution imposes a binding duty on the State to uphold the status of Irish as the first official language. It creates a constitutional imperative, that is, a positive obligatory command that the State must adhere to"²⁷². In framing the obligation in such a manner immediately one must question what use is any such obligation if a citizen has no right to access services through the medium of one language or another on the basis of the obligation. What value is an obligation if citizens have no substantive right to litigate on the basis of the failure of the State to fulfil that obligation?

²⁷¹ [2010] 3 IR 30 at p. 36

²⁷² [2010] 3 IR 30 at p. 37

Ó Néill J did not however entirely shut the door on the concept of language rights although he struggled with the concept “to ascertain what precisely the State is asked to do in the context of ‘language rights’ it is important to precisely define the nature of the rights in issue”²⁷³. In the course of his examination of language rights Ó Néill J relied strongly on the idea that if the applicants in cases where Irish language rights were being asserted were “happy to use the English language versions of whatever document was in issue there could be no suggestion of any unfairness in the procedure”²⁷⁴. Thus, he contended that the other rights had already been recognised such as the right of access to justice in either Irish or English and that such rights were sufficient to satisfy the rights of Irish speakers. He felt that framing “language rights” as rights concerned with access to justice was “an unconvincing explanation of the ‘language rights’ issue.”²⁷⁵ Such assertions are not without foundation save for the fact that they rely upon the condition that the parties seeking to assert such rights are content to use English language versions of the documents concerned. These documents tend to be those class of documents used as key elements of evidence in trials but not being statutory rules or laws, witness statements, certificates printed by intoxilyzer machines etc. Very often such documents are the most contentious and important elements of any case, particularly criminal prosecutions. While it is submitted that Ó Néill J is quite correct that if the Defendants in these cases did not wish to have such documents translated and were happy to accept the English versions and continue to carry out their defence through the medium of Irish then no case could be made that the Defendants were not having their

²⁷³ [2010] 3 IR 30 at p. 45

²⁷⁴ *ibid*

²⁷⁵ *ibid*

language choice vindicated. The reality is far different however and the very crux of many cases is what is contained in these documents. The Defendants, in wishing to carry out their defence through the medium of Irish, see these documents as key and they contend that without an official Irish translation of these documents they are placed at a significant disadvantage to an English speaker in the same circumstance. This contention is crucial because the case law as established²⁷⁶ and more recently s. 8 of the Official Languages Act, 2003 assert that a Defendant should not be placed at a disadvantage when choosing their language. In the cases of *Ó Gribín*, *Ó Gríofáin* and *Ó Conaire* each applicant was not happy to proceed without the translation of the document that they contended was key to their case and without which they felt they could not fully engage with the State in their chosen language. Given that, as Ó Néill J pointed out, such documents are not seen as being covered by the constitutional right to fair trial, these applicants have little other recourse other than to assert that the translation of such documents should be provided under language rights generally. Whilst Ó Néill J recognises this point where he says “[t]he reality, in my view, is that the rights which these applicants assert are free standing rights, the context and scope of which is to be found in Article 8 of the Constitution.”²⁷⁷ He went onto to note that “the practical application of those rights is, for this court, very problematic.”²⁷⁸ In explaining this difficulty Ó Néill J notes how there is a clear conflict between *Ó Beoláin* and some of the earlier case law such as *Attorney General v. Coyne and Wallace*²⁷⁹. It is submitted, in denying Ó Conaire the translation of the witness statements, Ó Néill J gave too much weight

²⁷⁶ See generally Chapter 2

²⁷⁷ [2010] 3 IR 30 at p. 45

²⁷⁸ *ibid*

²⁷⁹ (1967) 101 ILTR 17

to the older case law and not enough due regard for the more recent and key decision in *Ó Beoláin*. The doctrine of precedent would normally hold that the most recent decision should be followed unless there are reasons why such a judgment could be confined to own particular set of facts or distinguished for good legal reasons. Courts can overrule their own previous pronouncements but should not as a general principle overrule a decision from a higher court. It is submitted in this instance that the two drink driving cases of Ó Conaire (High Court) and *Ó Beoláin* (Supreme) are extremely similar from a factual point of view and that the legal points raised whilst not identical are quite similar too. In this context it is difficult to understand the rationale of Ó Néill J in instead choosing to give weight to the older case of *Coyne and Wallace*. An insight into this rationale is visible in Ó Néill J's concluding remarks where he notes

“each side is entitled to choose the language in which each will present its case, and as neither side is entitled to force its choice of language on the other, it necessarily follows, in my judgment, that...the applicant in this case does not have a right under Article 8 of the Constitution...to be furnished with Irish translations of the two witness statement [sic] at issue in this case.”²⁸⁰

It is submitted that Ó Néill J had misinterpreted the intentions of the applicant. At no stage did Ó Conaire seek to force the State to present their case through the medium of Irish, he merely sought the translation of two key documents which were required for his own defence which he was conducting, as is his constitutional entitlement, through the medium of Irish. Ó Conaire was not seeking to place additional burden upon the State but rather seeking to ensure

²⁸⁰ [2010] 3 IR 30 at p. 48

that his own rights could be vindicated. Ó Néill J's reliance on this and on *Coyne and Wallace* resulted in further erosion of the progress previously achieved in *Ó Beoláin* and continued the recent refocusing of the judicial understanding of Article 8.

Whilst not the last case in recent times concerning what might generally be called 'language rights' in Ireland, *Ó Conaire* has been the last significant case concerning parties who seek to use the Irish language in criminal trials or other disputes with the State as the opposition. It has resulted in the Courts drawing a clear distinction between the right to present one's own case in Irish and the right to be furnished with the tools to enable same. In the case of the former there always has been and there continues to be a constitutional right to present one's own argument in either of the official language of the State with the additional more recent development of s. 8 (6) of the Official Languages Act, 2003 which seeks to ensure that those choosing Irish should not be placed at a disadvantage. In the case of the latter element of furnishing the Defendants with the tools to ensure that they can conduct their case properly through the medium of Irish there has been a clear judicial divide created whereby any additional tools which are not expressly demanded by legislation or the Constitution (such as the translation of legislation under Article 25.4.5) have not been recognised in the most recent case law. It is submitted that to create any such divide between the two elements is a false dichotomy. Very often, in order to enable a Defendant to fully ensure their right to choose whichever of the official languages they wish to use in trial they will need additional materials and supports offered to them. Without such materials and supports it is submitted that the continuing recognition of the right to conduct one's trial in Irish rings hollow and speaks

towards only a notional or begrudging recognition of the Irish language in the legal system.

5.1 Solicitors and the Right to use the Irish language

As has been noted above, much of the jurisprudence of the Courts concerning the use of the Irish language and language rights generally concerns citizens who are being prosecuted for criminal offences (drink driving primarily). The other main group of litigants have tended to be the Solicitors who represent these clients. Two very significant judgments in this area have been issued in recent times which have shaped not only the manner in which the Solicitors in question carry out their professional duties through the medium of Irish but more crucially have delimited further the scope and extent of the rights recognised by the Supreme Court in *Ó Beoláin*.

5.2 Pól Ó Murchú

The case of *Ó Murchú v An Taoiseach*²⁸¹ serves as an excellent example not only of the nature of language rights which Solicitors have had vindicated but also of the shift in emphasis by the Court from the *Ó Beoláin* reasoning to the more recent narrow definition. This is demonstrated by the High Court judgment in *Ó Murchú* being issued in 2004 and the Supreme Court judgment being issued in 2010. The causes of action in these cases by the Solicitors actually pre-date the judgment in *Ó Beoláin*; however due to the usual delays the judgment in the High Court was not delivered until 2004. The High Court decision followed

²⁸¹ High Court unreported judgment 7 December 2004 (facts and judgment summarised in the Supreme Court judgment); Supreme Court judgment [2010] IR 528

shortly after the full ramifications of the *Ó Beoláin* decision and the enacting of the Official Languages Act, 2003 and crucially occurred before any the other cases noted above where a sea change in the judicial attitude towards the Irish language has been observed. The case concerned Pól Ó Murchú, the Solicitor for very many of the Applicants in the cases examined above. As a fluent Irish speaker and a practising Solicitor in Dublin, Mr Ó Murchú had a significant number of Irish speaking clients who sought to conduct all their official dealings with the State through the medium of Irish. In order to provide a legal service to his clients Mr Ó Murchú very often sought translations of official forms and documents.

These documents were primarily published by the State in the form of appendices to statutory instruments or orders. Statutory instruments are functional pieces of secondary legislation which, although still having legal effect, do not undergo the same enactment processes that legislation in the form of Acts of Parliament do. Normally, statutory instruments contain the minute or technical details which are not suitable to be placed in an Act of the Oireachtas, examples include the setting of details like fishing and milk quota, Court Rules and other rules and regulations which are subject to frequent change. The major advantage of statutory instruments rests in the fact that they can be amended and brought into force rapidly, allowing the State a degree of flexibility which the normal legislative process does not allow.²⁸² Very often the bringing into force of

²⁸² It should be noted that no new principles or laws should be contained in a statutory instrument in the Republic of Ireland. Ireland, as a constitutional democracy with a strict separation of powers allows only the Oireachtas to enact legislation. The Minister or other such body making

a statutory instruments merely requires the signature of the relevant Minister²⁸³ or body to which the power to enact the secondary legislation has been delegated. Under the Irish constitutional order there is no specific requirement that statutory instruments be translated into Irish in the manner which Article 25.4.5 prescribes for Acts of the Oireachtas, but prior to the 1980s all statutory instruments brought into force in Ireland were translated into Irish. During the 1980s this practice, along with the translation of the Acts of the Oireachtas ceased. In the wake of the *Ó Beoláin* decision and the enactment of the Official Languages Act, 2003 there was a renewed effort made to translate Acts of the Oireachtas but the translation of statutory instruments never resumed.

In order to facilitate his clients who wished to exercise their constitutional right to access justice through the medium of Irish Mr Ó Murchú very often had to either translate documents himself or pay for the translation of documents by third parties. This resulted in significant delays and additional expenses for Mr. Ó Murchú's clients²⁸⁴ in addition to concerns that an unofficially produced Irish language version of a Court document might not be accepted by the Court in proceedings. In an effort to vindicate his clients' rights and indeed his own Mr. Ó Murchú sought many of these translations from the various State offices charged with their production ultimately he was unable to obtain official translations. It

the statutory instrument may only use the instrument to give effect to the principles of the primary act and thus is only allowed to fill in details. This contrast strong with the United Kingdom where, thanks to clauses known as Henry VIII clauses the parliament may delegate the power to any Minister to enact new principles and rules should they wish to do so.

²⁸³ Statutory instruments in Ireland and at the British National level are enacted by the relevant Ministers. In jurisdictions like Wales and Northern Ireland the power to draft and bring statutory instruments has been devolved to the Assemblies. In Wales the Government of Wales Act specifically requires that legislation passed by the Assembly be translated into Welsh.

²⁸⁴ [2010] 4 IR 520 at p. 524

was on foot of this failure that Mr. Ó Murchú initiated judicial review proceedings seeking that the State provide official translations of the Acts of the Oireachtas, Court documents, forms and rules which were made by way of statutory instruments. In addition Mr. Ó Murchú claimed that Article 25 (which concerns the making of legislation) when read in conjunction with Article 8 (which awards the Irish language that status of First Official language of the State) and Article 40 (which concerns the personal right of equality guaranteed to every Irish citizen) required that the State translate every statutory instrument in force in the State. Such an argument was very much framed in the vernacular of ‘language rights’ which would later be rejected by the Courts as demonstrated in the above cases. It should be noted that whilst Ó Murchú commenced his case prior to the judgment in *Ó Beoláin* and the enactment of the Official Languages Act, 2003 by the time the case was eventually heard the combined effect of the judgment and the Act was that all Acts of the Oireachtas had to be translated in addition to the Court Rules (which included a number but by no means all of the forms Mr Ó Murchú required.). As a result of these developments in essence Mr Ó Murchú’s case centred on the issue of the statutory instruments and whether there was a legal compulsion upon the State to provide translations.

In his judgment in the High Court on 7 December 2004 Mr Justice Smyth granted Mr Ó Murchú’s application holding that there was indeed a constitutional obligation upon the State to provide official translations of all statutory instruments. Given that there is no specific constitutional requirement to translate statutory instruments it follows that Smyth J felt that the entirety of the Constitutional position with regards to the Irish language and access to justice created a right to have these documents translated into Irish. Unfortunately the

full reasoning behind Smyth J's arrival at this position is not available to us because the judgment was issued as an unreported judgement of which there is no full written record available nor is there any evidence to suggest that Smyth J offered any particular rationale or grounds upon which his decision was based. There is, however, reference to the nature of the judgment in the report of the judgment in the Supreme Court where it was noted that Smyth J had felt that the lack of translation was an "impediment on the Plaintiff"²⁸⁵. But in the Supreme Court it was also contended that the decision was "overly broad" and that Smyth J "failed to give any reasoned grounds in relation to the decisions, declarations and orders made in the matter."²⁸⁶

The practical consequences of the Ó Murchú decision in the High Court were considerable and profound in terms of the obligations placed up on the State. Due to the nature of statutory instruments there is a significant volume of statutory instruments produced each year. By way of example in 2011 a total of 647 statutory instruments were issued in comparison to a total of 41 Acts. Given that the translation of statutory instruments had ceased in the 1980s there was a significant backlog of instruments (a figure in excess of 5,000) which the State now had a constitutional obligation to translate. In order to do so the State would have to increase capacity within the Official Translation Section which was already overburdened with the backlog of legislation it was obliged translate as a result of the *Ó Beoláin* decision in addition to the current legislation it was obliged to translate as a result of both *Ó Beoláin* and the Official Languages Act,

²⁸⁵ [2010] 4 IR 520 at p. 543

²⁸⁶ [2010] 4 IR 520 at p. 529 These submissions made up some of the submissions made in the documents filed on behalf of the State when appealing the decision of Smyth J to the Supreme Court.

2003. In order to comply with the judgment the State would have to engage the services of many additional translators and lawyer linguists²⁸⁷.

The State sought to appeal this High Court decision to the Supreme Court grounding their appeal on a number of grounds including the contention that in the High Court Smyth J erred in law and failed to take account of issues such as cost and practicalities. Of particular concern to the State was the broad declaration that every statutory instrument had to be translated regardless of whether there was a connection in the statutory instrument to the Irish language or access to justice.

The Supreme Court judgment was delivered by way of a reserved judgment issued on 6 May 2010 by Ms Justice Macken with Justices Hardiman, Kearns, Fennelly and the then Chief Justice Murray agreeing with his decision. Macken J summarised many of the submissions made both on behalf of Mr Ó Murchú and those made on behalf of the State. Essentially Ó Murchú argued that given Acts of the Oireachtas and statutory instruments were so intertwined that treating them differently by translating only Acts but not instruments into Irish was “absurd”²⁸⁸. The Supreme Court rejected this argument and instead held in favour of the State. In addressing the High Court judgment which seemed to rely strong on ‘language rights’ elements the Supreme Court rejected the contention that Articles 8, 25 and 40 when read together created a constitutional obligation upon the State and instead the Court focused on the lack of any express constitutional requirement to translate statutory instruments. Macken J rejected

²⁸⁷ For a full examination of the difficulties faced by that State in employing lawyer linguist see further discussion in Chapter 4 of this work.

²⁸⁸ [2010] 4 IR 520 at p. 543

the case law from other jurisdictions where the concept of stand alone ‘language rights’ have been accepted noting that

“It is axiomatic that, in the case of language, perhaps more so than in respect of any other cultural issue, the particular social, political and/or historical contexts may be, and often are, quite different, depending on the particular circumstances arising at any given time when constitutions are adopted, and indeed depending on the language of the constitutional instruments themselves”²⁸⁹

It is significant that Macken J did not seek to take issue with the legal rational or rigour of cases such as *Bealuc* but rather chose to focus on what, it is submitted, essentially are factual and cultural issues which do not necessarily have any legal foundation. It would have been far more satisfactory had Macken J instead justified not applying case law such as *R v. Bealuc* on the grounds that the conclusions reached were not legally valid in Ireland.

On the particular subject of statutory instruments Macken J felt that there needed to be a distinction drawn between Court Rules, which exist and are brought into force as statutory instruments, and all other statutory instruments. Macken J does this on the basis that Court Rules occupy a particular place within the legal system noting that “the applicant in the present case is not disadvantaged simply by the absence of particular rules of court...but rather as a solicitor having a range of clients wishing to have their legal affairs conducted in Irish or wishing to serve advice in Irish in respect of them, he is in a singularly different but equally disadvantaged position”.²⁹⁰ Macken J further noted that solicitors could be engaged in a wide range variety of cases and as a result had a particular

²⁸⁹ [2010] 4 IR 520 at p. 542

²⁹⁰ [2010] 4 IR 520 at p. 550-551

interest in “the rules as a whole” whereas an individual applicant would be regarded as “simply a citizen with an interest in one case only”²⁹¹. As a result of this distinction Macken J discussed the implications of not translating the Court Rules and held that “the provision of such rules must be ensured within a reasonable period of time, and preferably as soon as practicable after their publication in English, so as to respond to the obligation to ensure compliance with rules relating *to access to court...*”²⁹². Whilst prima facie a partial victory for Ó Murchú this constituted little more than a restatement of the ruling in *Ó Beoláin* which had not yet been fully implemented. Although the rules as they stood in 2005 had been translated the various amendments and additions since 2008 had not been translated²⁹³. The sole distinction the Court made between the previous ruling in *Ó Beoláin* and the current case was the recognition that Ó Murchú in his capacity as a Solicitor, as opposed to Ó Beoláin as a private citizen, was entitled to such translations. Macken J noted that the various amendments and additions to the rules had not been translated into Irish in spite of the previous ruling of the Supreme Court in *Ó Beoláin* and directed that they be translated “as soon as may be practicable after they are published in English”²⁹⁴ however he gave no indication as to what sort of period of time he envisaged as “practicable”. It is significant that the requirement to translate these documents is framed in the language and in the context of access to justice which is in juxtaposition to the position adopted in the High Court judgment which had a strong ‘language rights’ tone to it.

²⁹¹ [2010] 4 IR 520 at p. 551

²⁹² [2010] 4 IR 520 at p. 552. Emphasis added.

²⁹³ *ibid*

²⁹⁴ [2010] 4 IR 520 at p. 553

When it came to statutory instruments other than the rules of Court, Macken J held that there was no constitutional imperative to translate such documents. Macken J placed a great emphasis on the lack of an express provision of the Constitution requiring translation and rejected the ‘language rights’ argument that when read together Articles 8, 25 and 40 constitute an overall requirement that statutory instruments be translated stating that the “provisions of Article 25.4.4, whether read alone or in conjunction with Article 8 of the Constitution or with any other article of the Constitution, do not lend themselves to being interpreted as creating any such general obligation”²⁹⁵.

The *Ó Murchú* decision, when analysed in the context of the other recent decisions of the Courts, should be seen as a judgment which continues the recent trend towards delimiting the recognition of the rights of Irish speakers. Where there is some recognition of obligations of the State towards the language such recognition is framed in terms of access to justice or administration rather than in terms of the acceptance of language rights or indeed as in this case limited by virtue that the obligation was recognised on the grounds that Ó Murchú was a member of the legal profession rather than being an Irish speaking citizen.

In a similar vein the case of *MacAodháin v Coiste Rialacha na nUaschúirteanna & chuid eile*²⁹⁶ concerned another prominent Dublin Solicitor who had a large client base of Irish speakers who wished to conduct their legal affairs and official business through the medium of Irish. The *MacAodháin* case occurred in

²⁹⁵ [2010] 4 IR 520 at p. 546

²⁹⁶ [2010] 2 IR 678 the title of the case translates as *MacAodháin v The Rules Committee of the Superior Courts and others*. Hereinafter *MacAodháin*.

between the High Court and Supreme judgements in *Ó Murchú* and thus the issues which were being considered by the Court in that case were not considered by the Court in *MacAodháin*. As a result the primary issue with which *MacAodháin* was concerned with was Order 120 of the Rules of the Superior Courts. The Order required that where a legal summons which was served in the Gaeltacht²⁹⁷ in English it must be accompanied by an Irish translation. Order 120 further requires that where a summons is served in Irish (regardless of the geographic location, be it within the Gaeltacht or outside) it must be accompanied by an English translation or subsequently be translated by an interpreter. The Applicant contended that such a rule was a blatant discrimination against anybody seeking to use the Irish language in legal actions. The applicant noted in particular that should any party wish to issue a summons in the second official language (English) in an area outside the Gaeltacht they could do so freely without needing to use Irish; however, no matter where an Irish speaking party to an action wished to issue a summons if they did so in the first official language (Irish) they were required to provide a translation in the second official language. The Applicant felt that Section 8 (6) of the Official Languages Act, 2003 and Article 8 of the Constitution would prohibit any such discrimination against any party wishing to use the Irish language during the course of legal proceedings. Charleton J heard the case in the High Court and dismissed the action taken by *MacAodhán*. Charleton J quoted extensively from his own judgment in *Ó Gríofáin* (see above) and felt that the arrangements were “not discrimination but a sensible manner of conducting affairs”²⁹⁸. While it is submitted that there might be certain sense to requiring that translations be

²⁹⁷ Irish speaking areas officially recognised by the State.

²⁹⁸ [2010] 2 IR678 at p. 686

prepared, particularly for those who do not understand the language in which they are being served, it is extremely difficult to reconcile the operation of a Order 120 which prima facie recognised English as a dominant language with the Constitutional position in Article 8 and the provisions of the Official Language Act, 2003. Very many legal enactments, laws and judgments are not necessarily 'sensible' however they are maintained because they carry the force of law. It is submitted that once again, when it comes to the Irish language, the judiciary is assigning to the language a de facto status as a minority language which is not supported in law.

The cases concerning Solicitors are particularly relevant to those seeking access to Justice through the medium of the Irish language because due to the nature of the Irish legal system it is extremely difficult to assert any particular right outside of the legal sphere. By clearly delimiting the rights of the Solicitors who seek to access justice for their clients through the medium of Irish the judiciary is effectively delimiting the very existence of the individual right itself. As a result it would seem that the future development of language rights or any further attempts to bring the notional position of Article 8 into line with the real situation have been halted by the judiciary.

6.1 An Coimisinéir Teanga

Given the eventual failure of the Courts as an appropriate venue in which to vindicate language rights and the rights of Irish speakers more generally, further attention is due on the status of the Coimisinéir Teanga as an alternative or indeed additional method of vindication of such rights and the more general role

the Office plays as a one stop shop for Irish speakers seeking to engage with the State through the medium of Irish.

Oifig Coimisinéir na dTeangacha Oifigiúla (The Office of the Commissioner for Official language²⁹⁹) was established by Part IV of the Official Languages Act 2003³⁰⁰. During the Dáil debates on the bill it was decided that the title of the Office and the title of Coimisinéir would be used in the Irish language alone rather than in English and Irish (although confusingly, the Act does use the term ‘Commissioner’ in the English language version). The rationale given by the then Minister with responsibility for the Irish language Éamon Ó Cuív was that using only one language version of the title would ensure that the Coimisinéir would have an easier and simpler title which would be particularly important in helping the Coimisinéir to have a greater impact on the consciousness of the general public³⁰¹. The Coimisinéir was seen as a central feature of the Act which was enacted with the aim of providing greater services and linguistic rights to Irish speakers when dealing with the various public bodies to which the Act applied.³⁰²

The Act was eventually enacted on 14th July 2003 and all its various provisions have been fully in force since 14th July 2006. On 23rd February 2004 Seán Ó Cuirreáin was appointed the first Coimisinéir Teanga by the President following a resolution which was passed by both the Dáil and the Seanad as required by

²⁹⁹ hereinafter the Coimisinéir

³⁰⁰ See generally Bohane, K. “The Official Languages Act 2003” (2005) Cork Online Law Review VIII available at <http://colr.ucc.ie>

³⁰¹ Dáil Debates 3rd July 2003 Vol 570, Col 930

³⁰² The full list of bodies to which the Act applies is available in the First Schedule to the Official Languages Act 2003.

Section 20 (3) of the Act. Section 20 (2) requires that the Coimisinéir be independent in the performance of his duties, which are detailed in the Second Schedule to the Act. The term of Office is set at six years, but reappointment for second and subsequent terms is allowed. The Coimisinéir may be relieved from office by the President, at the Coimisinéir's request. In a similar manner to Article 35.4 of the Constitution which deals with the removal of Judge from office, the Coimisinéir may be removed from office on grounds of stated misbehaviour or incapacity once a resolution is passed by the Dáil and Seanad calling for the Coimisinéir's removal. Section 2 (b) of the Second Schedule does have an additional reason for removal due to bankruptcy which does not appear in Article 35.4. In an additional measure to ensure the independence of the office members of the Dáil, the Seanad, the European Parliament and local authorities are not eligible for appointment to the role of Coimisinéir nor shall the Coimisinéir hold any other office or employment. The remainder of the Second Schedule is concerned with financial and administrative matters concerning the operation of the Office of the Coimisinéir.

6.2 Functions

The functions of the Coimisinéir are outlined in Section 21 of the Act and include monitoring and ensuring compliance by public bodies of their responsibilities under the Act, carrying out investigations into alleged failures by public bodies to do so, providing advice and assistance to public bodies and the general public in relation to the Act and finally carrying out investigations into whether any provision of any other enactment relating to the status or use of an

official language was not or is not being complied with. Such investigations can be carried out on the Coimisinéir's own initiative, on request by the Minister for Arts, Heritage and the Gaeltacht (hereinafter the Minister) or on foot of complaints made by members of the public. Nic Shuibhne³⁰³ describes the functions as “a potentially fruitful weapon if used effectively” while she sounds a note of caution when she suggests that “a considerable degree of discretion has been vested in one individual”³⁰⁴. The Coimisinéir's own mission statement³⁰⁵ is entitled “Protecting Language Rights” and is concerned with providing “an independent quality service whilst fulfilling our statutory obligations to ensure State compliance in relation to language rights”. The mission statement also seeks to “ensure fairness for all” when dealing with complaints from the public in relation to difficulties in accessing public services through the medium of Irish. The final portion of the mission statement signals an intention to “provide clear and accurate information” both to the public regarding language rights and to public bodies regarding their Irish language obligations. Bohane³⁰⁶ notes the functions of the Office are similar to that of an Ombudsman and although the term Ombudsman is not used to describe the Coimisinéir in the Act although the Coimisinéir does note in his annual report of 2006 that his Office became an associate corporate member of the British and Irish Ombudsman Association (BOIA); “an association formed on improving relationships and understanding among those engaged with ombudsman schemes”³⁰⁷. A Corporate associate

³⁰³ Nic Shuibhne, N. “Eighty years a’ growing – the Official Languages (Equality) Bill 2002” (2002) *ILT* No. 13 at p. 202

³⁰⁴ *ibid*

³⁰⁵ An Coimisinéir Teanga Inaugural Report Spring - December 2004 available at <http://www.coimisineir.ie/>

³⁰⁶ Bohane, K. “The Official Languages Act 2003” (2005) *Cork Online Law Review* VIII available at colr.ucc.ie

³⁰⁷ Annual Report of An Coimisinéir Teanga 2006 at p. 28 available at <http://www.coimisineir.ie>

member is one “which in the opinion of the executive committee [of the BOIA] is interested in and supports the objects of the [BOIA] and has significant relevant expertise in complaint handling.”³⁰⁸ Whether the Coimisinéir is in fact an Ombudsman concerned with issues of Language or perhaps some other type of regulatory entity is open to debate. Prior to the establishment of the Office of An Coimisinéir the Ombudsman had no competencies to deal with complaints concerning the Irish language due to a lack of enabling legislation however very many of the traits of the Office of the Coimisinéir mirror those of the Ombudsman. Both Offices are appointed by the President on foot of a motion of both houses of the Oireachtas; both carry out their duties in an independent manner, both have the power to conduct investigations and issue findings, neither of which are binding; and the scope of the bodies which each Office has competency over is regulated by law. The Office of the Ombudsman also lists the Office of the Coimisinéir on its own website in the section entitled “Other Ombudsmans Offices in Ireland”³⁰⁹. It is submitted that the Office of an Coimisinéir is indeed an Ombudsman, albeit a specialist one in a similar manner to offices such as the Financial Services Ombudsman³¹⁰, the Children’s Ombudsman³¹¹ and the Pension’s Ombudsman³¹².

In a somewhat contradictory and controversial development the Government has announced an intention to merge the Office of An Coimisinéir with the Office of the Ombudsman on the grounds of cost savings although the Government has not yet detailed what cost savings, if any can be achieved by this merger.

³⁰⁸ www.bioa.org/list.php

³⁰⁹ <http://www.ombudsman.gov.ie/en/make-a-complaint/other-ombudsmans-offices-in-ireland/>

³¹⁰ www.financialombudsman.ie

³¹¹ www.oco.ie

³¹² www.pensionsombudsman.ie

6.3 Powers

The powers which are available to the Coimisinéir to carry out these duties are contained in Section 22 of the Act. Nic Shuibhne claims the powers which are available to the Coimisinéir are “relatively (though not surprisingly) tepid”³¹³ although Huws notes that the Coimisinéir has “significantly wider powers with regards ensuring compliance with the Act than Bwrdd yr Iaith Gymraeg [The Welsh Language Board] has in relation to Welsh in Wales”³¹⁴. Section 22 (1)(a) empowers the Coimisinéir to compel any person to furnish him with information which he believes is relevant to the exercise of his functions under Section 21. Section 22 (2) ensures that no previous or subsequent enactments or rules of law can be used as a justification for not furnishing the Coimisinéir with information requested under Section 22 (1)(a). These wide ranging powers made available to the Coimisinéir are tempered in three specific ways. In Section 22 (1)(b) information relating to decisions and proceedings of the Government are excluded from the ambit of Section 22 (1)(a). The justification for such an exclusion lies in the nature of the constitutional separation of powers in Ireland where decisions and proceedings of cabinet decisions are strictly confidential so as to ensure the cabinet presents a united front once a decision is made. In determining whether such information does indeed relate to decisions or proceedings of the Government a certificate from Secretary General of the

³¹³ Nic Shuibhne, N. “Eighty years a’ growing – the Official Languages (Equality) Bill 2002” (2002) *ILT* No. 13, 198 at p. 203

³¹⁴ Huws. C.F. “The Welsh Language Act 1993: A Measure of Success?” (2006) *Language Policy* Vol 5 p. 141 at p. 148. It should be noted that the Welsh Language Board has ceased to operate formally from 31 March 2012 and has been replaced with a Welsh Language Commissioner.

Government is to be regarded as conclusive evidence of such. The importance of this requirement was demonstrated during the Coimisinéir's investigation into the Department of Justice Equity and Law Reform concerning Section 71 of the Courts of Justice Act 1924³¹⁵. The Coimisinéir refused to accept such a certificate from the Secretary General of the Department of Justice Equity and Law Reform noting that only a certificate from the Secretary General of Government would be valid under Section 22 (1)(b)³¹⁶. Once the Secretary General of the Government did forward such a statement the Coimisinéir was required to cease his investigation³¹⁷.

Section 22 (3) grants a degree of immunity and privilege to those who are compelled to furnish information by the Coimisinéir which is equal to the degree of immunity and privilege that a witness before the High Court would receive. Finally Section 22 (9) ensures that no right exists to the production of or access to information which is under legal privilege.

Failure to comply with a requirement made under Section 22 or hindering or obstructing the Coimisinéir in the performance of his duties carries a criminal sanction. The offence which is created in Section 22 (4) carries a punishment on summary conviction of a fine not exceeding €2000 or a term of imprisonment not exceeding six months or both. The criminal sanction element is further developed in Section 22 (5) which allows for the prosecution of bodies corporate³¹⁸. In

³¹⁵ Section 71 of the Courts of Justice Act 1924 concerns the appointment of Irish speaking Judges to Irish speaking areas.

³¹⁶ An Coimisinéir Teanga Annual Report 2007 (available at <http://www.coimisineir.ie/>) at p. 85

³¹⁷ This was not however the end of the matter, a group of language activists took another approach to this matter by commencing legal action.

³¹⁸ The *mens rea* requirement for a crime to be committed by a body corporate can be determined by attributing the *mens rea* of a director to the body corporate; *R v. OLL Ltd*, Unreported, Winchester Crown Court. 8th December 1994.

addition, if the offence committed by the body corporate is facilitated by neglect by a director, manager or secretary or a person in a similar position then they too may be charged with an offence in a similar manner to an individual charged under Section 22 (4). Whilst the Coimisinéir has the power to bring such prosecutions, he has yet to bring a prosecution in the years since his appointment. Given the fact that the Act has only been fully in force since mid 2006 the scope for such action has been somewhat limited. It is submitted that such powers, especially with the element of criminal sanction, are far from “relatively tepid” as described by Nic Shuibhne³¹⁹. She does, however, note that the operation of the Office of the Coimisinéir is more likely to be “one of enforcement more by stealth than force, using the powers of publicity and politics as much as anything else”. Such an observation was not without merit given that Nic Shuibhne was writing in 2002 before the passing of the Act. On numerous occasions in his early Annual Reports the Coimisinéir notes that he is acting in the spirit of the law rather than by way of a black letter interpretation of the Act. It should be noted that the Coimisinéir has achieved a relative degree of success with this “spirit of the law” approach, receiving positive responses from public bodies such as Western Health Board³²⁰, Central Statistics Office³²¹ and An Garda Síochána³²². In 2004 (before the full provisions of the Act were in force) the Coimisinéir felt compelled to thank to various bodies for their help in resolving “problems, difficulties and complaints...even when there was, *as yet* no legal

³¹⁹ Supra Note 289 above

³²⁰ An Coimisinéir Teanga Inaugural Report Spring- December 2004 (available at <http://www.coimisineir.ie/>) at p. 33

³²¹ Ibid at p. 35

³²² Ibid at p. 37

obligation in these matters on those bodies under the Act”³²³. In 2005 the Coimisinéir described the process of seeking help from various public bodies as an “interim strategy”³²⁴. The rationale behind such an interim strategy lies with the limited number of public bodies which were required to prepare language schemes under the Act and the fact that the full provisions of the Act were not yet in force in 2004 and 2005. Under Section 11 (1) of the Act the Minister may require public bodies³²⁵ to prepare language schemes detailing how the public body intends to provide their services through the medium of Irish. The public body must reply within six months with a draft scheme. Such schemes may then be confirmed by the Minister as per Section 14 (1) and then, as required by Section 14 (2), copies of such schemes will be forwarded to the Coimisinéir. In 2004 one public body, the Minister’s own department, had a scheme in force. By 2005 twenty one schemes were in force covering the requirements of thirty four different public bodies³²⁶. In 2006 forty three schemes were in force, representing the requirements of seventy one public bodies. As of the end of 2011, as per the most recent figures available there were 105 schemes covering the requirements of 191 public bodies have been commenced with a further twenty six draft schemes pending although the Coimisinéir noted that 66 of these schemes had expired³²⁷. The Coimisinéir signalled an intention to discontinue the “spirit of the law approach” in favour of a more statutory based approach as “[t]here would be little sense in continuing with this strategy in future when the

³²³ Ibid at p. 11 Emphasis added

³²⁴ An Coimisinéir Teanga Annual Report 2005 (available at <http://www.coimisineir.ie/>) at p. 6

³²⁵ A full list of the public bodies to which the Act applies is contained in the First Schedule to the Act.

³²⁶ The difference in numbers of schemes and numbers of public bodies can be attributed to the fact that some public bodies comprise of an aggregate group of public bodies eg The County Meath Local Authorities language scheme covers Meath County Council, Navan Town Council, Kells Town Council and Trim Town Council.

³²⁷ An Coimisinéir Teanga Annual Report 2011 (available at <http://www.coimisineir.ie/>) at p. 6

Act is fully in force – when the regulations are made under the Act in respect of the use of Irish in advertising, signage, stationery and oral announcements and when a sizeable percentage of language schemes are confirmed under the Act.³²⁸ Indeed in his 2008 Report the Coimisinéir expressed serious concern that there was a significant delay in the confirming of a number of replacement schemes after initial schemes had lapsed³²⁹, a concern which he reiterated in 2010³³⁰.

Whilst Nic Shuibhne was somewhat (justifiably) sceptical of the role that the Coimisinéir would have given the previous experience of similar bodies in Ireland³³¹ there are signs that the Coimisinéir is prepared to take a pro-active approach. In his 2006 report the Coimisinéir criticised a limited number of cases where a minimalist approach was adopted by public bodies in relation to the level of services offered in the first official language³³². He further noted that an absence of generosity of spirit existed in some quarters (which he did not name) which were not yet subject to the provisions of the Act³³³. It seemed clear given the Coimisinéir's annoyance with public bodies refusing to co-operate to the desired levels before they were legally required to do so, that thus signalled a serious intention to further scrutinise such public bodies once they were instructed to prepare language schemes by the Minister. This has been borne out in the activities of the Coimisinéir since 2007 where separate investigations have

³²⁸ An Coimisinéir Teanga Annual Report 2006 (available at <http://www.coimisineir.ie/>) at p. 36 and subsequently repeated in the 2007 Report.

³²⁹ An Coimisinéir Teanga Annual Report 2008 (available at <http://www.coimisineir.ie/>) at p. 6

³³⁰ An Coimisinéir Teanga Annual Report 2010 (available at <http://www.coimisineir.ie/>) at p. 7

³³¹ Nic Shuibhne N “Eighty years a’ growing – the Official Languages (Equality) Bill 2002” (2002) ILT No. 13, 198 at p. 202

³³² An Coimisinéir Teanga Annual Report 2006 (available at <http://www.coimisineir.ie/>) at p. 6

³³³ Ibid

been initiated by his office in response to complaints made to the office by members of the public.

6.4 Investigations

Section 23 of the Act allows for the Coimisinéir to conduct investigations in public. The Coimisinéir is granted considerable scope and discretion in relation to what he investigates and the manner in which the investigation is carried out by Section 23 (4) and Section 23 (5). Section 23 (3) allows the Coimisinéir to refuse to investigate a complaint on a number of grounds, including complaints he considers to be trivial or vexatious. Additional grounds for refusing to conduct investigations include complaints which the Coimisinéir considers to be a matter which relates to the powers of investigation of the Ombudsman under section 4 (2)(a) of the Ombudsman Act, 1980. Despite the considerable discretion the Coimisinéir has in the exercise of his duties, as highlighted by Nic Shuibhne³³⁴, Section 24 excludes the Coimisinéir from investigating any matter which is before the Courts unless there are “special circumstances” which make it proper to conduct such an investigation.

Where the Coimisinéir does conduct an investigation he is required by Section 26 (2) to prepare a report containing his findings and any recommendations he sees fit to make. Such a report should be submitted to the public body concerned, the Minister and, if the investigation was conducted on foot of a complaint made to the Coimisinéir, the complainant. Even in cases where the Coimisinéir decides not to conduct an investigation or to discontinue an investigation Section 26 (1)

³³⁴ Nic Shuibhne, N. “Eighty years a’ growing – the Official Languages (Equality) Bill 2002” (2002) ILT No. 13, 198 at p. 202

requires him to send a written statement of his reasons for doing so to the complainant, the public body concerned and any other such person as he considers appropriate (which further highlights the high degree of discretion the Coimisinéir has). Under Section 26 (4) the Coimisinéir may request a public body which he has investigated to submit comments to him in relation to the findings and the recommendations contained in his report under Section 26 (2). Section 26 (5) provides the Coimisinéir with a useful, if somewhat blunt, tool. Should the public body investigated fail (in the opinion of the Coimisinéir) to act upon any recommendations made by the Coimisinéir he may then make a report detailing such failings to both Houses of the Oireachtas. To date, the Coimisinéir has used this power on two occasions, concerning the Health Service Executive's (HSE) failure to address the recommendations made by the Coimisinéir in two investigations issued in 2009, and the National Museum's failure to do likewise in 2010. The outcome of this report of failure by the HSE and the National Museum to the Oireachtas is not yet to hand. Where the Coimisinéir finds failings on behalf of a public body the Minister may, with the consent of the Minister for Finance, allow for payment of monetary compensation to a complainant under Section 27 (1). It is submitted that this is the weakest link in the Coimisinéir's armoury. Firstly, the Coimisinéir is reliant on the Minister and also the Minister for Finance in order to get a scheme of compensation operational. This requires a great deal of goodwill towards the language in a time of constrained budgets where one wing of the State would essentially be fining another wing with the funds concerned all coming from the public purse. As Ó Catháin³³⁵ has commented, the Minister at the time of the enactment; Éamon Ó

³³⁵ Ó Catháin, L. in "Language and Governance" Williams, Colin H. Ed. (University of Wales

Cuív, had been very proactive in support of the Act (which he guided through the Oireachtas), the Office of the Coimisinéir and the Irish language generally, while accepting that other occupants of the office in the future may not have such an interest in the Irish language³³⁶. In addition, Nic Shuibhne is particularly critical of the absence of a “binding duty on either the Minister or public body actually to reverse the cause of the complaint in real terms”³³⁷. Indeed, the Act is silent on the consequences of continual long term failings once compensation has been paid. A citizen who seeks a service in Irish but fails to gain any degree of satisfaction may be entitled to some degree of compensation if the public body refuses to co-operate despite the intervention of the Coimisinéir. There is no statutory power to compel the provision of the service through the medium of Irish. Given the costs of translation services a situation could arise whereby the cost and effort of providing the service through Irish would be more burdensome than merely paying the compensation. It is submitted that if the Coimisinéir was given the powers to bring prosecutions at this stage in a similar manner to his powers under Section 22 (4) with a similar offence being created then a much more effective and satisfactory regime would ensue.

To date the Coimisinéir has initiated fifty six investigations. In one particular investigation however, concerned with the appointment of a District Court Judge to District No. 1 (Donegal including the Donegal Gaeltacht), the Coimisinéir felt he had no option but to discontinue his investigation. This situation arose after the Secretary to the Government issued a declaration that the matter concerned a

Press, Cardiff, 2007) at p. 65

³³⁶ As an example the Shadow Minister for Community, Rural and Gaeltacht Affairs from 2007-2011 Michael Ring TD could not speak Irish ; Sunday Tribune 23/09/2007 (available at <http://www.tribune.ie>) ; Dáil Debates, Thursday 8th November 2007, Vol 641 Col 2.

³³⁷ Nic Shuibhne, N. “Eighty years a’ growing – the Official Languages (Equality) Bill 2002” (2002) ILT No. 13, 198 at p. 203

Government decision which, due to the strict separation of powers in the Irish Constitution, is expressly beyond the scope of the Coimisinéir's investigations as per s. 24 of the Act. Summaries of each of the investigation are contained within the Coimisinéir's annual report³³⁸.

6.5 Commentaries and Annual Reports

Section 29 allows the Coimisinéir to prepare commentaries on the practical applications of the Act and the wider significance of the Act to the public in General. He may include his own experience in dealing with investigations in such a report and future holders of the office of the Coimisinéir may also discuss the experiences of his or her predecessor(s). The Coimisinéir has so far prepared Ireland's first language rights charter detailing the rights of all citizens and the obligations of the public bodies under the Act. In addition the website of the Coimisinéir contains a number of guides, hyperlinks and FAQs for those seeking information about the Office of the Coimisinéir or Irish language rights generally. The Coimisinéir has prepared information packs which have been distributed with national Irish language newspapers. His Office has advertised in Irish language media and to a limited extent in English language media. The Coimisinéir also made himself available for numerous media interviews³³⁹

³³⁸ The Coimisinéir stresses that the summaries are “merely condensed accounts of the actual investigations...[t]hey are the summaries of the official reports issued in accordance with Section 26 of the Acts...[i]t is in those official reports, and in those official reports alone, that the authoritative accounts of investigations can be found.” - An Coimisinéir Teanga Annual Report 2007 (available at <http://www.coimisineir.ie/>) at p. 27

³³⁹ Source; Coimisinéir's Annual Reports 2004-2010 available at <http://www.coimisineir.ie>

between 2004 and 2010. The interviews were primarily conducted with Irish language media with some interest from English language and international media. The issue of the media has been a source of concern for the Coimisinéir. He has, in particular, highlighted the criticism of some sections of the English language media of the Act which he has claimed are “often based on misunderstanding or misinterpretation of the Act itself and some comments which could best be described as contradictions – partly truth and partly fiction”³⁴⁰. The Coimisinéir placed a particular focus on promoting awareness of his Office and language rights generally among young people. To this end staff of his Office visited many educational institutes (second level and third level) in both the Gaeltachtaí and in English speaking areas. Finally the Coimisinéir has also met with many interest groups and various bodies with similar remits to his own such as the Canadian Official Languages Commissioner and the former Bwrdd yr Iaith Gymraeg.

Also featured prominently on the website of the Coimisinéir³⁴¹ are the bilingual annual reports prepared by the Coimisinéir as per his obligations under Section 30 of the Act. The annual reports detail the nature of the work carried out by the Coimisinéir during the year in question, the process of the implementation of the Act and the language schemes and limited details of the types of complaints received by his Office. With this in mind much of the earlier reports are taken up with details of the establishment of the Office of the Coimisinéir and the various

³⁴⁰ An Coimisinéir Teanga address to the International Academy of Linguistic Law, 10th International Conference, Galway 14th June, 2006 available at <http://www.coimisineir.ie>

³⁴¹ <http://www.coimisineir.ie>

steps being taken as the Coimisinéir finds his feet. Despite this a few noticeable trends are emerging. Firstly there has been a year on year increase in the number of complaints received from members of the public. Total complaints have risen from 304 in 2004 to over 700 in 2010 with the majority of these complaints coming from outside the Gaeltacht regions. In addition, the website of the Coimisinéir saw a year on year increase in hits from 2005 to 2009 and a record number of hits in 2010³⁴². Similarly the number of cases per year where public bodies sought advice from the Coimisinéir regarding their obligations under the Act rose steadily from 2004 to 2010. These upward trends demonstrate how the Coimisinéir and language rights generally are making an impression on the consciousness of Irish speakers and the public bodies listed in the first schedule to the Act. Such a development is to be cautiously welcomed.

Within the reports the Coimisinéir displays an admirable willingness to tackle controversial issues head on, including whether the investment by the State in Irish language education represents value for money³⁴³, the exact nature of extra marks awarded in civil service competitions for candidates with proficiency in both English and Irish³⁴⁴ and the often emotive issue of Irish versions of place names³⁴⁵. The Coimisinéir has also displayed a determination to name and shame various public bodies where he believes they have violated the provisions or the spirit of the Act. The Coimisinéir highlighted that less than 1% of the business in the Houses of the Oireachtas is conducted in Irish, despite the fact that a

³⁴² No information on website hits for 2004 is available in the annual reports

³⁴³ An Coimisinéir Teanga Annual Report 2004 (available at <http://www.coimisineir.ie/>) at p. 6

³⁴⁴ An Coimisinéir Teanga Annual Report 2005 (available at <http://www.coimisineir.ie/>) at p. 37

³⁴⁵ Ibid at p. 32

significant percentage of the members of both Houses have an understanding of the Irish language and he suggests strong leadership is expected from those elected to public office³⁴⁶. He has highlighted in particular the failure to publish various documents simultaneously in both languages as required by Section 10 of the Act³⁴⁷ and has secured guarantees that such failures would not occur again³⁴⁸. The Coimisinéir publicly criticised An Post and the Department of Communications, Marine and Natural Resources for a clear breach of Section 10 of the Act where An Post were given “permission” by the Department to delay the publication of an Irish version of their 2004 annual report. The Coimisinéir noted his concern and surprise that such a situation could arise and secured acceptance from the Department that at no time did they have the power to give “permission” to An Post to breach Section 10 of the Act³⁴⁹. The Coimisinéir noted in 2010 that the public service recruitment embargo was having an adverse effect on the ability of his office to carry out its function.³⁵⁰

Finally the annual reports also underline the Coimisinéir’s ability to shape Irish language policy going forward. In his 2004 report he noted that a small number of public bodies were experiencing difficulties in securing translation services. The Coimisinéir commented that;

“There is a need especially to address issues such as education and training, resources and the certification of qualifications. The development of a proper system of accreditation for translators is a basic

³⁴⁶ An Coimisinéir Teanga Annual Report 2004 (available at <http://www.coimisineir.ie/>) at p. 22

³⁴⁷ Ibid at p. 25,

³⁴⁸ An Coimisinéir Teanga Annual Report 2005 (available at <http://www.coimisineir.ie/>) at p. 26

³⁴⁹ An Coimisinéir Teanga Annual Report 2005 (available at <http://www.coimisineir.ie/>) at p. 47

³⁵⁰ An Coimisinéir Teanga Annual Report 2010 (available at <http://www.coimisineir.ie/>) at p. 4

requirement so that the confidence of public bodies in the translation sector can be enhanced”³⁵¹

By the year end of 2006 a full accreditation system for Irish language translators had been established by Foras na Gaeilge and the Coimisinéir’s office had begun an association with Dublin City University regarding an MA in Bilingual Studies. Whilst these developments cannot be attributed entirely to the Coimisinéir the developments represent an impressive turn around given the usual slow pace of change with regards to new developments concerning the Irish language.

Nic Shuibhne, writing before the passing of the Act and the establishment of the office of the Coimisinéir, suggested that the idea the Act could create a language commissioner “who would strive to reveal and expose linguistic injustice more than directly correct or punish it”³⁵² and such endeavour would need to be “strongly backed by procedures and rights having definite legal bite. Looking at the Act as a whole, however, it is not really yet convincing that this would actually be the case.”. It is submitted that whilst Nic Shuibhne’s concerns were soundly based, the reality of the operation of the Act and in particular the proactive approach of the Coimisinéir has resulted in satisfactory outcomes, albeit at this early stage. Nic Shuibhne's concern *vis-à-vis* the Coimisinéir having a “definite legal bite”³⁵³ however appears to have been well placed giving the frustration encountered by the Coimisinéir with regard to his investigation into

³⁵¹ An Coimisinéir Teanga Annual Report 2004 (available at <http://www.coimisineir.ie/>) at p. 27

³⁵² Nic Shuibhne, N. “Eighty years a’ growing – the Official Languages (Equality) Bill 2002” (2002) ILT No. 13 at p. 205

³⁵³ *ibid*

the Department of Justice and the appointment of a District Justice to Donegal. It is submitted that in the main the Coimisinéir has succeeded thus far in creating a climate of compliance with the terms of the Act it is clear that once events progress beyond the scope of the Coimisinéir the same willingness is not always present. On the occasions where breaches do occur the Coimisinéir has displayed a steely willingness to tackle the issues head on and has secured commitments that such breaches will not occur in future. In addition, the Coimisinéir has displayed a readiness to participate in reform and advancement by using the public platform granted to him by the Act. In 2011, the Coimisinéir issued a report urging amendment of the Official Languages Act, 2003 in a number of key areas which he felt would better represent the demand of Irish speakers for particular rights and services³⁵⁴.

Thus far, it is submitted that the Coimisinéir has performed admirably with regards to his own mission statement of protecting language rights. The Coimisinéir has been particularly pro-active and realistic in setting goals for the scope and operation of the legislation under which his Office functions. The biggest threat to the role of the Coimisinéir has not arisen from the powers conferred upon the Coimisinéir but rather from the ongoing reform which threaten to undermine the function of the Office. As part of budgetary measures the Government announced that the office of the Coimisinéir is to be merged with the office of the Ombudsman despite the existing legislation making a very clear delineation between the two Offices. The rationale offered for this change

³⁵⁴ Review of the Official Languages Act, 2003 (5 July, 2011) available at <http://www.coimisineir.ie>

was that cost savings could be achieved, however the Government have not been able to offer any proof that such a merger could achieve cost savings³⁵⁵. This development has been criticised by language advocacy groups, the opposition³⁵⁶ and international academic experts³⁵⁷ who point out that “[t]he great strength of the Irish system is the independence of the Commissioner’s office to investigate complaints in strict accordance with its statutory obligations,”. Indeed the timing of the announcement makes the proposed merger all the more questionable given that the Government have announced a review³⁵⁸ of the Official Languages Act, 2003 which is in its initial stages. In deciding to merge the Office of the Coimisinéir with the Ombudsman, it is submitted that the Government is undermining and prejudicing any potential findings of the previously announced review.

7. Conclusion

This chapter has outlined how the recognition of language rights has progressed since the high water mark of c. 2003/4 where the decision in *Ó Beoláin*, the enacting of the Official Languages Act, 2003 and the confirmation that the State was seeking official recognition of the Irish language as an EU language created a positive atmosphere language rights could thrive. If the theory of

³⁵⁵ “What State agencies are being rationalised?” The Irish Times, November 17, 2011 at p. 7

³⁵⁶ “Language Experts Questions Merger” The Irish Times, December 15, 2011 at p. 14

³⁵⁷ The academics quoted were Dr John Walsh of NUIG, Prof Colin Williams of Cardiff University, Prof Linda Cardinal of the University of Ottawa, Dr Wilson McLeod of the University of Edinburgh and Prof Rob Dunbar of Sabhal Mòr Ostaig, the University of the Highlands and Islands

³⁵⁸ “Minister of State Dinny McGinley T.D., announces Review of the Official Languages Act, 2003.” Available at

<http://www.pobail.ie/en/Consultations/ReviewoftheOfficialLanguagesAct2003/PressRelease/Pres%20release.pdf> as accessed 15 December 2011.

governmentality is applied to the various steps taken by the State in and around this period it could be suggested that the State was trying to shape a citizenry which was accepting of bilingualism and language rights more broadly. A climate was being created where the Irish language was given a particularly positive status together with a context in which it could operate.

It rapidly became apparent that such a development was not to be a long term one and soon there was a very noticeable and deliberate shift towards delimiting the status of Irish and perhaps moving away from the constitutionally expressed position that Irish was the first official language towards a realist position where Irish is very much a minority language. It is significant that the impetus for this shift came not from the legislature or from the executive but rather from the development of a body of case law emanating from judicial decisions taken in cases concerning the Irish language. It should be noted, however, that the State has a very large role to play in these issues before they ever reach the judiciary. For example, in much of the case law it was an alleged failing on behalf of the State which lead to the case being commenced by the Plaintiffs concerned and the State would have to make a conscious decision to fight these actions. Indeed in the *Ó Murchú* case the very decision to appeal the High Court decision which was very much a judgment which placed language rights at the heart of its rationale would have been taken at the highest level of Government. The later developments, such as the decision to merge the Office of An Coimisinéir with the Office of the Ombudsman, demonstrate deliberate steps being taken by the State to alter the nature of language rights and the status of the language more generally. When the theory of Governmentality is applied to these later developments it paints a picture of a State which wants to shape its citizens to

acknowledge and it is submitted, to pay lip service to the notion of language rights and language equality without seriously making provision for same. A final noteworthy consideration is one concerning economic matter. The Irish language does not and cannot exist in isolation from the broader Irish economy and the economic realities in which the Irish State is now forced to operate. Although in Canada the idea that cost should be a factor in such a decision was firmly rejected by Bastarach J in the famous case of *R v Bealuc* where a murder conviction was overturned on the grounds that the Defendant's language rights had not been vindicated such a position has not found favour in Ireland. Bastarach J noted that ;

“I wish to emphasize that mere administrative inconvenience is not a relevant factor. The availability of court stenographers and court reporters, the workload of bilingual prosecutors or judges, the additional financial costs of rescheduling are not to be considered because the existence of language rights requires that the government comply with the provisions of the Act by maintaining a proper institutional infrastructure and providing services in both official languages on an equal basis.”³⁵⁹

Since late 2007 Ireland has been in the grips of a deep and prolonged financial crisis which has necessitated outside assistance from the EU and IMF. The vast majority of the judgments and steps taken to delimit the status of the Irish language have occurred in the years from 2007 until present. With this in mind there is perhaps an element of legal realism in the acceptance by the judiciary and the State that in the time of such crises the status of the Irish language and its use and facilitation in the legal system, at least, is not to be considered a priority.

³⁵⁹ [1999] 1 SCR 786 at para 39

Chapter 4:- International Law and Language Rights

1. Introduction

International law has emerged as a key consideration when examining any aspect of law which applies to any modern democracy in the aftermath of the Second World War. This chapter proposes to examine language law and the rights of speakers' languages, including the Irish language, in the international law context which are no exception to the wide scope of international law. The Irish language occupies an unusual position in the international context due to a number of legal and political factors. International law has varying impacts on the language depending on factors such as which body of international law is in operation in a particular sphere, which type of right is being asserted and even which jurisdiction on the island of Ireland the claim for language rights emerges from. All of these considerations will be examined in this chapter.

Due to its very nature international law, or *jus gentium* as it was previously known, is difficult to define. Byrne and McCutcheon note that:

“international law has existed as long as there have been relations between nations, and classical international law dating from the late middle ages, recognises the nation state as the primary participant in the international legal order. Since the end of World War II in 1945, other participants have emerged onto the stage, and modern international law permits international organisations and non-state actors such as individuals, groups and other entities play an ever-increasing role”³⁶⁰

Languages, by their nature, play a crucial role in the international law field as the relationship between the different states, usually states with different languages,

³⁶⁰ Byrne, R. and McCutcheon, P. “Byrne and McCutcheon on the Irish Legal System” 5th Edition, (Bloomsberry, Dublin, 2009)at p. 791

will require at least a policy on languages. Nic Shuibhne argues that language rights themselves are one of the three key pillars of accepted international law along with humanitarian law and the abolition of slavery.³⁶¹ In many international law bodies complex rules and rights in relation to languages exist and often languages and the various texts in different languages are key to interpreting the meaning of an instrument of international law when a dispute arises. Ó Máille discussed the importance of international law in the context of language rights relating to the Irish language in 1990. It is significant that he placed such an emphasis on international law and language at that time, some seventeen years before Irish became an official European Union language, thirteen years before Ireland incorporated the European Convention on Human Rights into domestic legislation and two years before the drafting and adopting of the European Charter on Regional or Minority languages, all of which are considered key pillars of international law in the language context. Ó Maille notes that discussing language rights in the absence of international law is “seriously inadequate”. He further notes that

“Briefly stated, the effect of this body of law is that the rights of individuals are no longer confined to those provided by the State in which they are resident. The fundamental human rights of the individual human being, no matter where resident or of what nationality, are now the concern of the entire international community.”³⁶²

³⁶¹ Nic Shuibhne, N. “EC Law and Minority Language Policy – Culture, Citizenship and Fundamental Rights” (Kluwer, The Hague, 2001) at p. 190

³⁶² Ó Máille, T. “Stádas na Gaeilge – Dearcadh Dlíthiúil” (Bord na Gaeilge, Baile Átha Cliath, 1990) at p. 20

2. Applicability of International law in Ireland

In Ireland the position in relation to international law is somewhat curious due to the complexities of adding an additional layer of law to a domestically strong constitutional order. Different levels of international law are incorporated differently into the Irish legal system depending on the nature of the laws involved, the ratification process, the general acceptance of the international laws in other jurisdictions and the customs at play. For what, it is submitted, were historic reasons Ireland's Constitution makes it very clear that only the Irish Parliament can make laws for Ireland, that only the Irish government can make executive decisions on behalf of the People and that only the Courts established by the Irish Constitution have the right to administer justice in Ireland. The drafters of the 1937 Constitution were keen to assert the independence of the Irish State and to differentiate it from the 1922 Irish Free State which still had some residual British influences. All references and residual powers vested in the Crown were removed and all powers of Westminster to delegate legislation for Ireland were extinguished. In doing so the 1937 Constitution, perhaps inadvertently, made it slightly more difficult to incorporate international law in Ireland than it is in many other European jurisdictions. Article 29 of the Irish Constitution entitled "International Relations" provides the framework for recognising international law in Ireland, however there are a number of obstacles and challenges provided by the text itself. Article 29.1, for example, prescribes how Ireland "affirms its devotion to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality" without ever offering any definition as to what is understood by "international justice and morality". Article 29.3 is even more problematic. Firstly, in the English language

text the article provides “Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States” which would denote an acceptance by the Irish State of whatever principles or customs that operate in international law. Tying down the exact definition of these principles has, however, proven to be quite difficult and, as shall be examined, definitions and understandings of how international law operates varies from jurisdiction to jurisdiction.

An additional complication is the phrase “*ina dtreoir*” which appears in the Irish text (which is the authoritative text in the event of any conflict between the two texts³⁶³) the translation of which, “as a guide”, does not appear in the English text. In the case of *The State (Sumers Jennings) v. Furlong*³⁶⁴ Henchy J states that the correct position under Irish law is that the general principles of international law are accepted only “as a guide (*ina dtreoir*) in its relations with other states” and Article 29.3 should not be seen as tying the hands of the Oireachtas when it comes to international law³⁶⁵. With this in mind it is extremely important to consider how exactly different elements of international laws are incorporated into Irish law. Given that the correct position is to assume that international law principles and rules should only be accepted by Ireland as a guide a requirement exists for further steps to be taken to give international law the full force of law in Ireland. Traditionally this process has taken three distinct routes when it comes to the Irish legal order.

³⁶³ See generally Chapter 2

³⁶⁴ [1966] IR 183

³⁶⁵ *Ibid* at p. 187

The first option is for the particular provisions of the international laws in question to be incorporated into the Irish Constitution itself by way of a constitutional amendment. Such a method has been used in Ireland to give legal force to bodies of international law such as European Union law, international patents law and the International Criminal Court. If such a route is to be undertaken the people of Ireland must vote to accept the applicability of the particular body of international law to Ireland in a referendum and once the amendment is passed the Oireachtas may then set about implementing the international laws and standards into domestic law. Depending on the body of international law often some form of oversight or exercise of powers is required by an international entity, tribunal or court. Such oversight often can be described as making rules/legislation, deciding executive policy or administering justice, all powers which, as was noted above, are powers which are very carefully guarded by the Irish Courts. The passing of a constitutional amendment makes the exercise of these powers by bodies other than the Irish legislature, executive and judiciary constitutionally allowable. This should not be interpreted as a *carte blanche* for the various international bodies concerned to exercise their powers in Ireland. The extent to which their powers can be exercised are still very much limited in scope by the Constitution and the exact manner in which the Constitution provides for the body of international law to have force of law in Ireland. Different bodies of international law have different scope and enjoy the force of law in Ireland to varying degrees. A brief examination of two separate bodies of international law and the extent to which they enjoy the full force of law in Ireland illustrates the difference.

When the International Criminal Court was established in 1998 the Irish government signalled that they wished to ratify the statute, the Rome Statute, which brought the Court into existence. In order to do so Ireland would have to submit to the jurisdiction of the International Criminal Court in certain criminal matters (predominantly war crimes and crimes against humanity). Given that the Irish Constitution asserts Irish sovereignty and the right to try offenders³⁶⁶, submission to the jurisdiction of the International Criminal Court required the passing of a constitutional amendment to legitimise the partial transfer of the sovereign powers of the State in this limited criminal law sphere. On 27 March 2002 the Irish people overwhelmingly voted in favour of the 23rd Amendment of the Constitution which inserted Article 29.9 into the Irish Constitution³⁶⁷. In doing so the people of Ireland accepted the limited role of the International Criminal Court as established by the Rome Statute however it should be noted that no powers beyond those which are contained in the Rome Statute can be constitutionally transferred to the International Criminal Court. European Union law has also been incorporated into Irish law by constitutional means, however, the form and the scope of its incorporation differs greatly from the manner in which the International Criminal Court's Rome Statute was incorporated.

Since 1972 when Ireland joined the European Union, Ireland has incorporated the body of international law known as EU law into the Irish Constitution in a manner which has a very wide scope. The Irish people passed the 3rd Amendment

³⁶⁶ Articles 5 and 38 of the Irish Constitution

³⁶⁷ Article 29.9 of the Constitution reads; "The State may ratify the Rome Statute of the International Criminal Court done at Rome on the 17th day of July, 1998."

on 8 June 1972 which allowed Ireland to become a member of the (then) European Community by giving the Government the right to ratify the various treaties which formed the body of European Community Law. An additional clause was added which states in what is now Article 29.4.10 that:

“No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the European Union or of the Communities, or prevents laws enacted, acts done or measures adopted by the European Union or by the Communities or by institutions thereof, or by bodies competent under the Treaties establishing the Communities, from having the force of law in the State.”

Essentially the wording of 29.4.10 means that any provision of the Irish Constitution which would normally render a provision of EU law unconstitutional cannot do so as long as the EU law or rule was one which was necessitated to be enacted by the treaties establishing what we now know as EU law. The body of EU law was incorporated into Irish law in such a manner because EU law demands that it should enjoy supremacy over all national laws (including national constitutions) in areas where the various treaties give the EU competence. As Tomkin notes “Article 29.4.10^o ensures that Ireland could fully comply with its obligations under EC law, without fear of breaching the Constitution.”³⁶⁸ It is very important to note that while it is accepted that EU law enjoys a great scope of incorporation into national law this incorporation is limited to the scope contained within the various treaties which make up the body of laws known as EU law. EU law has no scope and does not enjoy any force of law or constitutional protection in spheres outside the ambit of the

³⁶⁸ Tomkin, J. “Implementing Community Legislation into National Law”, *Judicial Studies Institute Journal*, 2004 Volume 4 No. 2 130 at p. 132

treaties. EU law has become extremely dynamic and is ever evolving. In the years since 1987 the various competencies and scope of EU law have been altered on no less than seven occasions with new treaties requiring ratification on each occasion by each member State. Ireland, uniquely in Europe, requires a referendum on each occasion as a result of the decision of the Irish Courts in the *Crotty v An Taoiseach*³⁶⁹ case. Here the Supreme Court held that on each occasion the competencies of the EU change from treaty to treaty the Irish government must seek new permission from the Irish people by way of constitutional amendment authorising the further transfer of powers and sovereignty to the EU. Thus, EU law, as a body of international law in Ireland enjoys a large scope and is very strongly incorporated into Irish law but only to the extent to which the Irish people have acceded to in the various referendums.

The second manner in which international law is adopted into the Irish legal order is by way of the State simply ratifying the treaty which technically merely requires the signature of the Minister for Foreign Affairs, however, the practice has developed that any such ratified treaties are laid before the Dáil. When international law is ratified without any particular legal intervention it usually administered in an opt-in manner where Ireland commits itself to implementing the international law within the jurisdiction without any legal compulsion to do so. Although some attempts have been made to assert rights recognised at international level in domestic courts the Irish Supreme Court dismissed such arguments in the case of *Re Ó Laighleis*³⁷⁰ in 1960. Here Mr. Ó Laighleis sought to have the Irish Courts declare that his internment under the Offences Against

³⁶⁹ [1987] ILRM 400

³⁷⁰ [1960] IR 93

the State (Amendment) Act, 1940³⁷¹ was contrary to Articles 5 and 6 of the European Convention on Human Rights³⁷² which guarantee the right to liberty and the right to a fair trial. Ireland had signed and ratified the ECHR Convention but had not incorporated the ECHR Convention into domestic law at this stage. Although it should be noted that subsequently in 2003 Ireland did incorporate the Convention into domestic legislation. The Supreme Court held that Irish legislation could not be pushed aside merely by virtue of the fact that Ireland had signed up to an international treaty which might conflict with the domestic laws, noting; “[t]he Court...cannot accept the idea that the primacy of domestic legislation is displaced by the State becoming a party to the Convention for the Protection of Human Rights and Fundamental Freedoms. Nor can the Court accede to the view that in the domestic forum the Executive is in any way estopped from relying on the domestic law.”³⁷³ Instead of such treaties having full legal effect within the jurisdiction of the signatory State, which at the Supreme Court held in *Re Ó Laighleis* is not permissible, most States opt to amend their domestic legislation voluntarily in order to comply with the treaties. In Ireland’s case wherever Ireland has been found to be in violation of the ECHR by the Grand Chamber Ireland invariably has amended domestic legislation voluntarily even in cases where the Irish Courts have found no legal reason why the State would be compelled to amend its own domestic laws. It should be noted however, that Ireland tended only to undertake this voluntary action subsequent

³⁷¹ This Act was introduced initially as an emergency measure used to intern members of the IRA without trial who it was felt would threaten Irish neutrality during World War Two by launching attacks on the United Kingdom. Subsequently the same powers were used during further IRA campaigns and ultimately the tactic was replicated by the British Government as a method to deal with the Provisional IRA in the late 1970s and 1980s.

³⁷² Hereinafter the “ECHR”

³⁷³ [1960] IR 93 at 125

to adverse findings made against the State in cases to which Ireland has been a party. This meant that the entire corpus of ECHR law was not voluntarily incorporated into Irish law prior to 2003. The most famous example of such steps having been taken by the Irish State occurred in the *Norris v Attorney General*³⁷⁴ and *Norris v Ireland*³⁷⁵ series of cases. The Applicant, Mr David Norris, a prominent Senator, sought to challenge provisions of the Non Fatal Offences Against the Person Act, 1861 on the basis that the legislation criminalised homosexual acts. Mr Norris sought to rely on the right to privacy and the right to marital privacy recognised under the Irish Constitution and to have these rights extended to homosexual relations. The Irish Supreme Court considered the matter and by a slim margin (3-2) rejected the claims made by Norris in Irish law. Norris subsequently took his case to the European Court for Human Rights and was successful in having Ireland's legislation declared to be in violation of Article 8 of the ECHR which guarantees the right to privacy. As a result of this judgment from the European Court of Human Rights Ireland subsequently decriminalised homosexual acts with the enacting of the Criminal Law (Sexual Offences) Act, 1993. There was no constitutional or other legal imperative under which Ireland had to act to give effect to the judgment of the European Court of Human Rights however the contracting states opt into wilfully amending their domestic legislation to reflect the judgments of the Court. Should a state which is a party to the ECHR fail to reflect a judgment of the Court in their domestic legislation the option of monetary fines and ultimate expulsion from the ECHR Convention is available to the Court.

³⁷⁴ [1984] IR 36

³⁷⁵ (1988) 13 EHRR 186

The final manner in which international law is incorporated into Irish law and the Irish legal order is by the way of domestic Irish legislation. This usually involves what is known as the dualist system whereby a certain category of international law does not have direct effect upon Ireland unless Ireland takes positive steps to implement the law into its own domestic order usually by way of legislation. Article 29.6 of the Constitution makes it clear that no international treaty will form part of the domestic law of Ireland unless it is provided for by the Oireachtas. As Byrne and McCutcheon note;

“most treaties to which Ireland becomes a party to are never incorporated because they relate solely to the state’s rights and duties with respect to other states or, in the case of human rights treaties, because the rights they confer are already protected in Irish law. Where incorporation takes place, it is, for most part, achieved indirectly: the Oireachtas gives carefully defined effect to treaty by mirroring the most important of its provisions in the body of an Act”³⁷⁶

The vast majority of these treaties tend to be of a technical nature because they govern the relationship between states and the regulation of disputes arising therefrom. Usually, most of treaties to which Ireland is a party to are not justiciable in Irish Courts because the very nature of the treaties precludes any need to incorporate into domestic law. A number of particularly important international law treaties do get transposed into domestic law with the most prominent example being the ECHR which was enacted into Irish Law through the ECHR Act, 2003.

³⁷⁶ Byrne, R. and McCutcheon, P. “Byrne and McCutcheon on the Irish Legal System” 5th Edition, (Bloomsbury, Dublin, 2009) at p. 795

When Ireland ratifies a treaty either by merely signing the treaty or transposing it into domestic legislation there still exists the proviso that the legislation or the effect of the obligations placed upon Ireland by virtue of ratifying the treaty must pass the test of constitutionality. Only those treaties which have been incorporated into Irish law via the constitution can enjoy the protection of certainty as to their legality although treaties incorporated by legislation enjoy a presumption, albeit a rebuttable presumption, as to their constitutionality.

3.1 European Union Law

The European Union³⁷⁷ and its predecessors have always existed as multilingual entities. Each member state has the option of having their own national language(s) recognised upon joining the European Union and each language which is adopted as an official language of the European Union is granted equal legal status with every other official language within the Union. As a result of the European Union representing various nations with various languages it was apparent from the very inception of the Union that a detailed language policy would be required. There are twenty four official languages of the European Union³⁷⁸ with each Treaty since the European Coal and Steel Community Treaty stating that each language version of the text is equally authentic.

³⁷⁷ The European Union, as it is now known, has had a series of different names and denominations which often change with the passing of each Treaty which expands the competencies of the bloc. For ease of reading and understanding the term European Union or EU is used in this chapter to denote the various bodies and successors.

³⁷⁸ The languages being Bulgarian, Czech, Danish, Dutch/Flemish, English, Estonian, Finish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovakian, Slovenian, Spanish and Swedish.

Lenaerts and Van Nuffel note that the initial European Coal and Steel Community Treaty which was drafted in French although it was translated into Italian, German and Dutch/Flemish, the only authoritative version for the purposes of legal interpretation was the French language³⁷⁹. The importance given to language in the European Union can be seen by the initial pre-occupation with languages at both the Treaty stages where the prominence of languages was acknowledged and within the institutions themselves. The very first regulation made by the European Commission, the body which functions as the executive wing of the European institutions (albeit one with a legislative remit too), concerned language policy and the rules governing language within the Union. Regulation 1/58 lays out a number of the core policies which have become cornerstones of what we now understand as European Union language policy. Member States may communicate with the institutions in any official EU language of their choosing and must receive a reply in that language. Conversely where the EU institutions initiate the communication they must write to the member state or the entity or person to whom they are communicating to in the official language of that state. A number of states, including Ireland, have more than one official language which are also official EU languages and in such instances the EU institutions must abide the State's own internal language rules. In Ireland, for example, both languages are equally authoritative throughout the jurisdiction and hence the EU institutions can use either English or Irish when communicating with the State. In Belgium specific rules are in place for each linguistics region and if the EU institution was to communicate with a government authority located in the French speaking area the institution would

³⁷⁹ Lenaerts, K. and Van Nuffel, P. "Constitutional Law of the European Union" (Sweet & Maxwell, London, 1999), at p. 380.

have to use the French language. Although this requirement exists in a legal instrument the importance of the regulation is open to discussion. The European Courts of Justice³⁸⁰ have held that, while Regulation 1/58 carries the full force of law, failure to comply with the regulation will not render the action taking by an EU institution void unless the failure to abide with the terms of the Regulation resulted in a “harmful failure”. In the *ACF Chemiefarma NV v European Commission*³⁸¹ case the European Commission communicated to the applicant company, who were a Dutch company, partly in French, with the minutes of a previous meeting not being made available in Dutch. The Court held that the failure of the Commission to translate the minutes into Dutch could constitute a failure which might affect the legal validity of the Commission’s actions. The Court did note that the Applicant company was able to fully understand and respond to the communication, despite the fact that it was not in Dutch and that there were no procedural issues with regards to the content or accuracy of the information contained in the communication. The ECJ held that:

“The Applicant has not alleged that this resulted in the minutes containing substantial inaccuracies or omissions with regards to it. It must therefore be concluded that the irregularity which has been found did not in this case have *harmful consequences* capable of vitiating the administrative procedure. In these circumstances the abovementioned complaints must be rejected”³⁸²

While languages are central to the entire European project and each language version of a European text is to be considered equally the ECJ have shown a reluctance to display the sort of zeal that the Canadian Supreme Court did in

³⁸⁰ Hereinafter the “ECJ”

³⁸¹ [1970] ECR 661

³⁸² Ibid at para 49. Emphasis added

*Bealuc*³⁸³ with regards to violations of procedure when it comes to issues of language. The “harmful consequences” test developed by the ECJ in relation to the general communication would seem to more closely resemble the minority decision of Geoghegan J in *Ó Beoláin*³⁸⁴ and the more recent decisions of the Irish Supreme Court whereby the practical consequences of a violation of a language right are considered rather than the normative style logic we have seen in jurisdictions like Canada and to a lesser extent in Ireland with the development of the “double right” principle.

When it comes to the right to access the Court and the right of access to justice at the European Courts language issues are governed by regulation 1/58 however the ECJ was given the scope to provide for its own language rules with regards to procedure before the Court. Article 12 of the Rules of Procedure of the Courts of Justice makes the first mention of language noting that those who wish to apply for the position of registrar of the Court must inform the Court of the number of official EU languages the applicant speaks. Although no rights for the speakers of a particular language arise by virtue of Article 12 it does display at the very least a tepid acceptance by the Court of the importance of multilingualism at the Court. Article 22 prescribes that the Court should set up a translation service which is to be staffed by “experts with adequate legal training and a thorough knowledge of several official languages of the Court”. In doing so Article 22 puts an emphasis on the Court’s need to be able to facilitate all the official languages of the European Union which appear before it. Such support systems form an

³⁸³ [1999] SCR 786

³⁸⁴ [2001] 2 IR 279

integral part of any legal system which operates in more than one language and the requirement that such translators have specific legal training and expertise is key to the implementation of any successful system³⁸⁵. The Procedural rules do make provision for additional supports for members of the judiciary who wish, presumably for the purposes of clarity and certainty to have any questions translated into the language of their choice as per Article 27.3.

The primary sections of the procedural rules, however, which deal with languages come from Chapter 6 of the rules comprises Articles 29 to 31. Article 29.1 commences by listing all of the official languages of the European Union as languages which can be used before the Court. In line with Regulation 1/58 the default position exists, save in the case of a number of exceptions, whereby the language of any court case shall be chosen by the applicant. The first exception which is to be found in Article 29.2(a), which again is in line with the policy in operation for Regulation 1/58, is that where the Defendant in a case is a member state of the European Union, a legal entity in a member state or an individual citizen of a member state the official language of said member state shall be used. In a slightly different manner to 1/58 where the member state has more than one official language the applicant has the right to choose which language is to be used. In a case concerning Ireland, for example, an applicant would have the right to use either Irish or English. In a case concerning Belgium, unlike at a domestic level where procedural rules exist regarding which language is to be used in particular circumstances, an applicant would have free reign in a

³⁸⁵ See generally Chapter 5

European case to choose Flemish, French or German. Article 29.2(b) does allow parties to an action to make a joint request that any one of the official languages of the Court be used in a particular case, even if such a case were concerning an exception of the sort contemplated by 29.2(a), for example, the Commission and the United Kingdom Government could both agree to have a case heard in the Irish language despite Irish not being an official language in the United Kingdom. Even in cases where one particular language is the primary language of the case a further exception in Article 29.2(c) allows for the Court to allow part of all of the remainder of a case to be heard in another official language of the Court pending a successful application. It should be noted that the institutions of the European Union are expressly forbidden by the terms of 29.2(c) to make such an application. It is submitted that 29.2(c) allows the Court take account of the circumstances of Applicants and Defendants who might otherwise be placed in a perceived position of disadvantage due to the language of the hearing. By expressly forbidding the institutions to take advantage of the exception, 29.2(c) recognises the unequal position of a litigant and the multi-lingual institutions of the European Union who have vast experience and resources available to them in the field of legal translation and the provision of multi-lingual legal services. Where an action commenced in a domestic court and arrives to the ECJ by way of an appeal or a request for direction from a member state court, the language in which the case was heard in the domestic court shall be the language of case at the ECJ as per 29.2. A potential lacuna, however, could be created by such a stipulation. The potential exists for an action to commence in a domestic court in a language other than those official languages listed in Article 29.1 of the Procedural Rules eg Welsh, Scots Gaelic, Catalan, Basque, Galician etc and to be

referred to Europe. It is unclear from the terms of Article 29.2 as to whether it would be permissible to use a language which has some official status within its own jurisdiction but which lacks recognition as an official language at the Court. The situation is further complicated by the fact that Welsh, Scots Gaelic and the minority languages recognised by the Spanish government have been granted status as co-official languages thereby granting these languages a certain level of recognition within various institutions of the European Union but no express recognition within the ECJ. Irish, which now enjoys the status as a full official language previously enjoyed a more curious status as a treaty language whereby it was permissible to use Irish at the Court despite the fact that Irish was not an official language.

Article 29.3 makes it clear that the language policy of the Court extends to the written pleadings, supporting documents and minutes of the decision of the Court as well as to the oral pleadings. Supporting documents which are submitted in another language must be translated into the language of the case concerned, but, there is a clause excluding certain lengthy documents which only require translation of relevant extracts subject to the proviso that the Court or any party to the action may request a full translation. Due to the nature of EU law which applies equally to all member states, often member states which are not initially a party to an action may seek to intervene if a matter that is of interest to them arises during the course of the case. In such circumstances Article 29.3 allows for member states to intervene in their own official language however, in a manner similar to Article 29.2, there is no express requirement that this language be one of the official languages of the Court per Article 29.1. Thus if a language which

was an official language within the jurisdiction of a member state but not an official language of the Court the prima facie terms of Article 29.3 suggest it would be permissible for the member state to use the language before the Court. Article 29.3 further requires that where a member state intervenes in a case in its own official language the Registrar of the Court shall be responsible for having the intervention translated into the language of the case. If it were the situation that a member state official language which was not an official language of the Court were to be used in such an intervention the Registrar of the Court could be faced with certain difficulties in securing translations into a language which the Court would not necessarily have expertise in. Nic Shuibhne argues that it is likely that Article 29.1 sets “an overriding limitation against the use of non-official languages”³⁸⁶. Article 29.3 does even provide for non-member states making applications before the Court, but in such circumstances the non-member state is obliged to use one of the official languages of the Court as prescribed by Article 29.1 while Article 29.4 allows expert witnesses who cannot adequately express themselves in one of the official languages of the Court to use another language which must be translated into the language of the case. Article 29.5 gives all officers of the Court the right to use any of the languages of the Court in discharging their duties, even if they language choice differs from the language of the case. Article 30 places an obligation upon the Registrar of the Court to arrange for translation of anything which is written or said during the course of a case into any of the other official languages of Court upon receiving a request from a Court officer or party to the case. In doing so, Article 30.1 seeks to ensure

³⁸⁶ Nic Shuibhne, N. “EC Law and Minority Language Policy – Culture, Citizenship and Fundamental Rights” (Kluwer, The Hague, 2001) at p. 13

that all concerned with a case have the opportunity to fully understand every aspect of the Court proceedings in their own language, provided that their language is one of the official languages of the Court. If an Applicant does not understand one of the official languages of the Court the principles of natural justice require that the Court should make some interpreting available however there is no provision within the Procedural Rules of the Court to make such a service available. Article 30.2 requires that all publications of the Court be published in all the official languages of the Court. In practice, the judgment issued by the Court is only legally valid in the language of the case although this is subsequently translated into all of the official languages of the Court. While all language versions of the judgment are to be considered authentic if a dispute arises as to the interpretation of the judgment the language in which the judgment was initially issued will be referred to as the primary source. The final aspect of Chapter 6 of the Rules of Procedure of the Court re-enforces this element by holding that the texts of documents which have been drawn up during the course of the case in any of the official languages of the Court shall be authentic. Further articles of the Procedural Rules make some references as to language, however, most other provisions are of a minor technical nature and essentially involve restatement of the principles established in Chapter 6 (Articles 29- 31). The one additional article of interest when it comes to the provision of multilingual services is, perhaps, Article 37.2 which requires the Institutions of the EU to produce official translations of all the pleadings into all of the languages of Court within a timeframe as specified by the Court. In doing so, it is submitted, that the Court is enabling future cases to be taken in any of the twenty three official languages of the Court by creating an ever growing corpus of

precedents and terminology. Furthermore, the provisions of Article 37.2 serve to increase the demand for lawyer linguists/legal translators while at the same time adding to the experience and expertise of legal translators. The foregoing factors have been identified as factors which are often seen as barriers to access to justice in official minority languages in particular.

While the detailed rules relating to procedure at the Court place a strong emphasis on multilingualism and the facilitation of all of the official languages of the Court the nature of the administration of justice requires that a certain compromise has to be reached with regards to the deliberation stage of a case. The administration of justice demands that only those who exercise a judicial function should be allowed take part. No translators, scribes or interpreters are allowed to take part in the deliberations which must, as per Article 27.1, take place in private. As a result, the Court has been left with little option but to adopt a common working language between the judges in order to discharge their duties in an effective manner. The practice has developed that this language has always been French and this practice continues in force. The reason for choosing French at the outset when the Court was made up of six nationalities was most likely a pragmatic one which French being the most widely spoken language by all participants at the time. As various different member states have joined what we now know as the European Union the practice of using French as the working language of deliberations at the Court has continued. Such a situation is not without its difficulties given that not every member state now in the European Union would have had a traditional strength in French, particularly with a detailed knowledge of the specialist lexicon of legal French which would be required when dealing with complex legal issues. It is submitted that a system

which selects one particular language, particularly a language which may not be the most widely spoken language of all the participants at the Court, is by definition curtailing the potential pool of talent available to the Court and serves to limit to some extent the contributions of some members of the judiciary in deliberations. The fact the English has become a dominant L2 language across the globe has placed further pressures on the current system. Writing in 2001 prior to the accession of the 10 new members states in 2004 and an additional two in 2008 Nic Suibhne suggested that “this may become more problematic in the future, given the ever-increasing primacy of English as a second language across Europe.”³⁸⁷ Nic Shuibhne further argues that “the de facto distinction between official and working languages that is necessarily practised within the Court calls the absolutism of the principle of language equality into question and introduces the case for doctrinal reform”³⁸⁸. Whilst the idea of equal treatment of all languages, including Irish, at the ECJ is appealing Nic Shuibhne’s analysis is difficult to contest particularly in light of the huge expansion (particularly eastwards) of the European Union. A system designed to accommodate four languages initially may not be fit for twenty four languages.

3.2 The Irish language and the European Union

In 1973 Ireland joined the European Economic Community together with the United Kingdom. Given that English is the predominant language in both jurisdictions there was little doubt but English would become an official

³⁸⁷ Nic Shuibhne, N. “EC Law and Minority Language Policy – Culture, Citizenship and Fundamental Rights” (Kluwer, The Hague, 2001) at p. 14

³⁸⁸ Nic Shuibhne, N. “EC Law and Minority Language Policy – Culture, Citizenship and Fundamental Rights” (Kluwer, The Hague, 2001) at p. 14

language of the European Union. Questions arose with regards to the other languages spoken in the island of Ireland and Britain. The question of languages such as Welsh, Scots Gaelic and other regional and minority languages within the United Kingdom was never seriously considered particularly as these languages lacked any meaningful recognition within the United Kingdom at the time. The Irish language in Ireland was, however, somewhat different. Irish enjoys status as the first official language of Ireland as per the Constitution of Ireland³⁸⁹ and is used daily in official capacities. It is somewhat unclear as to why the Irish Government in 1972/1973 did not seek status for Irish as an official working language of the Union. Ó Riain suggests that a number of factors may have combined to bring the Irish government to this position³⁹⁰. Firstly, he suggests that the Irish Government foresaw “certain practical difficulties” with the implementation of the full status. Ó Riain is somewhat dismissive of this point.

The Irish government did not provide for the specific legal training through the medium of Irish which would have been most beneficial to the provision of the sort of services a full working language would require³⁹¹. It is submitted that while there is no doubt that that certain practical difficulties would have arisen in the provision of services, these difficulties were not insurmountable. It should be noted, for example, that the Irish government was able to successfully support its own domestic translation section in Rannóg an Aistriúcháin during this period

³⁸⁹ See generally Chapter 2

³⁹⁰ Ó Rian, Seán “How a Member State can influence EU Language Policy? – The Case of the Irish Language”, Address to the Permanent Representation of Ireland to the European Union available at <http://www.seanorian.net>

³⁹¹ See generally Chapter 5

and it was only at a later stage, due to lack of funding, that the provision of legal translation services suffered. Ó Riain further suggests the fact that pretty much every speaker of the Irish language could understand English (which was going to be a full working language of the European Union) could possibly have been the reason why the Irish Government did not push the status of Irish seeing as there was no fear that an Irish citizen would not understand at least one of the official languages of the Union³⁹². Instead Ireland sought status for Irish as an official but not working language of the Union. This suggestion was rejected because it was felt that a number of the smaller member states feared for the status of their own languages if this new class of official but not working languages were to be created³⁹³.

The example of the language of the deliberations of the ECJ (above) is an example of how these smaller member states may have feared the erosion of their own languages in favour of a *lingua franca* over time. The ultimate solution was to grant Irish the status of a new class of language known as a “Treaty language”. The Treaty language status meant that while Irish was not to be an official language of the European Union in the manner of the other languages, the Treaty of Rome and all subsequent treaties would be translated into Irish and have full legal effect in the Irish language. In addition the Irish language was given full status as a working language of the ECJ *ab initio* despite Irish not being an

³⁹² Ó Riain, Seán “How a Member State can influence EU Language Policy? – The Case of the Irish Language”, Address to the Permanent Representation of Ireland to the European Union available at <http://www.seanorian.net> at p. 7

³⁹³ Ó Riain, Seán “How a Member State can influence EU Language Policy? – The Case of the Irish Language”, Address to the Permanent Representation of Ireland to the European Union available at <http://www.seanorian.net> at p. 6

official EU language at the time. The justification for such a position is unclear. By the time Ireland had joined the EU in 1973 it was well established in Irish law that a party could take a case before the Irish Courts in the Irish language and not having such a position afforded to the Irish language would have required a number of specific amendments to the Procedural Rules examined above. Thus Irish occupied somewhat of a halfway house where Irish could not officially be used in the Parliament, at the Commission or at meetings of the Council of Ministers, none of the Directives or Regulations of the Union were available in Irish but all the Treaties were available and legally authentic in Irish and the ECJ could hear cases in the Irish language. The situation with regards to Irish was unique as no other member state had joined the Union without having their official language(s) recognised by the Union. Subsequently a number of further examples of languages with official status within a member state not being granted official EU status arose. Luxembourgish is not recognised as an official EU language albeit the language had not been recognised in Luxembourg at the time they joined the Union and only gained official status as the national language of Luxembourg in 1984. Prior to this point Luxembourgish was classed as a High German dialect by the Government of Luxembourg. When Cyprus joined the Union in 2004 Turkish, one of the two official languages of Cyprus along with Greek which was already recognised, was not adopted as an official language of the Union. It is submitted that there were overriding political and practical obstacles to Cyprus requesting that Turkish be recognised by the Union relating to the territorial and sovereignty disputes which exist on the island of Cyprus.

The fact that Irish occupied a unique position within the language policy of the European Union did not attract much subsequent attention in the period between 1973 and 2001. This situation persisted until early in the new millennium where a noticeable shift in Government policy, legal recognition and public demand combined to bring the issue of the Irish language and its status in Europe back on the agenda. As has been examined in Chapter 2, the *Ó Beoláin* decision of the Irish Supreme Court in 2001, served to refocus the need for the proper provision of translation services domestically within Ireland as is constitutionally mandated. The Government response went beyond that which was constitutionally mandated and was overwhelmingly positive in terms of the development of language rights. The Official Languages Act, 2003 places further duties upon the State and State bodies to make provision of services in the Irish language and the various language schemes brought into force served to increase the language awareness environment in Ireland. It was in this context that an extremely visible and public campaign started to have Irish recognised as an EU language at the same time as the 2004 expansion of the EU from fifteen member states to twenty five. The suggestion being that never again would such an opportunity present itself where so many new official languages were being added to the list of languages recognised at the EU. A public campaign commenced which included an online petition that garnered over 80,000 signatures in the space of three weeks and also a march of thousands of supporters to the Dáil³⁹⁴ as well as intensive lobbying, all of which resulted in all political parties supporting the demand for status at the EU level. Shortly thereafter the Irish Government began negotiations, and after Ireland gave

³⁹⁴ “Irish Language Group to March on the Dáil”, The Irish Times, 4 April 2004 and “Irish Language Group March on the Dáil”, The Irish Times, 26 April 2004

commitments as to funding and the provision of training courses, the status of Irish as a full official and working language of the European Union was confirmed at a meeting of EU Foreign Ministers in June, 2005³⁹⁵. The decision taken at the meeting was enshrined in law by Regulation 920/2005. Article 1 of 920/2005 amended the various provisions of Regulation 1/58 allowing Irish to be made an official EU language and making a number of other minor technical amendments including provisions of 1/58 which listed the number of official languages.

Regulation 920/2005 and thus the status of Irish as an official language of the Union came into force on 1 January 2007. Article 2 of 920/2005, however, granted a derogation to the Irish language which meant that not every single law or publication from the Union needed to be translated into Irish. 920/2005 states that this derogation was granted for “practical reasons and on a transitional basis”, the justification appearing to be the need to recruit suitably trained lawyer linguists and translators which are required to give Irish the same status as the other official languages of the Union. It is submitted that the Irish Government was aware that there was a lack of the particular skillset required to give full effect to this status and consequently took certain steps to rectify the situation³⁹⁶. Article 3 of 920/2005 states that this derogation was granted for an initial four year period and further extendable at five year intervals subject to the EU conducting a review as to the operation of the official status of the Irish

³⁹⁵ “Minister Dermot Ahern announces Official and Working Status for the Irish language in EU: Government Proposal Unanimously Accepted By EU Foreign Ministers”, Press Release, 13 June, 2005; <http://www.dfa.ie>

³⁹⁶ See generally Chapter 5

language. Irish was not unique in obtaining such a derogation, with Maltese being granted a very similar derogation by the terms of Regulation 930/2004 which granted an initial three year derogation to the Maltese language along the same lines as the Irish language. At the end of this initial three year period the Union decided that the derogation should not longer apply and as a result all documents, laws and publications produced by the Union must be fully translated into Maltese since 1 May 2007. Unlike Maltese, however, Irish was granted a further five year derogation by the terms of Regulation 1257/2010 which will expire at the end of 2016. Regulation 1257/2010 noted that “there are still difficulties in recruiting a sufficient number of Irish language translators, legal/linguistic experts, interpreters and assistants. It is therefore necessary to extend the derogation”. It is submitted that it is unlikely that this derogation will be further extended beyond 31 December, 2016 due to a number of factors. Firstly, as demonstrated by the example of Maltese, a language which according to Irish and Maltese census data³⁹⁷ has less than 1/3 of the numbers of speakers that Irish has and therefore ought to be able to develop the necessary human resources. As has been examined in Chapter 5, significant progress has been made in Ireland with regards to the provision of specialist training required to produce graduates with the skills needed to fill the roles mentioned in Regulation 1257/2010. Finally, significant political lobbying was required on the part of the Irish Government to securing the official status for the Irish language in the face of certain objections from the Spanish and French Governments in particular, it is submitted that the Irish Government would be keen to avoid the resulting loss

³⁹⁷ 2011 Irish Census data available at <http://www.cso.ie/en/media/csoie/census/documents/census2011pdr/Pdf%208%20Tables.pdf>, Maltese estimation of speakers from http://www.ethnologue.com/show_language.asp?code=mlt

of face that a further derogation would entail. In any case the EU is keen not to grant such derogations for long periods.

With regards to the case law of the European Court of Justice relating to the Irish language, one case in particular deserves detailed attention as the case served to demonstrate the Court's interpretation of the fundamental freedoms guaranteed by EU law and how they interact with State language policies. The case, *Anita Groener v The Minister for Education, Ireland and others*³⁹⁸, is noted as one of the most significant cases of EU law concerning the free movement of workers and concerned the Irish language policy of the Irish State and a Dutch national. The Applicant was an Art Lecturer in a Dublin Art College. In order to become established in a permanent post the regulations operated by the Irish Minister for Education required that each candidate pass an Irish language examination. This stipulation applied even in instances where the use of Irish did not form part of the particular post to which a candidate was seeking establishment in. Groener, being a Dutch national, had no particular knowledge of Irish and sought an exemption from this requirement but her request was turned down by the Minister on the basis that there were other suitably qualified candidates who had passed the Irish examination. The Minister did, however, agree to appoint Groener to the post provided she passed the examination within a set time frame. Groener attempted to learn Irish and pass the examination, she was ultimately unsuccessful in doing so and was not appointed to the post. Groener initiated proceedings on the grounds that the requirement to pass an Irish language

³⁹⁸ Case C-379/87, [1989] ECR 3967

examination unfairly discriminated against non-Irish nationals and as a result was a violation of the fundamental right guaranteed under EU law for the free movement of workers. It should be noted that a general exception to the free movement of workers principle exists in relation to the public service of each member state, however this exception has been extremely narrowly interpreted and is taken only to apply to the limited spheres of security, central government administration and diplomacy. The Irish Government via the Minister for Education in response argued that the requirement to pass the Irish language examination was a policy decision taken by the Irish State in an effort to protect the Irish language given that the language was an official language of the State as per Article 8 of the Irish Constitution. The Irish High Court first heard the matter and sought to refer the case onwards to Europe on the grounds that the rights which were being asserted were of a European rather than a domestic nature. While national courts do have the jurisdiction to rule upon matters of European law when an area of European law is newly developing or unclear, the usual practice is for the domestic Court to refer the case onwards seeking clarification of the EU law matters. Once the ECJ rules on the matter the case is then usually referred back to the domestic court in order to issue a final ruling. Groener's case took this particular course and the case reached the ECJ in 1989. The Irish High Court sought clarification on three issues in particular relating to the freedom of movement of workers which is one of the core freedoms of the European Union. Firstly, it was queried whether, as per the Irish State's view, the protection of the Irish language was a justifiable interference with the EU freedom. Secondly, it was to be determined whether it was legitimate for the Irish State to require that all candidates seeking to obtain establishment in an academic position, such as

the position sought by Groener, be competent in Irish even if knowledge of the Irish language was not required to fulfil the particular position. Finally the Irish High Court sought direction as to whether the overall interference's practical effect was to restrict nationals of other states from taking up the position. The ECJ dismissed Groener's case and upheld the position of the Irish State on a number of grounds. Firstly, the ECJ held that the Irish State had consistently sought to promote and protect the Irish language and the obligation placed upon lecturers such as Groener was framed within this context rather than being framed as a covert attempt to limit nationals of other states from having an opportunity to take up positions. The Court noted that;

“As is apparent from the documents before the Court, although Irish is not spoken by the whole Irish population, the policy followed by Irish governments for many years has been designed not only to maintain but also to promote the use of Irish as a means of expressing national identity and culture. It is for that reason that Irish courses are compulsory for children receiving primary education and optional for those receiving secondary education. The obligation imposed on lecturers in public vocational education schools to have a certain knowledge of the Irish language is one of the measures adopted by the Irish Government in furtherance of that policy.”³⁹⁹

The Court made further comments on the nature of EU law and how language requirements fit within such a frame. The Court noted that there was nothing within EU law to prohibit language requirements as long as the language requirements were proportionate to the stated aim of the requirement and the policies of the State in question. In the case of Groener the Court explicitly noted that “the requirements deriving from measures intended to implement such a policy must not in any circumstances be disproportionate in relation to the aim

³⁹⁹ Case C-379/87, [1989] ECR 3967 at para 18.

pursued and the manner in which they are applied must not bring about discrimination against nationals of other Member States”⁴⁰⁰. The Court held that in the circumstances of Groener’s case the steps taken by the Irish State were legitimate and proportionate to their aims. The Court placed particular emphasis on the role of educators, the “privileged relationship” they enjoy with their students not just as educators but as members of the community and in such circumstances placing a language requirement on teachers in particular was justified⁴⁰¹. The Court did warn that the certain steps such a requiring the language to be learnt within the State’s jurisdiction, exempting nationals of the State or denying nationals of other states an opportunity to re-sit oral exams would be unfair and discriminatory, none of these circumstances, however, pertained in the Irish context. The case was eventually returned to the Irish High Court which dismissed the Groener’s action in light of the clarification provided by the ECJ.

The significance of the ECJ’s ruling in Groener was the recognition by the Court that even the most cherished and most widely respected freedom conferred upon citizens of the European Union could be delimited by the various language requirements within a member state, provided such language requirements were in proportion to the aims they sought to achieve and non discriminatory. In the particular case of Irish, which at the time was not an official EU language, the decision of the ECJ demonstrated a level of respect and acknowledgement by the Court of domestic linguistic situations even in cases where the languages concerned were not official languages of the Union. Furthermore, the ruling of

⁴⁰⁰ Case C-379/87, [1989] ECR 3967 at para 19

⁴⁰¹ *ibid*

the ECJ served to dispel some of the initial fears of member states that the EU would seek to impose language policy from the “top down” and instead confirmed that the language policy of the EU would be one which was welcoming and happy to facilitate various languages (which in some cases were recognised to varying degrees). With regards to Groener herself anecdotally there is evidence that she eventually passed the Irish examination, was appointed to a permanent position and subsequently became Head of the Art College and a member of Aósdána, an Irish cultural and arts institution which has played a key role in Irish language lobbying over a prolonged number of years⁴⁰².

3.3 EU Policy on Minority Languages

In addition to the various rules and treaties of the European Union having had an effect on languages, including the Irish language, since its inception the EU has also been active in the area of minority language policy even though the EU has no express competency in the area. As a result policy in the area of minority languages has tended to emerge from the sole directly elected body of the Union; The Parliament. By virtue of their status as directly elected members of the Union Members of the European Parliament (MEPs) have a freedom which other officials within the Union do not enjoy. MEPs have the freedom and the democratic mandate to pass resolutions on most topics, including topics in areas which the Union has no competency (either expressed or otherwise). Although these policies and resolutions are not directly concerned with the Irish language

⁴⁰² <http://www.anitagroener.com/homepage>

they do inform the relationship between the Irish language and the European Union and indeed some of the resolutions served to refocus and inform the policy development in Ireland in areas such as the provision of translation and interpreting services. A problem arises due to the fact that Irish has always enjoyed a level of recognition above that of other minority languages at the Union (culminating in the granting of full Official Language status) there have been no direct attempts to group Irish with the minority languages within the Union. In failing to group Irish with the other minority languages Irish becomes somewhat isolated and lacking a focused minority language policy given its position in all reality as a de facto minority language.

One final recent development with the European Union has served to once again highlight how the EU places a strong emphasis on the importance of language rights and the provisions of multilingual services. In 2010 the EU adopted the Directive on the Right to Interpretation and Translation in Criminal Proceedings⁴⁰³. The directive effectively repeats the provisions of the European Charter for Human Rights and the European Charter for Regional and Minority Languages (discussed below) affirming the long recognised natural law right to have interpretation where an accused does not understand the language of the criminal proceedings it also includes the right to the translation of key documents. The directive does require certain minimum standards of service to be in place including the proper provision of training for interpreters and translators. While there is little in the directive which would impact on the rights

⁴⁰³ Directive 2010/64/EU

of Irish speakers the fact that such a directive was brought forward indicates a strong willingness of the EU to recognise the importance of language rights.

4. European Charter on Human Rights and the Council of Europe

The European Charter on Human Rights and the related assembly of the Council of Europe⁴⁰⁴ has developed its own corpus of rules and regulation in relation to the use of languages in official contexts. Ireland was one of the first States to ratify the ECHR in 1953 although the full provisions of the Charter were not enrolled into domestic law in Ireland until the enacting of the European Convention on Human Rights Act, 2003. Prior to this juncture the provisions of the Convention were binding on Ireland only because the Irish State choose to make it so rather than any concrete legal imperative⁴⁰⁵. The ECHR makes some direct references to languages and language rights while other provisions of the ECHR have been interpreted to have some bearing on rights asserted by the speakers of various languages. More saliently the Council of Europe, the assembly body which brought forward the ECHR, has passed additional treaties which have had a great effect on certain languages. In these cases a legal peculiarity in relation to Ireland's limited participation is examined below. The European Charter on Regional and Minority Languages and the Framework Convention for the Protection of Nation Minorities are optional treaties which are available for member states who wish to commit to strengthening and protection minority languages within their jurisdiction.

⁴⁰⁴ The Council of Europe is in no way officially connected to the European Union or any of its Institutions

⁴⁰⁵ See discussion of the Norris case above

The Council itself does not have as broad an official language policy as the European Union with English and French essentially being the two working and official languages of the Council, although provision can be made for the use of other languages. The ECHR, which is the most widely recognised and best observed treaty of the Council of Europe, recognises, for example in Article 14, language as one of the eleven listed⁴⁰⁶ grounds upon which discrimination should not take place. More pointedly, in the area of language rights before Courts and in the criminal process, Article 5.2 of the ECHR prescribes that “Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him”. This provision is of particular interest to speakers of the Irish language given that it is widely accepted that there are no longer any monoglot Irish speakers. In reality all speakers of the Irish language in Ireland, save for some very rare and extraordinary exceptions, understand the English language. In order to satisfy the requirements of Article 5.2 of the ECHR a State need only provide information relating to the reasons for arrest and the charge against the person in English, even if they are an Irish speaker. This provision would be consistent with long established principles of natural law but takes no account of the language choice of an accused. As was examined in Chapters 2 and 3 the position in relation to Irish in Ireland is somewhat more complex due to the “double right” constitutional principle recognised in Ireland where a party has the right to use Irish by virtue of principles of natural law such as those contemplated by Article 5.2 of the ECHR but in addition in a right by virtue of the official status granted to Irish by the Irish Constitution which, theoretically at least, grants speakers of

⁴⁰⁶ This list is not necessarily exhaustive however.

the Irish language a right to choose which language they use. As a result Article 5.2 has little practical effect within the jurisdiction of the Republic of Ireland as Irish speakers have recourse to a stronger body of law which grants further rights however Irish speakers within the jurisdiction of Northern Ireland, a legal jurisdiction with a significant number of Irish speakers, would tend to be more adversely affected as they would not have the same choice available to them⁴⁰⁷.

Certain provisions of Article 6.3 of the ECHR add some further detail to the language principle established in Article 5.2 whereby it notes that

“Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

...

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court”

Such principles have been interpreted by the Court in a similar manner to Article 5.2 whereby an understanding of a language is the key requirement rather than a preference for one language over another. Article 6.3 (e) makes it clear that the inability to understand a language is the key ground on which the provision of an interpreter rests. Once the inability of the accused to understand the language of a Court is established the European Court for Human Rights has interpreted the provision quite widely. In the case of *Luedicke Belkacem and Koc v The Federal Republic of Germany*⁴⁰⁸ each of the Applicants were non German nationals who

⁴⁰⁷ The situation of Northern Ireland is somewhat unique due to its Constitutional position within the United Kingdom, the effect of international law and the Good Friday Agreement, all of which are examined below.

⁴⁰⁸ Eur Ct HR Series, A 029

were forced by the German Courts to bear the costs of interpretation into their own language. The European Court of Human Rights⁴⁰⁹ held that this was a violation of 6.3 (e) and as a result ordered that Germany repay the cost of the provision of the interpreter service to the Applicants. The Court further noted that the onus on signatory states to provide interpreting services should be read widely so as to also include the translation of documents relating to the trial and the provision of interpreter services for any pre-trial evidentiary requirements including the questioning of a suspect. In the case of *Ozturk v. The Federal Republic of Germany*⁴¹⁰ the Applicant, a Turkish national living in Germany, was charged with a minor administrative offence in relation to a car accident he had been involved in. Although some issues were explained to the Applicant by way of an index card explaining some of the relevant details in Turkish the ECtHR held that the provisions of Article 6.3 require that a full interpreting service must be provided, even where minor matters are concerned, once it is established that the Applicant does not understand the language of the Court (German in this case).

With a particular focus on the Irish language, one case in particular highlights how the ECHR is not a treaty/charter which was drafted to specifically deal with language and language rights issues. In *X v. Ireland (1970)*⁴¹¹ the ECtHR ruled an application by an Irish Civil Servant inadmissible on the grounds that the alleged complaint did not fall within the remit of the Court. The Applicant sought a declaration that his rights under the ECHR had been violated on the grounds

⁴⁰⁹ Hereinafter ECtHR

⁴¹⁰ Eur Ct HR Series, A 073

⁴¹¹ Eur Ct HR Application 4137/69 – Judgement issued 13 July 1970. It should be noted that this case had no connection with the later Irish High Court case of the same name which concerned the right to life of the unborn under the Irish Constitution, see Chapter 2.

that the Irish State required him to fill out an application form which was only available in the Irish language in order to obtain a children's allowance benefit. The Applicant claimed that as freedom of expression was protected under the ECHR in Article 10 the insistence that he fill out the form in Irish rather than his own spoken language of English was a breach of the freedom of expression. The ECtHR rejected the application noting that language choice and freedom of expression were not analogous and that the Irish State was free to use whichever language they required in administrative matters. The judgments of the Court in *Luedicke Belkacem and Koc* and in *Ozturk* do indicate that the Court would most likely have come to a different conclusion if X's application concerned a criminal matter rather than a civil one.

While the issue of language does arise from time to time in cases before the ECtHR, it is submitted that the ECHR is not necessarily the correct tool to deal with cases concerning language rights, particularly minority language rights. The Council of Europe itself it appears has also recognised this issue with the adopting of two additional treaties which deal more explicitly with the issue of regional and minority languages.

The first such treaty was the European Charter for Regional and Minority Languages⁴¹² which was brought forward in 1992. The charter seeks to protect and encourage the use of regional and minority languages within the States who have signed up to the ECRML. The ECRML covers a range of spheres but of particular interest is the emphasis the charter places upon states who opt in to Part III of the charter which covers the areas of justice, administration and

⁴¹² Hereinafter ECRML

education in relation to the minority language. The charter defines minority languages in a very particular manner in Article 1a of the charter whereby it provides that regional or minority languages means “languages that are traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and different from the official language(s) of that State”. Article 1a also makes clear that the definition of regional or minority language insofar as the charter contemplates “does not include either dialects of the official language(s) of the State or the languages of migrants”. Essentially the charter is seeking to protect languages such as indigenous languages which have been traditionally used within a jurisdiction but gradually displaced by an incoming majority language for example Welsh in Wales or regional languages which remain the majority language in a given region, but which are a minority due to the overall linguistic status within the jurisdiction concerned for example Catalan. When signatory states sign up to and ratify the charter they have two options available to them. Either the State can merely sign up to the requirements and obligations under Part II of the charter or in the alternative the state can go one step further and opt into Part III of the charter which places additional and more focused obligations upon signatory states.

Part II Article 7.1 of the charter makes a number of general pronouncements which are important in terms of the granting of status and recognition to the minority language and includes the need for signatory states to recognise the cultural richness provided by the minority language(s), the need to protect and encourage the use of the language(s) including the promotion of study and

research on such languages. Article 7.2 obliges parties to the charter to remove any unjust barriers or distinctions which are placed before the minority language although positive discrimination in favour of the minority language of the sort usually seen in Ireland vis a vis the Irish language in the areas of recruitment and education is permissible. The remaining provisions of Part II of the charter encourage mutual understanding of between language groups and require the signatory states to take the views of the linguistic community concerned into account when determining language policy. Finally, Part II does encourage signatory states to attempt to apply all of the foregoing to other language groups within its jurisdiction while accepting that the principle of *mutatis mutandis* applies. In doing so, it is submitted, that the charter is attempting to put forward its own provisions as examples of best practice and encouraging signatory states to use the provisions and commitments contained in Part II within their own jurisdiction when dealing with all linguistic communities albeit with the saving clause of recognising the need for adapting policy to suit each different situation.

The optional requirements of Part III place further and more specific obligations upon signatory states for those member states that choose to opt in. Areas such as media, cultural activities, economic and social life and transfrontier exchanges are addressed within Part III in detail requiring signatory states to make a number of commitments towards the promotion and inclusion of the minority language(s) within these spheres. Of more pertinent interest for the purposes of this work are the provisions in relation to education, judicial authorities and administrative authorities including public services. Part III Article 8 requires signatory states to make provision for education at all levels from pre-school to university and higher level education in the regional or minority language although the full

effect of this provision is tempered by the proviso that such education need only be provided “according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State”. Recognising some of the issues highlighted in Chapter 5 of this work the charter also requires in Article 8.1(g) that the signatory state makes arrangements to provide the basic and further training of the teachers required to implement the above levels of education. In doing so it is submitted that the charter recognises that the provision of training, including legal education, is key to the continued support and development of a minority language.

Part III Article 9 of the charter focuses in detail on the steps that signatory states should take with regards to the administration of justice in the minority language.

The scope of the provisions of Article 9 are quite limited. As per Article 9.1 the provisions only apply:

“in respect of those judicial districts in which the number of residents using the regional or minority languages justifies the measures [specified below], according to the situation of each of these languages and on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice”.

It is submitted that the provisions of Article 9.1 are quite weak and widely open to interpretation by the signatory state. The charter offers no definition or guidance as to what is to be understood by the number of speakers of a regional or minority language which justifies the provision of administration of justice in the minority language. Article 9.1(a) is concerned with criminal proceedings, which as was demonstrated in Chapter 2, are usually afforded a higher degree of concern than civil matters when it comes to language rights and seeks to

guarantee that an accused person should have the right to have their minority or regional language used as the language of the proceedings and to allow the accused to use their own minority language (including that any submissions or evidence made in the minority language not be dismissed purely on the grounds that they are presented in the minority language). In addition, Article 9.1(a) provides for the translation of documents and the provision of interpreting services at no additional cost to the accused. As has been noted previously the concepts of natural law and natural justice usually require all of the various conditions required by Article 9.1(a) to be met. Crucially, the principles of natural law and natural justice normally will only apply in cases where it is demonstrated that the accused does not understand the language of the trial. Article 9.1(a) excludes any references to the accused's knowledge of other languages (including perhaps the official language[s] of the State concerned) and in doing so Article 9.1(a) can be compared to the long established principle in Irish law of the "double right" whereby the knowledge of additional languages is not relevant once the accused seeks to use their own language. The remaining provision of Article 9 are concerned with civil and administrative cases and require that consideration is given to the use of the minority languages in a manner similar to the provisions made for the accused in criminal cases including the right to use one's own minority language before the Court and the right to free translation or interpretation. It should be noted, however, that the Irish legal system does not explicitly separate cases as to whether they are concerned with civil or administrative matters in the manner that certain European jurisdictions do. In Ireland administrative matters are heard in civil courts and parties in these actions have the same rights to use the Irish language in these cases as would any

other litigant. The final noteworthy element of Article 9 of the ECRML is Article 9.3 which requires signatory states to make available “in the regional or minority languages the most important national statutory texts and those relating particularly to users of these languages, unless they are otherwise provided.” In the case of Ireland while the Constitution provides that such steps should be taken in any event as we have seen this is not always the case. Similarly in the case of Welsh since the advent of devolution all secondary legislation of the Welsh Assembly is translated although many important pieces of Westminster drafted and enacted legislation which have a direct bearing on the speakers of the Welsh language have not been officially translated into Welsh.

Article 10 of the Charter is significant in some respects due to the manner in which the obligations placed upon signatory states is framed. Article 10 deals with the obligations upon administrative authorities and the provisions of the public services. A broad range of obligations is contemplated by Article 10 in areas such as dealing with written and oral interactions in the regional or minority language, the provision of training for staff of the authorities or service providers in the minority language and even an acknowledgement that in order to comply with the obligations the authorities may have to recruit those with knowledge of the minority language. Although such provisions are by themselves to be welcomed it should also be noted that the provisions of Article 10 are very similar to provisions in domestic legislation in jurisdictions such as Wales in the various Welsh language Acts, Ireland in the Official Languages Act, 2003 and Scotland in the Gaelic Language (Scotland) Act, 2005. It is submitted that many jurisdictions have adopted Article 10 as a framework model for best

practice with many legislative provisions, statutory standards or language schemes mirroring the general scope and obligations of Article 10.

Part IV of the Charter is concerned with the applicability of the Charter and is of particular interest when discussing the Irish language. Article 15 provides that signatory states should present a report on the progress of the state in achieving the aims of the Charter in relation to each language for which the state has signed the Charter. Such reports, to be prepared every three years, are to be presented to the Secretary General of the Council of Europe and are required to be made public. Article 16 requires the reports prepared by the signatory states to be examined by a committee of experts⁴¹³ who then issue a report on the progress of the signatory state to the Council of Europe. Such reports can include recommendations of actions to be taken by the signatory state in order to ensure compliance with the provisions of the Charter. Article 16 has an additional, and it is submitted extremely effective, provision which allows for NGOs and other interest groups within the signatory state concerned to make submissions and to highlight issues of the sort contemplated by the Charter. In doing so the Charter gives the various linguistic communities an opportunity to have their voice heard in a direct manner without needing to do so via the signatory state itself.

The Irish language is spoken as an everyday language by an indigenous population (excluding emigrants who choose to speak Irish when living outside

⁴¹³ The Committee of Experts is formulated as per article 17 which requires each state to nominate one member of the committee.

Ireland) exclusively on the island of Ireland. Ireland has two operational legal jurisdictions being the Republic of Ireland and Northern Ireland⁴¹⁴. Within the Republic of Ireland the Irish language has its status recognised as the first official language and the national language⁴¹⁵ while the language currently lacks any serious official recognition in Northern Ireland. Although all available evidence clearly demonstrates that the Irish language is a minority language in the Republic of Ireland, the status granted to the language by virtue of Article 8 of the Constitution of Ireland presents a problem for the Irish State. Within the definitions of the European Charter on Regional and Minority Languages it is clearly stated that in order for a language to be considered a minority language for the purposes of the Charter it must be different from the official languages of the State. Although Irish is clearly a minority language within the Republic of Ireland its theoretical status as the first official language, as recognised by the Constitution of Ireland now serves to prevent the Irish Government from signing the treaty. It should be noted that Ireland was not unique in having a constitutional impediment to the ratification of the Charter. France faced a number of political and legal difficulties in relation to the Charter. It was held by the French Constitutional Committee that any attempts by France to fully ratify and comply with the Charter would be unconstitutional. Article 2 of the French constitution holds that French is the national language of France (*La langue de la République est le français*) and it was felt that such a provision precluded any

⁴¹⁴ The very use of the various terms for the names of the jurisdictions can even be problematic. Northern Ireland is a devolved political jurisdiction within the United Kingdom however in terms of the legal system it has functioned as a separate distinct legal jurisdiction since 1921. The Irish Constitution maintains that the former free state should be known simply as Ireland however in 1948 the term Republic of Ireland was adopted with the passing of the Republic of Ireland Act, 1948.

⁴¹⁵ See generally Chapter 2

official recognition of any of France's regional languages. In 2008 an amendment to the French constitution which recognised the regional languages of France as part of France's heritage in Article 75-1 (*Les langues régionales appartiennent au patrimoine de la France*) have paved the way for France to begin to fully enforce the Charter although only tentative steps have been taken thus far.

Irish, in the Republic of Ireland, still remains outside the scope of the Charter. It is submitted that the situation in which the Irish language finds itself in Ireland is the exact sort of linguistic situation which it was envisaged that the Charter would deal with. However, due to the somewhat unique status of Irish, ratification of the Charter is not possible for Ireland as things stand. As has been noted, many of the provisions of the Charter are either already in place in Ireland by virtue of the laws of Ireland or have been mirrored more recently in enactments and language plans. In some instances the provisions under Irish law are much more robust than those put forward by the Charter however in other areas the Charter contemplates certain actions or plans which have no equivalent when it comes to the Irish language in Ireland. Furthermore, it is submitted that the inability of Ireland to ratify the Charter is a regrettable one on a number of grounds. Firstly, the oversight provisions of the Charter provide signatory states with a unique opportunity to have their own policies and practices in relation to a minority language rights presented, examined and investigated by the public, the broader international community and more formally by the committee of experts as provided for in Article 16 of the Charter. Furthermore, the ability of NGOs and language groups to make submissions to a committee of international experts would be most welcome in the case of the Irish language. Lastly, it is submitted

that the ratification of the Charter is a positive and public statement of support for a language and its linguistic community whereby a state affirms its commitment in a legal and international sphere and the inability of successive Irish Governments to do so is regrettable. It should be noted that the Charter does indeed apply to the Irish language on the island of Ireland in certain unique circumstance considered below.

5. The Irish language and Northern Ireland

Although the consideration of Northern Ireland and the situation concerning the Irish language in Northern Ireland under the heading of international law might be considered problematic it is done so for a number of reasons. Firstly, this work has primarily focused on the Irish language in the Republic of Ireland and how the constitutional status of Irish in Ireland has shaped the language rights and the use of the language within the legal system. An entirely different legal and political situation exists in Northern Ireland and in the strictest technical sense Northern Ireland is an international jurisdiction distinct from the Republic of Ireland although it is accepted that many people, particularly Irish speakers, would not consider the term “international” acceptable but in this context it is used for convenience. The legal and political status of Northern Ireland has now been firmly established with the enacting of the Good Friday Agreement and the amendment of Articles 2 and 3 of the Irish Constitution which have removed the claim of the Republic of Ireland over Northern Ireland. Secondly the primary area of law which will be examined with regards to the Irish language in Northern Ireland is the European Charter on Regional and Minority Languages,

an instrument of international law which was signed by the United Kingdom Government for the Irish language in Northern Ireland. Historically the Irish language has had an uneasy relationship with officialdom in Northern Ireland for historical and cultural reasons associated with the political status of Northern Ireland. The most recently available census data from Northern Ireland dates from 2011 which indicated that 184,853 people ⁴¹⁶ described themselves as having some knowledge of Irish with the vast majority (c.92%) of these speakers coming from the Catholic community. Mac Giolla Chríost⁴¹⁷ estimated in 2000 that there were c. 45,000 “functional” Irish speakers in Northern Ireland with the lesser figure of c.15,000 being described as speakers “fluent in the full range of language skills”. Aodhán Mac Póilín notes that Neo-Gaeltachtaí setup initially in Belfast in 1969 had very profound knock on consequences on the modern promotion of the language and the wider community where he notes “within my own lifetime the number of active Irish speakers in Belfast has exploded”⁴¹⁸. Within the legal system certain barriers exist in Northern Ireland to the use of the Irish language while at the same time Northern Ireland enjoys certain benefits with regards to the Irish language which are not available even to Irish speakers in the Republic of Ireland. The Irish Parliament⁴¹⁹ passed the Administration of Justice (Language) Act, 1737 which prescribed that “All proceedings in Courts of Justice within this Kingdom shall be in the English language”. The rationale for such an enactment, put forward by the text of the Act itself, was “to remedy

⁴¹⁶ Available at <http://www.nisra.gov.uk/Census/2011Census.html>

⁴¹⁷ Mac Giolla Chríost, D. “Planning Issues for Irish Language Policy: 'An Foras Teanga' and 'Fiontair Teanga’”, Cain Web service Available at <http://cain.ulst.ac.uk/issues/language/macgiollachriost00.htm>

⁴¹⁸ Mac Póilín, A “The Universre of the Gaeltacht” in “Reimagining Ireland” (University of Virginia Press, London, 2006) Andrew Higgins Wyndham (Ed) at p. 102

⁴¹⁹ Prior to the Act of Union, 1801 the Island of Ireland had its own devolved Parliament as a British Kingdom.

those great mischiefs, and to protect the lives and fortunes of the subjects of this kingdom more effectually than heretofore from the peril of being ensnared, and brought into danger, by forms and proceedings in courts of justice in an unknown language". It is suggested within the statute itself that the use of Latin and French in legal proceedings had caused great confusion and resulted in a number of injustices. Similar Acts were also enacted in England and Wales but subsequently repealed in 1863 while the Act was repealed in the (now) Republic of Ireland by the enacting of the Constitution of the Irish Free State yet the Act remains in force in Northern Ireland having never been repealed. The practical effect of the legislation is to prohibit the use of any other language (including Irish and Ulster-Scots) in the Northern Ireland legal system. In the modern context, as a result of European Human Rights law which the United Kingdom has enacted, it is accepted that were a situation to arise whereby a party to a legal action did not understand English they could request that translation be provided in their own language. With regards to the Irish language (and indeed Ulster-Scots) however virtually every speaker of Irish over and above school going age has a command of another language (English in the vast vast majority of cases) and as a result Irish speakers in Northern Ireland would in almost every imaginable case be precluded from using the Irish language before a Court by the 18th century legislation.

Northern Ireland has undergone significant changes in a relatively short space of time due to the progression of the peace process and the passing of the Good Friday Agreement which made some significant contributions to the development of the Irish language and to a lesser extent the Ulster-Scots

language⁴²⁰. Although many have questioned whether Ulster-Scots is a dialect of English rather than a language on linguistic grounds legally speaking the Good Friday Agreement references Ulster-Scots in a section concerned with language and linguistic diversity while the United Kingdom Government referred to Ulster Scots as a Regional or Minority language when it ratified the European Charter on Regional and Minority Languages⁴²¹. The United Kingdom also ratified the ECRML for the Irish language and in doing granted a status to the Irish language which the Irish Government in Dublin could not do. As has been shown elsewhere in this text the provisions of the Charter are not of huge significance in terms of language rights generally although the very fact that the United Kingdom Government was willing to take such a step, it is submitted, was hugely significant and points to a marked change of attitude. In signing up to the Charter in relation to the Irish language in Northern Ireland, the United Kingdom Government ensured that they would be subject to review as per the process outlined above. While the UK submission was being prepared and the Expert Group reply was being formulated a legal challenge was commenced by an Irish speaker from Belfast attempting to challenge the validity on the Administration of Justice (Language) Ireland Act, 1737 known as *In the Matter of the Administration of Justice (Language) Ireland Act, 1737*⁴²². The Applicant, Mr. Mac Giolla Catháin sought to obtain an occasional liquor licence for an Irish language music event in Belfast. He instructed his Solicitor to seek the licence from the Court through the medium of Irish however the Courts Service of

⁴²⁰ Section 3 of the Economic, Social and Cultural Issues under the Rights Safeguards and Equality of Opportunities Strand of the Good Friday Agreement.

⁴²¹

<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=148&CV=1&NA=&PO=99&CN=999&VL=1&CM=9&CL=ENG>

⁴²² [2009] NIQB 66

Northern Ireland refused to deal with the request to do so in Irish on the basis that the Administration of Justice Act, 1737 was still in force. The Applicant then sought to judicially review the Act on two grounds; firstly that the Act was inconsistent with the UK's ratification of the Charter on Regional and Minority Languages and secondly that the Act was inconsistent with UK's ratification of the European Convention on Human Rights. In hearing the case Tracey J noted that the Applicant, while an everyday Irish speaker had full command of the English language and had previously made applications for occasional liquor licence through the medium of English. Tracey J also considered the provisions of the Good Friday Agreement and competing submissions from historians engaged by the Applicants and the Respondents as to whether or not the Act should be seen as part of the discriminatory "penal laws"⁴²³. In coming to his decision Tracey J felt that none of these particular factors were crucial and instead focused on the nature of the Act which he felt did not conflict with the ECRML on the basis that the Act was not designed to discriminate against the Irish language, it is worth noting that at no point in the Act is the Irish language mentioned. Furthermore Tracey J felt that the mere ratification of the Charter without any empowering legislation could not be used to declare an Act of Parliament invalid⁴²⁴. On the second ground concerning the ECHR provisions a slightly different situation arose as the UK has passed legislation which would give the ECtHR the power to render the 1737 Act invalid should it be found to be inconsistent. In this instance Tracey J found no inconsistency between the ECHR and the 1737 Act noting that the provisions of the ECHR are concerned primarily with those who do not understand the language of the Court and further noting

⁴²³ Ibid at para 30

⁴²⁴ Ibid at para 39

that the Applicant had previously successfully applied to the Court for a licence in English. The case was subsequently appealed to the Appeal Court⁴²⁵ which affirmed the decision of the High Court in turning down the appeal noting that:

“[t]he way in which Irish should be recognised and valued in Northern Ireland is a matter of political debate. The Good Friday and St Andrew’s Agreements pointed up the issue. How the question should be dealt with is a question of policy not law. The court cannot resolve the issue or contribute to the political debate. It can only determine the present appeal by reference to the correct legal principles applicable under the existing law.”⁴²⁶

It is submitted that judged purely on the relevant laws the interpretations of the High Court and of the Appeal Court in Northern Ireland were correct in deciding that neither the ECHR nor the ECRML could be used in order to overturn the 1737 Act. It is also clear, as noted by the High Court and the Court of Appeal, that a policy and political issue arises as a result. Given the difficult nature the status of the Irish language presents in the political sphere it is hard to see how any significant political consensus within Northern Ireland’s devolved institutions could emerge. Given that the United Kingdom Government has submitted itself to the rigour of the Committee of Experts (as described above) as part of their commitments upon ratifying the European Charter on Regional and Minority Languages significant outside pressure can be brought to bear on the United Kingdom’s policy and legal approach towards the Irish language. In the latest available Expert Group Report on the United Kingdom a number of shortfalls were identified in relation to the Irish language. Particular mention was given the lack of availability of statutory materials in Irish as required by Article

⁴²⁵ [2010] NICA 24

⁴²⁶ Ibid at para 3

9.3 of the Charter, a failing for which the Expert Group has sought an explanation from the United Kingdom. In other areas outside the sphere of the administration of justice a number of other failings of the United Kingdom were identified in relation to the Irish language (including but not limited to matters such as Irish medium education, Irish language media and the lack of availability of a full simultaneous interpretation service in the Northern Ireland Assembly) leading to the expert group to recommend that the United Kingdom bring forward “a comprehensive statutory basis for the protection and promotion of Irish in Northern Ireland”⁴²⁷ while the report was also critical of the United Kingdom Government’s approach to Ulster-Scots. The Report of the Expert Group was considered ultimately by the Committee of Ministers of the Council of Europe who recommended that that United Kingdom “adopt and implement a comprehensive language policy, preferably through the adoption of legislation”⁴²⁸. This development is noteworthy given that the fact that the United Kingdom has signed up to the Charter has allowed a dispassionate examination and reasoned debate with regards to the Irish language and language rights in Northern Ireland to take place arguably for the first time outside the sensitive political arena. As Mac Giolla Chríost notes

“Attitudes towards the Irish language in region are complex and are cross-cut by a range of factors, many of which digress from concepts of the language which are largely grounded in inadequately informed socio-political rhetoric. In general terms it should be underlined that while there exists broad agreement on the value of the Irish language to society as a

⁴²⁷ Report of the Committee of Experts on the Charter, 3rd Monitoring Cycle at para 349 available at <http://www.coe.int/>

⁴²⁸ Recommendations of the Committee of Ministers ReChL (2010) 4 at point 2 available at <http://www.coe.int/>

whole in NI, it is also true to say that there are very substantial levels of concern regarding the perceived over-politicisation of language issues”⁴²⁹

One final curious element in relation to the Irish language in Northern Ireland is the status which the Irish language now enjoys as an official EU language, a status which no other regional or minority language in the United Kingdom enjoys. This situation arises due to the constitutional arrangement in Northern Ireland which means that Northern Ireland remains part of the United Kingdom in its devolved form. The Belfast Agreement⁴³⁰ had very specific sections on languages the language question remains a politically sensitive one. The Irish Government’s 20 Year Strategy on the Irish language makes a very brief particular reference to Northern Ireland which accepts the difficulties noting that;

“[T]he Irish Government will continue to press for the full implementation of commitments relating to the Irish language, which fall to the British Government and the Northern Ireland Executive, including the introduction of an Irish Language Act and the enhancement, protection and development of the Irish language in Northern Ireland.”⁴³¹

Although the status of the Irish language as an official EU language exists by virtue of the actions of the Republic of Ireland the rights which accrue therein are freely available for Irish speakers in Northern Ireland to enjoy. Thus we are presented with the unusual situation whereby an Irish speaker is expressly prohibited from using the Irish language in a court in Northern Ireland but, were the case to be appealed to the European Courts of Justice the Irish speaker would

⁴²⁹ Mac Giolla Chríost, D. “The Irish Language in Ireland: From Goidel to Globalisation (Routledge, London, 2005) at p. 171

⁴³⁰ More widely known as the Good Friday Agreement

⁴³¹ 20-Year Strategy for the Irish Language 2010-2030 – Government of Ireland. Available at www.ahg.ie/publications At p. 29

the right to have the case heard in Irish. This right would include the right to have all the relevant EU legal documents available in Irish, have any submissions made before the Court in another language translated or interpreted into Irish and at no point at the European level would the level of English spoken by the Irish speaker be relevant to the provision of this service.

6. Conclusion

The relationship between the Irish legal system and international law is a complex and strained one due to the various claims of supremacy made by different international law bodies. Added to this, it is even more difficult to reconcile the relationship between the domestic recognition of the Irish language and the various attempts made at different levels of international law to recognise the rights of speakers of different languages. The Irish constitutional position with regards to the applicability of international law is of itself difficult to ascertain due to a linguistic conflict between the English and Irish texts of the Irish Constitution. What is clear however, both from the text of the Irish Constitution and the developments in laws and practices since 1937 is that the Irish legal system does place a certain value on the guidance and examples of best practice offered by international law. The extent to which these elements of international law become accepted as part of Irish law is largely dependent on the body of international law concerned. The body of international law known as European Union law for example has a much stronger impact upon Irish speakers and those people who are seeking the enjoyment of language rights generally because of the nature of the legal relationship between European Union law and

Irish law. The People of Ireland on numerous occasions by way of referendum have accepted that European Union law should enjoy a supremacy over Irish law in certain areas, some of which do impact upon the area of language rights and the right to access to the Courts using the Irish language. The developments in 2007 whereby Irish became an official EU language served to further strengthen the importance of the EU law to the Irish language. The importance of this should not be understated. Not only does the awarding of this status to the Irish language afford a legal status which is equal that of any other official EU language, the status brings with it additional benefits such as the prospect of employment, the increased prominence of the language in the public sphere and an overall increased sense of relevance for the language. Other bodies of international law such of European Human Rights law and the European Charter on Regional and Minority Languages are somewhat less effective as tools for Irish speakers on two main fronts. Firstly the nature of their incorporation into Irish law (or indeed the inability to incorporate them into Irish law as in the case of the Charter) means that their provisions are subject to the rights granted by the Constitution of Ireland which remains the primary source for Irish language rights. Secondly, the provisions of many international law enactments on language law are not necessarily a good fit for the Irish language because they tend to focus primarily on the recognition of rights whereby a speaker of a language does not understand the language used by a State party in situations such as a criminal trial, a situation which does not arise in the case of the Irish language.

The issues which exist in Northern Ireland, while unique to Northern Ireland due to its political and constitutional status, do, however serve to demonstrate the

importance of international law in the area of language rights particularly when no provisions of domestic law serving to support the language exist. Indeed, in the case of Northern Ireland certain provisions of law serve to hinder the use of the Irish language in the official setting of a court. Muller further notes how the political issues surrounding the language in Northern Ireland makes progress difficult and where the approach towards the language by the power sharing Northern Ireland Assembly is “simply at odds with positive language planning.”⁴³². Without recourse to international law Irish speakers in Northern Ireland would lack the an effective method of advocating for change using the reporting provisions of the Charter and the ability to use the language in official settings when dealing with matters of EU law. While the direct effect of international law has been varied in the Republic of Ireland it would not be correct to say that international law is of no relevance to the Irish language in the Republic of Ireland. Many of the best practices developed at international law level have found their way into domestic solutions such as the Official Languages Act, 2003, a development which is to be welcomed.

A further consideration of the impact of International law on the Irish language in the context of best practices and providing imputus toward reform. This is perhaps most keenly seen in the area of legal education and the Irish language which is considered in the next Chapter. Through the Irish language’s exposure to international law and international institutions there has been an increased awareness of the need for particular training of professionals concerned with providing legal services in a bilingual or multilingual arena. While the

⁴³² Muller, J “Irish Language Strategy and Development: Building a Concerted Approach” in “Strategies for Minority Languages:Northern Ireland, the Republic of Ireland, and Scotland” – Kirk J.M. and Ó Baoill, D.P. (Eds) at p. 129

difficulties highlighted in Chapters 2 and 3 demonstrate that there is a need for legal education and training in the traditional legal professions and actors in the legal system such as lawyers, judges and Gardaí the international experience has highlighted the importance of training professions such as lawyer linguists, legal translators and legal interpreters which were not traditionally seen within the Irish legal system.

Chapter 5:- Legal Education and the Irish Language

1. Introduction

The position of the Irish language in the Irish legal system is established primarily by the Constitution where the Irish language is described both as the “national language” and the “first official language”. Although there has been much criticism that the Irish language is given an artificial position in the legal system it is nevertheless a legal reality in Ireland. In light of such recognition there exists the possibility for any party to a legal action to use either official language of the State. The importance of Irish language education to key stakeholders in the legal system has been highlighted in particular by the attention which the judiciary have placed upon the obligations faced by the State towards the Irish language. Although, as has been examined in Chapters 2 and 3, there is a noticeable trend both at a judicial level and at a legislative level to delimit the status of the Irish language to certain areas of key obligations, there still exists a consistent demand for various professionals who have the ability to engage in the legal process and related industries through the medium of Irish. Given the ramifications of the *Ó Beoláin*⁴³³ decision, there is a clear obligation upon the State to provide translations of legislation which has been enacted in English. This role is filled at the moment by Rannóg an Aistriúcháin⁴³⁴. However that office is overburdened by the sheer volume of work, which is of a specialist nature and requires a particular skill set. While the initial High Court decision in

⁴³³ [2001] 2 IR 279

⁴³⁴ The Translation Section to the Irish Parliament

*Ó Murchú*⁴³⁵ suggested that there would be an even greater demand for graduates with lawyer linguist and translation skills there is still a strong demand for such graduates at European level as a result of the official status which has been conferred upon Irish as a language of the European Union. Indeed the lack of suitable persons available to carry out the sort legal translation of work envisaged as a result of the decision in *Ó Murchú* was used by the State as grounds for appeal stating that there did not exist a pool of suitably qualified persons to carry out the work. Outside the field of translation it is apparent from the many delays faced by applicants such as *Ó Beoláin*, *Ó Murchú* and others that the legal profession and the Court system (the supply of Irish speaking Judges in particular) have struggled to keep up with the demand from Irish speakers seeking to access justice through the medium of Irish. Finally the Coimisinéir Teanga has pointed out that without a critical mass of professionals with Irish language training the operation of the Official Languages Act, 2003 is very much in jeopardy. Thus it is clear that a legal system which purports to treat English and Irish on an equal footing requires that there is a sufficient pool of Irish speaking service providers and professionals who can enable the vindication of the rights of those seeking to access such a service.

This chapter seeks to analyse the position which exists in relation to legal education, analysing the historical situation which pertained and how some recent developments have changed the direction of legal education through the medium of Irish. Some original research was conducted in the form of a survey of students currently studying law through the medium of Irish as part of this

⁴³⁵ High Court unreported judgment 7 December 2004 (facts and judgment summarised in the Supreme Court judgment); Supreme Court judgment [2010] IR 528

chapter. For the purpose of this chapter legal education is to be read in its broadest sense encompassing not only traditional undergraduate and professional legal education but also including the various educational initiatives and training provided to the other key actors in the legal system including, but not limited to; the Judiciary, An Garda Síochána, translators and interpreters, the Court's Service staff and civil servants more generally. The chapter will seek to outline and analyse the effectiveness of the training currently provided in each sphere and contextualise the real world effect of such training (or indeed the lack thereof) has on the various parties who are seeking to access justice through the medium of Irish. The general importance of legal education to democracy and to establishing the rule of law and access to justice in any country was highlighted by Swenson and Sugarman when speaking about Afghanistan.

“a country's system of legal education has an undeniable impact on its legal system. Lawyers' education, especially in developing or transitional countries like Afghanistan, impacts how they practice their profession, both in private and government roles. Legal education also promotes scholarship and practical expertise among a diverse range of government officials. Legal education is, thus, essential to the rule of law”⁴³⁶

2. History and Context

English language legal education and more generally an English language dominated legal system have been accepted as the norm since the Common Law took hold in Ireland. The notion of joint law degrees or legal training with an Irish language element is considered to be a relatively recent innovation. Whilst the current courses on offer are somewhat recent arrivals it could be argued that

⁴³⁶ Swenson, G. and Sugarman, E. “Building the Rule of Law in Afghanistan: The Importance of Legal Education”, [2011] Hague Journal of International Law, Vol 3, 1 130 at p 134

they are merely picking up the baton of Irish language legal education which was put aside when the Common Law finally vanquished the native Brehon law. The Brehon law was one of the oldest legal systems in Europe and the native early law of Ireland. It consisted of an expansive civil code with an emphasis on compensation for harm done rather than punishment. The system was administered by a class of Judges known as *Breitheamh* with a separate class of academic lawyers called *Ollamh*⁴³⁷. The *Ollamh* operated law schools at various locations through out the country where numerous manuscript texts were compiled and studied. The arrival of Christianity meant that many Brehon traditions were fused with the Canon law to create a new bilingual legal order in Ireland, Kelly notes with reference to the *Senachas Már* legal manuscript that this fused system is attributed to no less a figure than St. Patrick himself;

“According to the *Senachas Már* text...the Irish people were governed by the law of nature until the coming of Patrick. The poet *Dubthach maccau Lugair* is said to have supplied the details of this law to Patrick who eliminated from it all those elements which were contrary to Christian doctrine. Consequently, the Irish people were thereafter subject to two laws: the law of nature and the law of the letter, i.e scriptural law”⁴³⁸.

The native Irish laws would have been passed down orally and at a later stage recorded in Old Irish whereas the Canon Law operated in the Church’s lingua franca of Latin. Kelly notes in his Guide to early Irish Law⁴³⁹ that one of these early law schools was based in the monastery at *Corcach*⁴⁴⁰. The location of that monastery is believed to be the very ground on which University College

⁴³⁷ Ginnel, L. “The Brehon laws ; a legal text book” (West, Dublin 1917) 2nd Ed. at p. 89. The terms *Breitheamh* and *Ollamh* survive in common use in modern Irish meaning ‘Judge’ and ‘Professor’ respectively.

⁴³⁸ Kelly, F. “ Guide to Early Irish Law “ (Institute for Advanced Studies, Dublin, 1988) at p. 247

⁴³⁹ Kelly, F. “ Guide to Early Irish Law “ (Institute for Advanced Studies, Dublin, 1988)at p. 247

⁴⁴⁰ The modern Irish name for Cork is Corcaigh

Cork⁴⁴¹, the sole University currently offering a Law and Irish undergraduate degree, stands hence the Law and Irish degree program could be construed to returning to a long established tradition rather than commencing on a new path. The motto of the University “Where Finbar⁴⁴² taught let Munster learn” seems particularly apt when it comes to Law and Irish.

The arrival of the Normans in Ireland resulted in a decrease in the use of Latin in the native Irish law schools gradually being replaced by French in the first instance and subsequently English. During this time the native Irish legal culture continued to thrive and existed side by side with the Norman’s Common Law and in many instances remained the dominant legal system in operation, with very many of the Anglo-Norman lords employing the services of native lawyers⁴⁴³ who would have required at least some knowledge of English and French in addition to old Irish. The legal education to carry out such works involved the study of manuscripts in established law schools throughout Ireland run by *Ollamh* academic families⁴⁴⁴. It was only after the defeat at the Battle of Kinsale, the Flight of the Earls in 1603 and the subsequent collapse of the Gaelic order that Irish medium legal education ceased⁴⁴⁵.

With the departure of the Gaelic order and Gaelic Lords Common Law took hold in Ireland and legal training for lawyers was undertaken by the Kings Inns, originally established in 1541. Legal education would have taken place predominantly through the medium of English although Latin and French would

⁴⁴¹ Hereinafter UCC

⁴⁴² St. Finbar is the Patron Saint of Cork and is most associated with the Abbey established in Cork.

⁴⁴³ Kelly, F. “ Guide to Early Irish Law “ (Institute for Advanced Studies, Dublin, 1988)at p. 254

⁴⁴⁴ Kelly, F. “ Guide to Early Irish Law “ (Institute for Advanced Studies, Dublin, 1988)at p. 251

⁴⁴⁵ C Kenny “Tristram Kennedy and the revival of Irish legal training, 1835-1885” (Irish Academic Press, Dublin, 1996), Preface to the first edition

have played important roles necessitating lawyers to have at least some grasp of both in the initial period at least. A number of developments served to ensure that there would be no role for the Irish language in legal training. Firstly whilst Irish was still very much the dominant language in Ireland up to the mid 1800's the administrative and commercial centres of Ireland (essentially Dublin and its environs) were pre-dominantly English speaking and dominated by a Protestant upper class. Subsequent to the Williamite Wars in the 1690s Catholics were effectively banned from practising the law by the Penal laws and as a result the population with knowledge of the Irish language was precluded from entry into the legal profession. Although this position was reversed in 1792 with the passing of the Catholic Relief Act the legal profession and thus legal training remained very much with the control of the English speaking elite. Even in the rare instances where fluent Irish speakers advanced to senior positions in the legal professional, such as arguably Ireland's most celebrated lawyer ever, Daniel O'Connell, there was no impetus to advance the cause of legal education with any element of Irish language. Although O'Connell was a fluent Irish speaker there is very little, if any record of him having used the Irish language during the course of his legal career. The Irish language, lacking any official status as a language recognised by the Courts, inevitably failed to eke out any role within the formal legal education system in the period between 1603 and 1929 save for the exception of the Dáil Courts. The Dáil Courts were courts established during the Irish War of Independence and operated as local Courts of first instance throughout Ireland. The Courts were held particularly in areas where the British presence was weakened or low (the status of Dublin as the administrative capital of Ireland and the ferocity of the fighting in Cork between

the IRA and British forces meant that the Dáil Courts were mostly held in rural areas in the years between 1919 and 1922). The Courts were established pursuant to a motion of the Dáil⁴⁴⁶ and held session in the name of the Irish Republic. The Irish language was given some prominence and a role within the legal system. It was recognised for example a sub-committee of Irish scholars would need to be assembled in order to assist with the production of “the Irish terminology and the forms, formulae etc”⁴⁴⁷. Casey notes that there were practical hindrances to overcome which resonate very much with the modern situation whereby he noted that

“the reference to Irish terminology suggests an idea that business might be transacted in that medium, on many counts a doubtful prospect. It would have been difficult enough to find...justices of sufficient calibre to staff the courts, given the circumstances of their creation and the difficulties of the time; to find...such persons who could also do business in Irish would surely have been impossible”⁴⁴⁸

Given the unstable political and legal environment in which the Dáil Courts operated, although there was some consideration for the Irish language, at no point were there any plans to establish law schools which would give any particular role to the Irish language. Subsequent to the War of Independence the Dáil Courts were stood down by the Dáil Éireann (Winding Up) Act, 1923. During the intervening period (1922) the Irish Free State was established which granted recognition to the Irish language within what was essentially a Common law system although it was sometime before any attempts were made to

⁴⁴⁶ Established by Decree no 8, of Session No. 4 of Dáil Éireann. At this stage in Irish history the Dáil would have been seen as a rebel parliament and was branded as an ‘illegal gathering’ by Westminster although the Dáil is known in modern Ireland as ‘the First Dáil’.

⁴⁴⁷ SPO DE 2/38

⁴⁴⁸ Casey, J. “The Genesis of the Dáil Courts”, *The Irish Jurist*, (1974) Vol 5 326 at p. 331

accommodate the Irish language within the sphere of legal education. Such developments were very much focused on the professional education of lawyers rather than on any engagement with the third level sector. This is primarily attributable to the manner in which legal education has developed in Ireland and the United Kingdom whereby legal education was primarily carried out in the form of vocational professional training with aspiring Barristers attending various Inns to train under instruction from practising Barristers and Solicitors doing likewise with an element of centralised training provided by the Law Society. The establishment of the Law faculties at the Universities in Ireland in the 1850's lead to some consideration of legal education at University level. As Murphy notes the uptake was very low;

“low student numbers were due to the absence of a requirement, in some areas, of a university qualification for professional practice. Law lectures were attended by only a sprinkling of professional students, since there were few advantages in doing so: the reduction of the solicitor's apprenticeship period from five to four years was hardly a major incentive...[o]n the other hand arts students took law as a general education subject.”⁴⁴⁹

O'Malley notes “the policy decision to establish Law Faculties in the Queen's Colleges in the mid-nineteenth century, appears to have had very little to do with local demand”⁴⁵⁰ but rather came about as a result of the political and social circumstances in existence at the time. Thus until comparatively recently legal education of lawyers was the sole domain of the professional legal bodies which fulfilled their own educational remit. By way of example the first full time

⁴⁴⁹ Murphy, John A. “The College - A History of Queen's/University College Cork 1845-1995” (Cork University Press, Cork, 1995)

⁴⁵⁰ O'Malley, L. “Law” – available at http://www.nuigalway.ie/law/documents/publications/liam_omalley_on_law.pdf at p. 12

member of law teaching staff was not appointed to the Faculty of Law at University College Cork until 1970 with the first full time professor being appointed only in 1977. The often repeated mantra in relation to law schools that they are indeed “law schools not lawyer schools” still holds true today however there has been a steady increase in demand for law courses at university level as precursors for entry to the professional although not technically required. In Ireland it is possible to undertake a Solicitor’s traineeship without ever having secured a degree in law. There is a requirement that each prospective Solicitor holds a University degree but this degree can be taken in any discipline and entry to the professional traineeship stage is regulated by entrance exams and the ability to secure an traineeship with a qualified solicitor. In order to be admitted to the roll of Barristers in Ireland students must either take a recognised undergraduate law degree and a one year professional training course at the Kings Inns or for those students who do not hold an undergraduate law degree study for three years in total at the Kings Inns.

The Irish Government’s 20 year Strategy on the Irish Language makes particular reference to the need to train professionals with the skills required to ensure, in particular, the success of the language as an official EU language⁴⁵¹. Although the Strategy do not make explicit reference to legal education it is clear that many of the professional roles required to ensure the success of the Irish language are legal roles.

⁴⁵¹ 20-Year Strategy for the Irish Language 2010-2030 – Government of Ireland. Available at www.ahg.ie/publications At p. 29

3. Challenges to Providing Bilingual Legal Education

The challenges raised by bilingual legal education, and in particular bilingual legal education through a minority language are not unique to the provision of legal education alone. Irish enjoys recognition as the First Official Language and as the National Language in Ireland however in the more specific context of the University system the Irish language is recognised in a number of different respects. Firstly section 12(e) of the Universities Act, 1997 includes the promotion of the official languages of the State as an objective of the University with a specific reference to the promotion of the Irish language as an objective for Universities in Ireland. Furthermore section 13 (2)(d), which deals with the functions of the University, allows for Irish Universities to collaborate with “Irish language interests” in order to further the aims of the University. Section 31(b) of the Act allows for Universities to set out within its Charter the arrangements it has for the promotion and use of the Irish language.

Many jurisdictions through the world experience these challenges and seek to overcome them in broadly similar ways. Other jurisdictions such as Wales where the bilingual legal education includes legal education through the minority language are the most interesting with regards to understanding the Irish context and provide a useful vantage point from which to analyse the Irish experience. It is submitted that many of the issues raised are not so much national issues relating to each individual jurisdiction as they are generic and transnational issues which relate to higher education in any minority language. The question of the status of the minority language within the jurisdiction and the more specific question of the status of the language within the University sphere in each jurisdiction are no doubt important, however, a key consideration in all

jurisdictions is the management of resources and the challenges faced in the provision of minority language education. Reynolds identifies issues such as human resources, linguistic ability and funding support as being vital in the Welsh context⁴⁵². Reynolds makes further observations which perhaps perfectly sum up the challenges faced in Ireland when it comes to legal education and the Irish language where she notes;

“Bilingualism needs to be strategically included in policies within a structured programme of expansion within institutions which can be subject based or in collaboration with partnerships, according to a specialised area or subject expertise. It can also be developed regionally and across sectors eg University/Higher and Further Education. In order to be successful there are a number of needs to be addressed. There are a limited number of students, across a wide number of provisions/programmes. There are also a limited number of bilingual staff who are able to deliver programmes and the resources are sparse. Premium/advantageous funding, in operation needs to be used to develop staff and resources and regional co-operation needs to be strategic and funded centrally.”⁴⁵³

4. Bilingual Legal Education in Context: The University Experience

*BCL*⁴⁵⁴ *Law and Irish at University College Cork*

The notion of modern joint law and language degrees in Irish Universities is a relatively recent one. For years Law and Language have been taught as totally separate courses and, save for the odd optional module, they rarely had any

⁴⁵² Reynolds, E. “Resource management and bilingual education”, in “Challenges to Bilingual Education in Nic Pháidín, C and Uí Bhraonáin, D (eds.), University Education in Irish : Challenges and Perspectives (Fiontar- DCU, Dublin, 2004) at p. 60

⁴⁵³ Ibid at p. 64

⁴⁵⁴ Bachelor of Civil Law – although the term suggests that students study civil law the BCL is recognised primarily in Ireland as the award of an undergraduate degree in law. In the United Kingdom the undergraduate law degree is more commonly known as a LLB with a BCL being considered a postgraduate award in a number of universities.

interaction with each other. Over the course of time, spurred on especially by the increasingly important role played by European integration, programmes in Law and French and Law and German became available in Ireland and the United Kingdom. In Ireland, these courses would provide a firm foundation in the core Irish law subjects and broadly cover the subject requirements of the professional bodies as prescribed by the various bodies. Of particular importance to these degree programmes was the provision of specific law modules aimed giving the students a firm grasp in the legal system of the target country and delivering these modules through the medium of the target language. In addition, these courses also provided modules from the relevant language departments which would facilitate the learning and improvement of the language skills required by the students and sought to ensure that the language training provided would enable the students to obtain fluency in the relevant language. Some modules are purely language based whilst other 'link modules' are concerned with issues which touch upon legal elements such as the study of French jurisprudential works. In order to ensure that the students who were recruited into these courses were not coming to University to start the language anew there was a requirement that the student would have obtained at least 65% in the State examination in that language used to determine entry to University (In Ireland the Leaving Certificate and the A Levels in the United Kingdom). The final key pillar upon which these law and language courses rested upon was the junior year abroad scheme whereby students travelled to a French or German university and spent the entire academic year taking courses in law through the medium of the target language in a total immersion environment. It was within this framework that the undergraduate degree in Law and Irish arose. The provision of the course

can be primarily attributable to the vision and commitment of Dr. Neil Buttimer of the Department of Modern Irish in University College Cork. As Buttimer notes “I did not see why, in principle, a similar degree involving Irish and law could not be created. The other language departments and the Department of Law had already worked out the basic model”.⁴⁵⁵ The primary difference between the case of Irish and the other languages was the practical reality that a junior year abroad option would not be feasible given that the Irish language was the target language at issue. Instead it was agreed that the junior year of study could be spent on a work placement internship, previous experience having indicated that such work experience had positive and lasting learning outcomes⁴⁵⁶. As a result the junior year in the BCL (Law and Irish) is spent on a work placement rather than at a third level institution in Europe. These work placements are organised by the University on behalf of the students in order to ensure there is sufficient pedagogical merit to each placement. The students would be placed with various stakeholders with demands for the provision of services through the medium of Irish⁴⁵⁷. These partners tended to be primarily State bodies and departments of Government among whom the demand for Irish language services would be strongest although there has been considerable input from the legal professional and language interest groups too. As Buttimer noted “As well as participating in the daily task of their host organisations, students would also be obliged to submit projects in Irish and in law to facilitate academic

⁴⁵⁵ Buttimer, N. “BCL (Law and Irish) at University College Cork – a case study” in “Challenges to Bilingual Education” in Nic Pháidín, C and Uí Bhraonáin, D (eds.), *University Education in Irish : Challenges and Perspectives* (Fiontar- DCU, Dublin, 2004) at p. 147

⁴⁵⁶ *Ibid* at p. 150

⁴⁵⁷ For a full list of Placement Partners see the Annex C attached to this work.

assessment of the knowledge they had acquired.”⁴⁵⁸ Similar language and link modules (including the study of Irish language cases, the Irish text of the Constitution and legal translation) are studied by students of the BCL (Law and Irish) although initially there was no traditional core law module delivered through the medium of Irish. For the first time, due to the third year placement, students of an Irish Law School are graduating with hands on experience of bilingual legal drafting, the operation of minority languages in other jurisdictions and in various other aspects of the legal system. At the same time the students continue to receive some of the more traditional academic elements of legal education with some modules taught through the medium of Irish which may benefit them in their practice. The success of and high demand for the Law and Irish course is reflected in the CAO⁴⁵⁹ points allocation system whereby Law and Irish has maintained consistent demand among college applicants. This high points requirement (whereby new entries into the Law and Irish Degree programme are drawn from well within the top 2% of all University applicants) is coloured to some extent by the limited number of places on offer each year for Law and Irish students at UCC. Whilst the number of graduates has remained relatively low due to the small intake of students each year the learning outcomes are unique in Irish legal education.

⁴⁵⁸ Buttimer, N. “BCL (Law and Irish) at University College Cork – a case study” “Challenges to Bilingual Education in Nic Pháidín, C and Uí Bhraonáin, D (eds.), University Education in Irish : Challenges and Perspectives (Fiontar- DCU, Dublin, 2004) at p. 152.

⁴⁵⁹ Central Applications Office. An independent body which regulates entry to undergraduate third level courses in Ireland, similar to UCAS in the United Kingdom. A set number of points are allocated to students based on Leaving Certificate results. These points determine the threshold required for entry into each course based on the number of available places. See generally <http://www.cao.ie>

Indeed the success of the Law and Irish programme at UCC has been affirmed internally by the adoption of the Law and Irish model for use in the BCL Clinical degree which provides students with the opportunity to go on placement in the third year of their four year BCL degree programme.

Although the Law and Irish Degree at UCC has proved successful there is scope for further development. Even in the brief few years since the inception of the degree course there have been seismic changes in language law in Ireland. The judgment in *Ó Beoláin v. Fahy*⁴⁶⁰ was particularly significant, confirming the need for primary legislation translation from English to Irish which had fallen into disrepair. It also required that the Rules of the District Court be translated into Irish. At the same time the campaign to bring forward language equality legislation came to fruition with the passing of the Official Languages Act, 2003. The Act required certain State and semi-state bodies to prepare language plans which would enable them to treat English and Irish on a basis of equality. Provision for court room interpreting in cases where a party wishes to use Irish was also enshrined in Section 8 of the Act. In addition, the Act also established the office of the Coimisinéir Teanga who would oversee such plans and take action in cases where the prescribed bodies failed to make proper provision for the Irish language. Finally, as from the 1st January 2007 the Irish language was made a full official language of the European Union where it had previously been a treaty language.

⁴⁶⁰ [2001] 2 IR 279

These major developments, in what is a relatively small field, call for a refocusing of where Irish language legal education is heading. When the course at UCC was established the entry quota was set at six students per year. This figure was based upon the number of students the Law Department could accommodate and the potential problems in securing work placements⁴⁶¹. With new opportunities and fresh demand for those with Law and Irish language training both at home and in Europe the entry quota issue has been re-evaluated.

In February 2008 a conference was held in University College Cork⁴⁶² to assess the progress of the Law and Irish Degree and in particular to evaluate the success thus far of the unique placement element. It was agreed that the placements had been a success in terms of providing students with experience of Irish in a legal and work setting. The importance of accuracy of language was discussed at length. The difference between an Irish speaker who becomes a lawyer and a lawyer trained in Irish language legal terminology in particular was highlighted. Other issues touched upon included; the importance of developing the new European dimension by securing a placement for a Law and Irish student at the EU, likewise with the Office of the Coimisinéir Teanga and consideration to extending the placement length from its current four months. Some of the challenges identified included the accommodation of the demands of the professional law schools regarding the number of core module exemptions required for entry. This was proving difficult to balance with the Irish language

⁴⁶¹ Buttimer “BCL (Law and Irish) at University College Cork – a case study” “Challenges to Bilingual Education in Nic Pháidín, C and Uí Bhraonáin, D (eds.), *University Education in Irish : Challenges and Perspectives* (Fiontar- DCU, Dublin, 2004) at p. 151

⁴⁶² Law and Irish Placement Partners Conference, 21st February 2008. The author participated in the conference a report on which is attached as Annex D to this work.

modules and it was suggested that lecturing some of the core law modules through Irish might assist in alleviating this concern⁴⁶³. It has been suggested in Wales⁴⁶⁴ that subjects where the demand for Welsh lawyers would be the greatest be taught through the medium of Welsh. In Wales' case Criminal Law and Legal Drafting were suggested as possible candidates, such a suggestion, it is submitted would also be valid in Ireland's case.

In response to these difficulties UCC advertised for the position of Law and Irish Lecturership. The position was an initial three year position which has subsequently been renewed. The funding for this position has come from the Department of Community Rural and Gaeltacht affairs in connection with the Higher Education Authority of Ireland. Whilst there has always been a certain level of funding available for third level courses with an Irish language element through the Strategic Irish Fund an additional spin off funding cycle has been created. The Advance Irish Skills Initiative was thus created with the ultimate aim of this targeted funding expressly being to increase the number of graduates with Irish language skills with a particular emphasis on facilitating the continued use of the Irish language as an Official EU language. A significant proportion of the work required in order to facilitate the Irish language as a EU language is that of legal translation thus the Law and Irish Degree at UCC was seen as an appropriate candidate for such funding. The provision of a Law and Irish lecturer

⁴⁶³ At the time of holding of the conference no members of staff of the UCC Law Faculty possessed sufficient Irish to lecture a law module though the medium of Irish however this situation has since been improved with the recruitment of a designated Irish Medium Lecturer
⁴⁶⁴ "The Operation of a System of Law Making that in Practice Treats English and Welsh on a Basis of Equality – A Report of the Office of the Counsel General to the National Assembly for Wales" (National Assembly for Wales, Cardiff, 1999) at p. 34

has allowed UCC to significantly alter the offering to students who wish to study law through the medium of Irish. Previously whilst there were some elements of the relationship between Law and Literature available to the students there lacked any traditional core law module offering through the medium of Irish.

The traditional core subject of Constitutional Law is now offered to all undergraduate students (not just the cohort who are enrolled in the Law and Irish degree programme) through either the medium of English or Irish. Whilst some of the concerns which were raised by the empirical evidence in Wales such as the lack of availability of text books and difficulties with terminology might prima facie also apply to Irish, the response from students has been overwhelmingly positive. Thus far c. 15% of all law undergraduate students have chosen to study this module through the medium of Irish in their first year of study at University College Cork. This success can be attributed to a number of factors which arise in the case of Irish and which do not necessarily apply to the Welsh language courses. Firstly, the core subject covered is that of Irish Constitution Law. The Irish Constitution is a bilingual text with a strong Irish language emphasis and in addition most official legal materials such as primary legislation, Court Rules and often court judgments are available in Irish. In the case of Welsh only a certain level of secondary legislation is available through Welsh⁴⁶⁵. As a result of the increased emphasis there has been a certainly level of scholarly research into the area of Constitutional Law through the medium of the Irish language. Although this research is not comparable with the level of research which has been carried out through the medium of English it does provide teaching staff

⁴⁶⁵ The materials here are limited to secondary legislation passed by the National Assembly within its areas of competence in the years since devolution.

and students with some level of secondary materials including reference materials such as legal dictionaries etc. All Irish law students must undertake a module in Constitutional law, (either in English or Irish) in order for their degree to be considered as a qualifying degree for the purposes of professional legal education thus a 'captive audience' existed for such a course in the first place. Furthermore, every Irish student who has gained a place at University is required to have undertaken study to Leaving Certificate level⁴⁶⁶ in Irish. Although the standard of Irish among those commencing University varies greatly every student attending has encountered the Irish language in a formal educational setting and passed a final examination in the subject save for a small cohort of students who obtain exemptions from studying Irish (these students are normally students who lived outside of Ireland until the age of 8 or students who have recognised learning difficulties). The course in Constitutional Law through the medium of Irish, known as *Dlí Bunreachtúil*⁴⁶⁷ mirrors the content that the students are offered in English medium module of Constitutional Law in delivery, content, learning outcomes and assessment. Both classes take place simultaneously, covering broadly the same materials at the same juncture with the sole discernable difference being the language of delivery. There was a large degree of co-operation between the Lecturers involved in delivering the materials and as a result students studying the module through the medium of Irish also had the English materials made available to them to assist with any issues arising out of translation. Students are provided with comprehensive notes on each

⁴⁶⁶ A final second level examination which is used to determine access to the 3rd level. Roughly equivalent to the A-Levels in England and Wales.

⁴⁶⁷ Module Description and Learning Outcomes are attached to this work in Annex E

topic⁴⁶⁸ in Irish and although the majority of the text books available are in English exclusively all the primary materials being available in Irish (the Constitution itself, various judgments, legislation) mitigate against any potential negative impact.

No such initiative or anything similar to it had been taken at any Irish Law School prior to the commencement of the Dlí Bunreachtúil module at UCC. A similar approach had been taken at the Department of Law and Criminology at the University of Wales Aberystwyth by Dr Glenys Williams for Welsh medium legal education. Given the broadly similarities between Irish and Welsh legal education and the somewhat similar experiences of both languages it is submitted that the Williams model was as good a source as was possible to obtain in connection with Irish medium legal education. Williams sought to assess the effectiveness of this departure by undertaking a survey of the students concerned. Williams' survey was conducted in an effort to gauge the reason why students choose to study some Welsh medium modules and why others, despite being Welsh speakers chose not to. The survey, which focused on a particular module connected with Health Care Law which had been delivered in Welsh, was carried out among undergraduate students. Of particular interest in the Welsh survey was why a number of students who self identified as Welsh speakers did not wish to take up study through the medium of Welsh. All students who identified themselves as Welsh speaking were surveyed. Although the response rate was disappointing a number of valuable conclusions were drawn by Williams from the

⁴⁶⁸ A sample of completed survey questionnaires is attached in this work in an Annex F.

data obtained⁴⁶⁹ such as student concern about translation, availability of materials and in particular a fear among students of being put at a disadvantage *vis-à-vis* their English speaking colleagues.

In an effort to gauge the success and uptake among students an adapted version of the Williams survey was replicated among all first year undergraduate students studying through the medium of Irish at the Faculty of Law at University College Cork across two intakes of students in the 2011/2012 and 2012/2013 academic years⁴⁷⁰. Such a survey carries many of the pre-existing flaws and prejudices as identified by Williams such as being carried out with a known sample rather than a random sample and lacking a large sample from which to take the survey.

In the Welsh study the University of Wales, Aberystwyth keeps a register of students who identify themselves as Welsh speaking, no such register exists in Irish Universities. As a result the survey was conducted among students who had already opted to undertake at least some study through the medium of Irish and those students who were taking Irish language classes within the University. The students were asked to assess their own level of Irish language competence, asked why they chose to study law through the medium of Irish. Further questions sought feedback from the students on the nature of legal education

⁴⁶⁹ Williams, Glenys “Legal Education in Welsh – An Empirical Study” (2005) 39 (3) *The Law Teacher* 259

⁴⁷⁰ Sample of Survey attached as an Annex to this work

through the medium of Irish and enquired as to the students' understanding of the employment prospects for multilingual law graduates.

The students themselves tended not to describe themselves as fluent Irish speakers despite the fact that they had reached a standard where they were fully capable of discussing matters of Constitutional law to the same level as their classmates who chose the English language version of the same course, such an outcome would seem to mirror the concerns as to confidence in speaking the minority language as identified in the Williams survey. The English and Irish versions of the module covers the same material, using the same assessment methods, the same learning outcomes and indeed the same external examiner. A noteworthy difference, however, between the Irish and Welsh students was that no Irish students were concerned that they themselves would not be understood clearly by choosing to undertake the module and assessment through the medium of the minority language, a concern which was particularly highlighted by the Welsh students. When asked as to why the students chose to study through the medium of Irish the almost universal responses given by students over both years of the survey can be divided into two categories which are not in any way mutually exclusive of each other with a number of students citing both and indeed it is submitted that the underlying reasons for both answers are intricately intertwined. The first category of responses can be classed as those students who wished to continue their study of Irish for fear of 'losing' their grasp of the language if they did not study modules through the medium of Irish. Such a response is not entirely unexpected given the students in question would have spent the previous fourteen years of their formal education studying the Irish language due to the compulsory nature of language study in the Republic of

Ireland and understandably would be not want to consider those fourteen years to have been spent in vain. The second series of answers can be classed in the 'goodwill' bracket where a number of students remarked that they are well disposed towards the language or consider it an important part of the identity and thus consider university level study in the language to be a worthy pursuit. Some students pointed to patriotism as a reason for their goodwill towards whilst others enjoy engaging with the Irish language and wish to continue doing so. It is submitted that in analysing these two categories of answers that one can draw a conclusion that there is a tepid recognition by the students that having and maintaining knowledge of the Irish language is of benefit to them in an educational/professional capacity be that as a result of an increased skill set or some other ancillary benefit. A small number of students also remarked that the Irish language version of the module appealed to them due to the niche nature of the module. In a manner similar to the trend identified in Wales the students were pleased that the smaller class allowed for more interaction with the lecturer and an opportunity to ask more questions while some students remarks that by studying in a smaller class they'd stand out more from their peers who studied through the medium of English.

The students seemed to demonstrate a good understanding of the implications of the official status granted to the Irish language in Ireland and the more recent status in Europe with a particular eye on the resulting demand for multilingual law graduates. Most of the students had studied another European language to at least Leaving Certificate level with a number of students claiming fluency in other official EU languages (one student also indicated a knowledge of spoken

Mandarin Chinese). This additional factor is particularly important given that the EU expects that employees would be comfortable operating in two official EU languages (Irish and English in the case of these students) and have at least some knowledge of another official EU language. When the survey was carried out among a second cohort of students in May 2013 there was an increased awareness of the job opportunities available to Irish speakers in Europe in particular compared with the students who took the survey in May 2012. This most likely connected with a number of information visits from the Kings Inns (see below) during the course of the 2012/2013 academic year.

Other jurisdictions with more than one official language such as Canada and Wales have encountered challenges when it comes to the availability of teaching materials in a language which did not traditionally enjoy a place in the law schools. In the case of Ireland in recent times, as recognised by Buttimer⁴⁷¹, a growing corpus of legal materials is available in the Irish language covering topics such as Constitutional Law, Judicial Review, various aspects relating to the Irish text of the Constitution and the Official Languages Act 2003. A specific Legal-Irish dictionary has also been published which greatly aids the standardisation of legal terminology (an issue which has posed certain challenges in both Canada and Wales⁴⁷²). This level of scholarship in the Irish language and the law must continue if materials covered are to remain fresh, topical and up to date with modern legal developments. If this ceases to be the case and students

⁴⁷¹ Ibid at p. 36

⁴⁷² Williams, Glenys “Legal Education in Welsh – An Empirical Study” (2005) 39 (3) *The Law Teacher* 259 at p. 261

have to resort to using English language materials empirical evidence from Wales suggests that the take up of courses such as Law and Irish could be reduced⁴⁷³. Students do not want to be put at a disadvantage in comparison to their English medium peers.

5. Post Degree Level

As identified by the UCC Law and Irish Conference above and more generally by the Irish Government's commitment to "Fourth Level Ireland" developing research dimensions is likely to be a key consideration for all subjects going forward. The Irish language is no different in this regard. Specific research into the Irish language and the legal position it enjoys has commenced in at least four Universities.

Dublin City University MA in Bilingual Practice

At Dublin City University (DCU) a two year part time MA in Bilingual Practice has been established. The course is primarily directed at those who work within the Irish language sector such as "Irish language officers in the public service and in voluntary organisations and those responsible for the implementation of the Official Languages Act 2003"⁴⁷⁴. The course seeks to provide "the participants with the knowledge and skills necessary to ensure that the public is provided with a quality bilingual service according to international standards"⁴⁷⁵. Students study courses such as Corporate Responsibility and Bilingualism,

⁴⁷³ Ibid at p. 271

⁴⁷⁴ MA sa Chleachta Dátheangach Online Prospectus available at <http://www.dcu.ie/prospective/deginfo.php?classname=TCD&mode=full>

⁴⁷⁵ *ibid*

Legislative Schemes for the Irish language and the Irish language and the Law amongst others. In addition students complete a research project on a subject in the field of bilingualism as their Masters thesis. Due to the specific target group of perspective students for the MA the course is offered on a part time basis with the modules being delivered online although attendance is required on campus for lectures for six weekends per academic year. Such an arrangement allows the students to continue in employment whilst completing the course. It is submitted that the part time arrangement is key to the effectiveness of the course. The fact that the participants are already in place in their respective roles ensures that the benefits of the course to the provision of Irish language services and general language awareness can be delivered promptly and efficiently. Whilst provision of courses to graduates straight out of college is also beneficial there is a natural lag effect whereby not all graduates fulfil positions directly related to their university qualifications and those who do so are likely not to be in positions of influence for a considerable time. The Language Scheme of the Courts Service identified problems with the slow pace of change in Gaeltacht offices due to the fact that the time scale for recruitment of sufficient Irish speakers to enable the office to function exclusively through the medium of Irish could take as long as ten years. The provision of training to those already in place in such positions such as the likely participants on the MA in DCU would help not only to avoid similar delays to those envisaged by the Courts Service but to bring about a sea change of culture whereby such a situation would not be allowed to develop in future.

Terminology

Further research at DCU's Fiontar department into Irish language legal terminology has commenced with the provision of a PhD scholarship to a graduate of the BCL (Law and Irish) from UCC. It is envisaged that such research would fit into an existing series of projects which focus more generally on Irish language terminology. The importance of terminology in a legal setting has been highlighted in both Wales and Canada as being of crucial importance⁴⁷⁶. Pioneering work by the Centre de Traduction et de Terminologie Juridiques at the Law Faculty at the Université de Moncton in Canada allowed for the development of standardised terminology for law students and practitioners alike. The Université de Moncton continues to carry out this and other translation works for the Canadian Government. Although there has been some efforts made in Ireland to provide official standardised terminology through the provision of Legal Terms Orders as provided for under the Irish Legal Terms Act, 1945 this has proved to be somewhat ineffective. The Act envisaged a committee consisting of senior Judges, lawyers and translators preparing a glossary of Irish language terms which would be issued by the Minister in the form of a Statutory Order thus ensuring a consistent and standardised lexicon. As Ó Cearúil⁴⁷⁷ notes no Legal Terms Order has been issued since 1956 and in practice terms which are suggested in the Legal Terms Order do not always find favour with translators working day to day in the Oireachtas translation service. Furthermore,

⁴⁷⁶ See generally "Bilingual Law Making and Justice – A report on the lesson for Wales from the Canadian experience of bilingualism" (National Assembly for Wales, Cardiff, 1999) and "The Operation of a System of Law Making that in Practice Treats English and Welsh on a Basis of Equality – A Report of the Office of the Counsel General to the National Assembly for Wales" (National Assembly for Wales, Cardiff, 1999)

⁴⁷⁷ Ó Cearúil, M. "Bunreacht na hÉireann – A study of the Irish text" (Government of Ireland, Dublin, 1999) at p. 23

the terms which are favoured by the translators working with the language day to day also differ from the Irish used in the Constitution of Ireland. In the absence of official up to date terminology a useful and comprehensive dictionary *'Focal Sa Chúirt'*⁴⁷⁸ written by practicing Solicitor Leachlain Ó Catháin has become the de facto guide for modern practitioners. Whilst the input of private practitioners is to be welcomed, Government sponsored research remains crucial to ensure a sustained and focused effort at providing standardised terminology. Whether it is envisaged that any such research carried out at DCU is to form part of a new Irish Terms Order or whether a different approach is to be used the fact that such research is being sponsored and encouraged by the State indicates a willingness to develop and enrich a modern Irish legal lexicon.

University College Cork

As noted above University College Cork pioneered the undergraduate Law and Irish Bachelor of Civil Law degree programme. The programme was proven to be popular among students and the selected placement partners alike and until recently there existed no formal research dimension. Whilst any student who wished to undertake research on the Irish language and the law would have been able to do so within the scope of the existing postgraduate programmes at University College Cork a number of potential obstacles existed. Firstly there are no taught post graduate programmes available which cover issues relating to the Irish language and the law and at present no law modules are available in any other language aside from English. In addition up until recent times no member

⁴⁷⁸ Ó Catháin, L. "Focail sa Chúirt" (Coiscéim, Baile Átha Cliath, 2002)

of staff had an active research profile in the area of the Irish language and the law which created difficulties for students who seek supervisors.

6. Translators, Interpreters and Lawyer Linguists

The ramifications arising from the Irish Constitution, the Official Languages Act 2003 and the official language status granted to Irish by the European Union require that a significant and ever increasing amount of legal translation be undertaken in the Irish language. Until recent times most aspects of official translation was handled by the Oireachtas translation service known as Rannóg an Aistriúcháin. Rannóg an Aistriúcháin was first conceived on the day of the first sitting of Dáil Éireann in 1919. A number of staff members were employed in order to ensure that records in English and Irish could be maintained⁴⁷⁹. Subsequently, with the adoption of the 1922 Constitution, further expansion of the Rannóg was required as Irish was granted official status. From 1922 onwards the workload for Rannóg an Aistriúcháin consisted primarily of the translation of legislation, both primary and secondary, from English to Irish. At some stage during the 1980s this ceased to be the practice due to budgetary cutbacks and the lack of translation gave rise to the cause of action in the *Ó Beoláin* case. The Rannóg also played a key role in providing a standardised version of the Irish language in terms of spelling and later grammar. Before 1945 for example the Irish text of the Constitution was not written in the modern simplified Irish as it appears today but rather in the traditional Gaelic font and using a spelling system which had not changed in hundreds of years however the Rannóg standardised

⁴⁷⁹ Dáil Debates Volume 1, January 22, 1919

the text in July 1945 and issued a version of the Constitution in the Roman font rather than the Gaelic font. As was noted in Wales and Canada the lack of standardised terminology served as a great hindrance to legal education prior to the various standardisation projects⁴⁸⁰. However given Rannóg an Aistriúcháin's proactive role such a challenge did not emerge in Ireland. Since 1972 Rannóg an Aistriúcháin has also provided any interpreting services needed in the Oireachtas when those who lacked a sufficient understanding of the Irish language required a translation of business carried out through the medium of Irish⁴⁸¹.

The typical profile of the staff of the Rannóg was that of fluent Irish speakers with a third level qualification although the qualification in question was rarely, if ever, a law qualification. The rationale for this was that there did not exist sufficient graduates with knowledge of legal Irish and it was thought better to train those with a high standard of Irish to understand and recognise legal terminology such as that used in legislation. It should be noted that such was the experience from the very inception of the office, in 1921 the Minister for Irish noted that

“It was very hard to get suitable men. Men with a knowledge of Irish were almost impossible to get. There was no man in Ireland that the enemy was more against than the Irish inspector and many of them had been arrested. For the past year if a piece of paper written in Irish was found on a person he was immediately arrested and now no one was writing Irish.”⁴⁸²

⁴⁸⁰ “The operation of a system of Lawmaking and Justice that in practice treats English and Welsh on a basis of equality – A Further Report on the lessons from the Canadian Experience” (National Assembly for Wales, Cardiff, 2006) at p. 7

⁴⁸¹ <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/a-misc/Rannog1.htm>

⁴⁸² Dáil Debates Volume 4, 22 August 1921

Although the reasons for the difficulties in recruitment from pre-1921 to the post independence years may vary there has traditionally been a particular difficulty in securing the services of competent people to conduct legal translation in Ireland. Furthermore as noted above due to the historic situation in relation to the training of lawyers in Ireland traditionally those who underwent legal training, regardless of their linguistic ability tended to gravitate towards the legal professions and the practice of law rather than towards other pursuits. Law as a discipline at University level only truly gained traction in the late 1970s and particularly the 1980s by which time there were embargos on recruitment into the public service (which also coincided with the cessation of translation of legislation). Rannóg an Aistriúcháin accordingly provided the majority of the training internally within the organisation once recruitment had taken place. A strong emphasis was placed upon recruiting employees with a high quality of written and spoken Irish. The training regime consisted primarily of the use of pre-existing precedents which were presented to new employees.

The precedents showed the new translators how the office had developed methods to deal with difficult issues encountered in translation and which could be used again in the translation of future pieces of legislation due to the formulaic and uniform manner in which legislation is produced in the English language in Ireland. Certain difficulties would be encountered repeatedly which the translators were taught to deal with by the use of precedents. Examples of such problems include legislation being drafted in English without consideration as to the mutations required in Irish depending on the context and gender of

particular words or the untranslatability of certain oft used expressions into Irish including the word ‘such’.

Although no formal qualification was awarded on the basis of this training, three different grades of translators were established which allowed for progression depending on experience and skill with additional editorial training being provided upon promotion. Although significant difficulties were encountered with the continuation of the service in the 1980s for budgetary reasons the system essentially functioned well given the demands placed upon it. Given that the vast majority of legislation (in excess of 99%) was drafted, passed and enacted in English before an Irish language version would be required there was no pressing need for translators to have legal qualification given that they were translating documents which could not be edited to facilitate smoother translation.

Other jurisdictions (most notably Canada and Wales) faced a similar issue when it came to translation, however, a different approach yielded different results. In Canada, it was recognised in the 1980s that subsequent translation of laws which had been drafted in one language leads only to “quality issues”⁴⁸³. The solution put forward, which has subsequently been adopted in Wales, was that all bilingual laws should be co-drafted. The English and French texts are prepared side by side, with two drafters being assigned and instructed together bilingually, and each drafter is considered an equal partner. Together the drafters produce one document which is co-edited and published. The experience in Canada (and

⁴⁸³ “Bilingual Lawmaking and Justice - A report on the lessons for Wales from the Canadian experience of bilingualism by the National Assembly for Wales” at p. 16, available at <http://www.assemblywales.org/bilingual-lawmaking-e.pdf>

subsequently in Wales) is that, firstly, the document in the minority language is of much higher quality than a document which has been translated. Whilst there were some delays to the drafting stage the process was ultimately quicker than subsequent translation. The technique employed in Canada would also serve to address the sort of concern identified by McCarthy J in the *X Case*⁴⁸⁴ where no document could be said to be a mere translation of another. Perhaps most crucially, however, there was a noticeable increase in the quality of the English language drafting in Canada as a result of this process whereby two drafters rather than one examined the English text. The drafters were more likely to spot gaps and problems and were better able to deal with them when they did arise⁴⁸⁵. In 2003 in Ireland the Official Languages Act required that all bills of the Oireachtas be published in both languages simultaneously. The drafting has however, in the vast majority of cases, been carried out in English only. Indeed, in recent times concerns have been raised anecdotally that the publication of certain bills has been delayed due to the Irish translation being unavailable. Were a position similar to the Canadian one to be adopted in Ireland, such issues would not arise at all and the evidence suggests that our English drafting would also improve. In order to achieve this specific legal and linguistic expertise would be required from the very commencement of the process. The system, skill set and expertise in place with *Rannóg an Aistriúcháin*, whilst fit for the purpose of subsequent translation, would not be fit for such a role.

⁴⁸⁴ See Chapter 2

⁴⁸⁵ “Bilingual Lawmaking and Justice - A report on the lessons for Wales from the Canadian experience of bilingualism by the National Assembly for Wales” at p. 16, available at <http://www.assemblywales.org/bilingual-lawmaking-e.pdf> at p. 19

The benefits to the Irish State arising from the adoption of any potential co-drafting approach provided by lawyer linguist would not be limited to internal national interests. Since 2007 there are actual demands for such professionals as a result of the Irish language being granted the status as a full official working language of the European Union due to the passing of Council Regulation EC 920/2005 on 13 June 2005. Prior to this, Irish was recognised as a treaty language which required minimal translation however with the granting of official status every European legal instrument and document would require translation. In what, it is submitted, was a clear recognition of the issues faced in the education of lawyers with Irish language skills the regulation provided a derogation for the Irish language for an initial period of five years which was subsequently further extended for an additional of five years in early 2012. It is however highly unlikely that a further derogation will be granted in 2017 given the derogation which was in place for Maltese, a language with fewer speakers than Irish, was removed in early 2012. In response the Irish State has continued to fund some of the existing programmes which could likely provide lawyer linguists and translators such as the BCL (Law and Irish) but in addition further support was given to academic and professional training programmes with the particular aim of putting supports in place which would facilitate the demands official working language status places upon the Irish language.

6.2 Lawyer Linguist training at the Kings Inns

In response to the above, and through the mechanism of the Advanced Irish Language Skills Initiative fund provided by the Higher Education Authority in

Ireland, a two streamed course was commenced at the Kings Inns, the traditional centre for the education of Barristers in Ireland. The course seeks to train lawyer linguists and legal translators in order to provide for the existing demand at the European institutions, which, as noted above, is likely to further increase once the derogation is no longer in place. Both streams provide students with the opportunity to obtain a Higher Diploma in either the profession of a lawyer linguist or a legal translator. In order for candidates to be eligible to partake in the courses it is required that they hold a high standard of written and spoken Irish (equivalent to “A” standard in the Leaving Certificate Examination) and suitable IT skills given the nature of the modern professions. An additional requirement is in place for lawyer linguists requiring that they hold a degree or postgraduate legal qualification or that they are enrolled as Barristers or Solicitors in the Republic of Ireland or the United Kingdom. This additional requirement is key given that lawyer linguists need not only to be fully versed in understanding the languages they are dealing with but also have sufficient legal expertise in order to overcome the challenges in untranslatability that can occur when it comes to legal terminology. Very often when ensuring that sufficient care has been taken in the translation of a document mere knowledge of the different expressions of the one word in different languages will not suffice. As noted by MacIntyre, language in a particular context, such as a legal context, is “language as it is used in and by a particular community living at a particular time and place with particular shared beliefs, institutions and practices”⁴⁸⁶ without knowledge of the particular legal practices and institutions a non lawyer attempting to translate or ensure the accuracy of the translation of a legal

⁴⁸⁶ MacIntyre, A. “Whose Justice ? Which Rationality ?” (Duckworth, London, 1988) at p. 373

document would run up against issues of untranslatability. MacIntyre offers the example for the naming convention of a City in Northern Ireland⁴⁸⁷. The City is officially known in English as *Londonderry* and in Irish as *Doire Cholm Chille*⁴⁸⁸. No amount of skill and knowledge in a language would enable a translator to translate either name from one language to another. In order to provide an accurate translation of the name of the City from one language to the other the translator would be required to have additional specialist knowledge of the history and cultural background of the City in question. The course for lawyer linguists is aimed at giving students who already possess a foundation in law the further training to be able to deal with multiple legal texts with each text having the same legal standing. Lawyer linguists need to be sure that the same legal meaning and effect is being maintained through each draft. The course for legal translators, in a manner similar to the training provided in Rannóg an Aistriúcháin, is more suitable for those without particular legal knowledge as the translators work more closely with direct translation and have the legal expertise of the lawyer linguists to draw upon when it comes to ensure legal accuracy. Thus, linguistic accuracy is of particular importance for the legal translators' training. Both courses share some modules given the close relationships between the profession of legal translator and lawyer linguist; however, for the reasons outlined above some degree of differentiation is also required. All students for example undertake modules concerned with accuracy in the Irish language and

⁴⁸⁷ *ibid*

⁴⁸⁸ It should be noted however that the situation is further complicated by the use of two further names for the City being Derry in English and Doire in the Irish language in addition to a cultural and political sensitivity being attached to the use of one name or the other. The use of one particular name for the City over another has traditionally been dependant on cultural/ethnic grounds with each tradition in the community often associating with a particular version of the name.

translation skills which are delivered by barristers with experience of working in the European institutions while the lawyer linguists take further modules on topics such as civil law, the institutions of the European Union, jurisprudence and the practice and procedure at the European Court of Justice. The courses last for the duration of a standard academic year, usually from September to June with a visit to the various European institutions also incorporated.

In order to ensure the quality of graduates a number of important steps are taken. Firstly, entry to the two courses is strictly by way of a challenging entrance examination and a strict quota system which ensures that only the best 15 candidates are admitted to each course in each academic year. Various elements of continuous assessment are conducted throughout the year and if a student's performance dips below the required standard during the course of the year then their place on the course is forfeited. Finally, a passing standard of 70% is demanded from all students which is far in excess of the 50% passing standard required by the European institutions themselves in the official EPSO civil service recruitment examinations. Thus far the take up for the courses has been encouraging with a number of the graduates going on to secure positions within the European institutions. If the EU derogation is to be discontinued there will, however, be a persistent and strong demand for graduates of such courses particularly when the high turnover of staff at the EU institutions is taken into account.

6.3 Interpreting

The provision of interpreting services as a requirement for access to justice has long been recognised as a key element in any system which recognises more than

one language. In the legal context in particular the need for professional and accurate translation and interpreting is particularly pressing. As Bacik notes:

“Serious concerns can arise in cases where non-professional interpreting or translation services are provided. In some cases, miscarriages of justice can even occur due to language difficulties. This is a particular concern in criminal trials, either because non-English speaking accused persons are provided with an inaccurate translation from English into their own language – or where the evidence of non-English speaking witnesses is translated inaccurately into English.”⁴⁸⁹

Similar concerns have been highlighted by interpreters and translators themselves in an official submission to the Irish Government in 2002 on the topic of Court room interpreting:

“...Court Interpreting is probably the most specialised area across the interpreting spectrum as the interpreter must have a very high level of accuracy, must understand legal concepts and must have strategies to help deal with the explanation of legal terms to clients from different legal systems.”⁴⁹⁰

In order to avoid some of the concerns highlighted above some form of training and legal education is required for courtroom interpreters in particular. The provision of such training is not widely available. Such a phenomenon is not a uniquely Irish problem as Pöchhacker has noted “[w]ith few exceptions, spoken-language community interpreters do not (yet) have the option of dedicated master’s or even bachelor’s degree programs”⁴⁹¹. He further noted that most of the training provided is provided not in the formal education context such as

⁴⁸⁹ Bacik, I. “Breaking the Language Barrier – Access to Justice in the New Ireland”, *The Judicial Studies Institute Journal*, [2007] Vol 2 109

⁴⁹⁰ Submission from the Irish Translators’ and Interpreters’ Association (ITIA) to the Working Group on the Jurisdiction of the Courts, 2002, at p. 2.

⁴⁹¹ Pöchhacker, F. “Introducing Interpreting Studies” (Routledge, London, 2004) at p. 179

training provided by Universities or professional bodies but within the various institutions who demand the service.

The need for particular training for courtroom interpreters and the lack of availability of same has also been highlighted at judicial level in the European Court of Human Rights case of *Kamasinski v. Austria*⁴⁹² where the Court examined a claim by Kamasinski that his rights had been violated due to, amongst other claims, the lack of sufficient accreditation of his interpreter. Kamasinski, a US citizen, had the entire trial interpreted into English yet he expressed concerns as to the quality of this service. The European Charter on Human Rights recognises a party's right to have interpretation service if they do not understand the language of the trial and Kamasinski claimed that the quality of training provided to Austrian interpreters was insufficient so as to vindicate that right. Ultimately Kamasinski's appeal was not successful but the Court did note that:

“In the view of the need for the right [to an interpreter] to be practical and effective, the obligation of the competent authorities is not limited to the appointment of an interpreter but, if that are put on notice in the particular circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation provided.”⁴⁹³

Phelan notes that the response of various jurisdictions to this judgment of the ECHR was varied with some countries starting comprehensive training programmes and other simply ignoring the judgment. But, crucially, as identified by Phelan “[I]t is absolutely essential that court interpreters should be impartial, they should not take on the role of advocates and they should have an

⁴⁹² ECHR 9783/82, (1991) 13 E.H.R.R. 36.

⁴⁹³ (1991) 13 E.H.R.R. 36 at 41

understanding of legal concepts. *But if interpreters are not trained, how can they acquire these characteristics themselves*”⁴⁹⁴

Prior to 2007 courtroom interpreting in Ireland was provided on an ad hoc basis with the provision of the service and the appointment of interpreters left to local Court offices⁴⁹⁵. Since then an agreement has been signed with Lionbridge International, a commercial entity, to provide all interpreting services across the Courts Service in Ireland including courtroom interpreting for what Lionbridge term “rare languages such as Irish”⁴⁹⁶. As examined in Chapters 2 and 3, the case of the Irish language is somewhat unique given that the right to interpretation is founded upon a constitutional guarantee rather than a natural law right and most, if not all Irish speakers, understand English to some degree the underlying principles of training and education for courtroom interpreters remains the same.

There is, at present, no one particular course in Ireland designed to train courtroom interpreters professionally. As noted above, Rannóg an Aistriúcháin does provide some in-house training to those who work within the translation section of the Oireachtas for interpreting the business of the Houses of Parliament. However such interpreting is by its nature of a different type to courtroom interpreting.

⁴⁹⁴ Phelan, M. “The Interpreter’s Resource” (Multilingual Matters, Buffalo, 2001) at p. 29, emphasis added.

⁴⁹⁵ Riordan, D. “Immigrants in the Criminal Courts”, The Judicial Studies Institute Journal, [2007] Vol 2 95 at p. 102

⁴⁹⁶ <http://en-gb.lionbridge.com/interpretation/irish-courts.htm>

A recent and potentially crucial innovation with a particular focus on the Irish language however has been the provision of a MA in Conference Interpreting⁴⁹⁷ at the *Acadamh na hOllscolaíochta Gaeilge*⁴⁹⁸ at the National University of Ireland, Galway. This course aims to provide students with training in the skills of interpreting with a particular focus on the demands in the European Institutions. Students study modules in the Theory and Practice of Interpreting, Consecutive and Simultaneous Interpreting and a module focused on the European Union itself. A final additional element of a minor research thesis allows the students to further investigate a particular element of interpreting. Although the course has no particular legal training element to it nor does it have a background in legal training as an entry requirement in the manner of the Kings Inns courses above, it is submitted that should a candidate undertake this course in addition to courses such as the offerings at Universities and the Kings Inns above they would be well placed to operate as courtroom Interpreters with many synergies achievable. Phelan for example suggests that those trained as legal translators would be well suited to the role of courtroom interpreter although she suggests that further training would be beneficial⁴⁹⁹.

In recent years in Ireland, despite the widespread lack of formalised training opportunities, the professional body responsible, Irish Translators and Interpreters Association (ITIA), has begun to create a database of certified translators and interpreters. In order to be accepted as a certified translator or

⁴⁹⁷ <http://www.nuigalway.ie/courses/taught-postgraduate-courses/conference-interpreting.html>

⁴⁹⁸ The Acadamh is an Irish language offshoot of the NUI Galway located in the Gaeltacht and has a particular remit of focusing on courses and research with a strong Irish language focus.

⁴⁹⁹ Phelan, M. “The Interpreter’s Resource” (Multilingual Matters, Buffalo, 2001) at p. 29

interpreter there is a requirement to pass an examination set by the ITIA. This examination caters for translators and interpreters across all fields and as a result has no specific focus on legal translation or interpreting. The ITIA do operate a Continuing Professional Development scheme which allows certified translators to continually hone and develop their skills in a manner similar to the CPD schemes introduced in the legal professions. The ITIA has also taken an extensive role in lobbying for reform in the area of training and education for translators and interpreters. In their 2002 submission to the Department of Justice Working Group on the Jurisdiction of the Courts, the ITIA noted that there was a significant lack of training opportunities for their members who have to work within the legal system and recommended that training courses be provided by the Courts Service in order to ensure quality and clarity of service⁵⁰⁰. Furthermore, the IATI recommended that the Courts Service maintain a register of accredited interpreters and provide continuing refresher style training to the interpreters engaged by them in addition to providing some level of training to the staff within the Courts Service who have to engage with interpreters during the course of their work. A final and more far reaching recommendation which the IATI felt would be of great benefit in the training of interpreters was a recommendation that court cases be recorded so as to allow interpreters study the materials. Whilst court cases in more recent times the audio proceeding have been recorded via the Learner system, this system is in place purely to aid the production of court transcripts and there still exists a general Common Law ban on the recording and broadcasting of court cases in Ireland. It is extremely unlikely that such materials would be made available for the purposes of

⁵⁰⁰ IATI submission to the Department of Justice Working Group on the Jurisdiction of the Courts at p. 3 available at <http://www.iati.ie/>

interpreter training given the legal and policy hurdles which would need to be overcome. The IATI proposals and general remit extends over all interpreters operating in Ireland who subscribe to membership of the Association and they do not have any particular focus on the specific issues concerning the Irish language. Foras na Gaeilge, the All-Ireland body established as part of the Good Friday Agreement to promote the use of the Irish language has sought to fill the gap to a certain extent by creating a certification process to certify translators and editors with particular skills in the area of the Irish language⁵⁰¹. Foras na Gaeilge maintain a public register of all translators who have passed their annual certification examinations which enables those who have demands for a service to consult the list and aid the recruitment of a suitably qualified translator. While such a development is to be welcomed, there is no actual provision of training *per se*, Foras na Gaeilge merely administer the examination process. Furthermore, the certification process accredits translators and editors as professionals capable of carrying out their duties through the medium of Irish, no particular focus is placed upon specialist legal training nor the skills required by interpreters.

7. Practicing Legal Professionals

Further challenges exist in continuing legal education beyond the University particularly with regards to the legal professions in the Republic of Ireland. Previously, those wishing to become either Barristers or Solicitors were required

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http://www.forasnagaeilge.ie/Terms_and_Translations/Accreditation_Systems_for_Translators_and_Editors.asp

by the Legal Practitioners Act, 1929 to obtain such as level of competency in Irish “sufficient to enable a legal practitioner efficiently to receive instructions to advise clients, to examine witnesses and to follow proceedings in the Irish language”. While the intentions of the legislature in creating such a requirement were noble whereby Ó Catháin suggests that “[h]ad the will and intent of the legislators been put into effect, as intended...the effect on the subsequent revival of the Irish language would have been profound and widespread”⁵⁰². Unfortunately, such a situation did not come to pass and it is submitted that the effort by the legislators to promote the Irish language through these means was somewhat misplaced, and as Nic Shuibhne noted, how the legislation “ignores the fact that most [lawyers] will never actually use Irish in their professional lives”⁵⁰³. The majority of Deputies in the Dáil were in favour of introducing the test. A small number of Deputies and Senators spoke out against the introduction of the test, primarily doing so on the grounds that the standard would be far too difficult to achieve. One Deputy remarked that the limited vocabulary of the Irish language would render legal practice in that language extremely difficult if not impossible noting;

“The framers of this Bill did not state that the standard of knowledge set for those engaged in the legal profession under the aegis of the Bill is an absolutely impossible standard. If a man in the legal profession, under the Bill as it now stands, is to qualify for practice at the Bar, his standard of knowledge must be such that he can conduct the business of his clients in the Irish language. Does anybody realise what standard of knowledge a lawyer at the Bar would require for the carrying out of such duties as this? Does anybody realise that in the existing vocabulary of Irish the standard is impossible? Does anybody realise that at present we are

⁵⁰² Ó Catháin, L. “Language, Law and Governance: An Irish Perspective” in “Language and Governance” Williams, Colin H. Ed (University of Wales Press, Cardiff, 2007) at p. 301

⁵⁰³ Nic Shuibhne, N. “First Among Equals, Irish language and the law”, (1999) Law Society Gazette, March, 17 at p. 18

coining words every day to fit in with new words that we are meeting as we go along?”⁵⁰⁴

In reality, the experience of the real consequence of the requirement of the test was that such materials were never examined in the first place. The integrity of the examination process itself must be called into question with the standards required of lawyers to obtain a passing mark nowhere near those required in the actuality of everyday practice of a legal profession through the medium of Irish. In the case of Solicitors it was the Law Society of Ireland who administered the examination system. The exam process consisted of an initial Irish exam (usually sat by law students during their first year of undergraduate study or at least prior to any training provided by the Law Society of Ireland) and a similar exam a number of years later (usually sat by trainee solicitors during their professional training course). The format consisted of a brief oral conversation and the translation of turn of the century Irish literature extracts which are written in non-standardised local dialects of Irish many of which no longer form the vernacular in modern Irish speaking communities. It is submitted that such examinations could not possibly have been sufficient to prepare lawyers to carry out their professional duties before courts where standardised Irish and specialist legal terminology are used on a daily basis. Nic Shuibhne convincingly contended that such an examination process “does not bear much likeness to the criteria envisaged in the 1929 Act”⁵⁰⁵. There was no particular provision for specific legal terminology in the examination process and no preparatory classes were provided to Solicitors as part of their professional training course prior to the

⁵⁰⁴ Deputy JJ Byrne, Dáil Debates, Wednesday 20 March 1929, Vol 28, No 19

⁵⁰⁵ Nic Shuibhne, N. “First Among Equals, Irish language and the law”, (1999) Law Society Gazette, March, 17 at p. 18

sitting of the second examination. Solicitors were expected essentially to have sufficient Irish from the primary and secondary schooling to get through the examination process. As a result the bar was set extremely low whereby Solicitors who were in no practical sense considered to be Irish speakers were able to obtaining passing marks in the examination.

The exam process with regards to those who wished to become Barristers was administered by the Honourable Society of the Kings Inns and was somewhat more satisfactory. Over a two week period a series of lectures on specific Irish language legal terminology is given to students who then sit written and oral exams on the topics covered⁵⁰⁶. This more focused learning still lacked the level of Irish language training required to conduct a case in Irish or to converse with an instructing solicitor or client in Irish. In theory, every lawyer who qualified in Ireland between 1930 and 2009 is certified to have sufficient Irish so as to carry out their professional duties through the medium of Irish. In reality only those who possessed a high level of Irish before entering the legal professions and who took it upon themselves to familiarise themselves with the correct legal terminology carry out their practice through Irish. The vast majority of practising lawyers in Ireland, despite having completed the Irish examinations as a compulsory element of their professional training, are not capable of carrying out their professional duties in the Irish language. Ó Catháin argues that “the failure of the 1929 Act or rather its circumvention by barristers, solicitors and civil servants, was a major blow to the language revival movement as the legal administrative system and the courts never became available to the Irish-

⁵⁰⁶ *ibid*

speaking citizen as a practical reality.”⁵⁰⁷ Not only did this situation result in farcical tokenism with little practical benefits but it has been suggested that the situation has caused more harm than good⁵⁰⁸. Murdock suggests “there is genuine goodwill for the Irish language. It is likely that a more liberal approach to it, removing compulsion, would result in a greater interest in the language”⁵⁰⁹.

In addition the Competition Authority’s wide ranging review of the legal professions in Ireland suggested that the Irish language requirement was an “unnecessary obstacle” and that the requirement “does not achieve [its] aim”. It is important to note however that Irish language prerequisites for entry into certain professions or positions of employment have been upheld by Courts both on the domestic level and at the European level. As was examined in detail in Chapter 4, in the case of *Groener v Minister for Education and Others*⁵¹⁰ the Applicant, a Dutch national sought to challenge a requirement that in order for a lecturer in a Dublin Art college to be established permanently in a role the lecturer in question had to pass an Irish language exam. The Irish Courts referred the case to the European Courts of Justice on the grounds that Mrs Groener claimed the rule requiring knowledge of the Irish language was a hindrance to competition and the free movement of workers between member states of the (then) European Community. The European Courts of Justice rejected this argument noting that the Irish rule required that all candidates who were to be appointed to such a role were required to have knowledge of the Irish language regardless of their nationality. The rule applied equally to Irish nationals.

⁵⁰⁷ Ó Catháin, L. “Language, Law and Governance: An Irish Perspective” in “Language and Governance” Williams, Colin H. Ed (University of Wales Press, Cardiff, 2007) at p. 301

⁵⁰⁸ See Chapter 2

⁵⁰⁹ Murdock, J. “Is fearr Béarla cliste ná Gaeilge bhriste” [Is clever English better than broken Irish], Law Society Gazette, June 2006, 16 at p. 17

⁵¹⁰ Case 379/87 *Groener v Minister for Education* [1989] ECR 3967

The ruling of the Court in *Groener* suggests that legally at least a requirement for Irish language competence as a prerequisite for entry into a profession was justified although it should be noted that the Irish Government did not for example extend the Irish language requirement for qualified lawyers of other EU states who wished to become Solicitors in Ireland. The Qualified Lawyers (EC) Regulations 1991 (SI 85/1991) sets out a list of subjects which must be passed before a lawyer from another member state of the EU can be enrolled as a Solicitor in Ireland however the list excludes Irish in spite of the fact that such a step would have been legal given the judgment in *Groener*. Murdock calls this a “pragmatic approach” which reflected reality⁵¹¹ and it is submitted that it was perhaps a tepid early acceptance by the Irish State that the Irish language requirements for lawyers were not an example of best practice and thus were inappropriate to extend to lawyers from other jurisdictions seeking to qualify in Ireland.

As part of its wide ranging review the Competition Authority stressed that it fully recognised the rights of Irish speakers to be represented in Court by lawyers capable of carrying out their duties through the medium of Irish but they suggested this could be best achieved in a different manner to the compulsory Irish exams. The Competition Authority, in consultation with and with the full agreement of both the professional law schools, suggested that a voluntary

⁵¹¹ Murdock, J “Is fearr Béarla cliste ná Gaeilge bhriste” [Is clever English better than broken Irish], *Law Society Gazette*, June 2006, 16 at p. 17

system whereby those lawyers who were interested in representing their clients in Irish could undertake specific and relevant training in the area. Once verified by examination these lawyers could advertise themselves as being qualified to carry out their duties through the medium of Irish. The Government response was to bring forward legislation enforcing the suggestions put forward by the Competition Authority and the professional law schools in the form of the Legal Practitioners (Irish Language) Act 2008. Indeed, during the Dáil debates when the Act was in bill stage the Government clearly and publically accepted that “the reality was that for many years, the passing of the tests specified...did not signify an ability to carry out business through Irish”⁵¹².

7.2 *Legal Practitioners (Irish Language) Act 2008*

The Act is a well thought out and balanced approach to the issue and drew almost unanimous support both within the Dáil and outside it. Indeed, *Conradh na Gaeilge*⁵¹³ welcomed the provisions of the Act and their concern related not so much to the proposed Irish language training for practising lawyers but rather the use of Irish in Courts in the Gaeltacht. Not only does the Act address the concerns of the Competition Authority but it also provides a welcome vehicle to expand the use of Irish within the legal profession. The Act has removed the previous requirements and has replaced them with a sensible and workable process whereby all trainees will undertake training in legal terminology and the understanding of legal texts in Irish.

⁵¹² Deputy Thomas Byrne, Dáil Debates, Thursday 13 December 2007, Vol 644, No 2

⁵¹³ An Irish Language interest group with a strong focus on lobbying.

Such training will enable would-be Solicitors and Barristers to identify the legal service that is required and refer the client to another practitioner who would be competent to deal with the matter should the trainee be unable to deal with the matter themselves. A key element of this training being provided to all future lawyers, regardless of their nationality or ability to speak Irish, lies in the language awareness benefit of such a scheme. By insisting that all future lawyers take a course which recognises the demands that some clients have for Irish language services, it is submitted that even those lawyers who lack any knowledge of the Irish language will perhaps have a greater respect for the rights of Irish speakers. Colloquially, at least, there exists a widespread view that certain parties use the Irish language as an excuse or an opportunity to find a loophole in legal cases.

In addition, the Act provides for the creation of 'Advanced Courses' which would be an optional subject on the Professional Practice Courses for trainee Barristers and Solicitors who wish to further their studies. The Act also provides that enrolment on the Advanced Course shall not be limited exclusively to trainees, a move which is to be welcomed. The wider scope for enrolment will enable already practising lawyers who possess knowledge of the Irish language but who lack the precise register in the Irish language for legal terminology to develop their language skills. Those who complete the Advanced Course are entitled to sit an Irish exam which will be used as an assessment for lawyers who wish to be added to a newly established list of suitably qualified Solicitors and

Barristers known as the ‘Irish Language Register (Law Society)’ and ‘Irish Language Register (Kings Inns)’ respectively. This register is to be made available for public inspection. The Act suggests that the website of the Law Society and the Bar Council as the appropriate fora. Such a development will allow members of the public who seek to engage an Irish speaking Solicitor to select their representatives in a direct and clear manner.

Similarly, when a Solicitor is seeking to instruct an Irish speaking Barrister there will be a ready made list of capable candidates available to them. At present word of mouth is the primary manner whereby a potential client can seek to engage the services of Solicitors who are competent to carry out their duties through the medium of Irish. A duty imposed upon the Law Society and the Kings Inns by the Act to prepare an annual progress report of the new arrangements for the Minister for Justice, Equality and Law Reform offers some insurance against the danger of new arrangements deteriorating in a similar manner to the previous compulsory system. Although it should be noted that there were undertakings and similar provisions contained in the 1929 legislation, albeit not as strongly worded.

The new arrangements are to be welcomed and are a good start for all those concerned with the use of the Irish language by legal professionals. One can only imagine that when the previous requirements were framed in 1929 they were intended to have a lasting and positive effect. The key challenge for the new arrangements is to maintain the momentum. In this regard it is very encouraging

to see the innovative and thorough approach adopted by the Law Society and by its Law School. A modern interactive course compiled with the assistance of experience personnel and authoritative bodies such as Rannóg An Aistriúcháin has already been launched by the Law Society of Ireland and Kings Inns. The recent arrival of the Continuing Professional Development scheme to the legal professions presents a glorious opportunity for Solicitors and Barristers to continue to stay abreast of developments in what is an ever evolving legal and linguistic environment. By insisting that practicing legal professionals undertake a certain minimum number of hours training each year an opportunity and a readymade captive audience exists for Irish language training to be provided to Solicitors who are already qualified. Courses such as the CPD Certificate in Legal Irish which has been prepared in recent times by the Law Society will play a key role in creating a culture of Irish language in the professions. When the concept of governmentality is applied to this particular element it could be argued that the State is trying to shape a legal profession where a certain percentage of the lawyers can provide legal services through the medium of Irish but where all lawyers understand the legitimacy of the demands of those who demand such services.

7.3 Judiciary

The issue of judicial training in the broadest sense without a particular reference to the Irish language has been a problematic and difficult topic for the State to deal with over a number of years. Although Ireland established a Judicial Appointments Advisory Board pursuant to Part IV of the Court and Court

Officers Act, 1995 there is little doubt that all judicial appointments in Ireland are political. As per Section 16 of the Act those eligible lawyers who are seeking appointment to the judiciary must put forward their name to the Judicial Appointments Advisory Board when a vacancy arises. The Board must then submit to the Minister a shortlist of seven eligible candidates whom they consider suitable for appointment. As per Section 16(6) the Minister and the Government are not, however, obliged to appoint from the list provided by the Board rather they must merely consider the seven candidates suggested by the Board first. There is nothing in the legislation to which prohibits the Government from ignoring the seven names suggested by the Board and proceeding with their own appointment regardless. While the Irish judiciary are essentially government appointees but once they take office the judiciary function with a carefully guarded independence. Regulation of the judiciary at any level has proven difficult with the Executive wing of the government always acting cautiously for fear of offending the strict separation of powers doctrine in place in Ireland. Different to many other jurisdictions, only those who are qualified lawyers of at least ten years standing are eligible for appointment to all levels of the judiciary in Ireland⁵¹⁴.

In theory all lawyers were competent to carry out their duties in Irish by virtue of having passed the Irish language exams as required by the Legal Practitioners Act, 1929. As was noted above passing such an exam cannot be said to be a fair or accurate indication of a member of the judiciary's ability to administer justice

⁵¹⁴ For a number of years entry into the high levels of the judiciary was reserved for Barristers only however both Barristers and Solicitors can now be appointed to all levels of the judiciary.

through the medium of Irish. In the same manner as Barristers and Solicitors members of the judiciary who are capable of conducting their professional duties through the medium of Irish do so because they have independently attained a sufficient level of Irish prior to their appointment to the judiciary. Given that the appointment of Judges with a sufficient level of Irish is dependent on there being a sufficient pool of Barristers and Solicitors, with sufficient Irish, the flaws apparent in the Irish language training provided to legal practitioners are carried through as flaws in the judiciary.

Such flaws have manifested themselves as the significant delays seen in the administration of justice in the cases discussed in Chapter 2 and 3. An additional and significant hurdle faced by the judiciary are the provisions of Section 71 of the Courts of Justice Act, 1924 which provides:

“So far as may be practicable having regard to all relevant circumstances the Justice of the District Court assigned to a District which includes an area where the Irish language is in general use shall possess such a knowledge of the Irish language as would enable him to dispense with the assistance of an interpreter when evidence is given in that language.”

S. 71 thus contemplates that a pool of Irish speaking Judges would not only be available but would be appointed to the Irish speaking areas of the State but in 1924 there were no provisions whatsoever for the training of such Judges nor is there today and the legislation remains in force. The legislature imposes a duty upon the Government who appoint the judiciary without providing for any means by which such members of the judiciary would obtain Irish language legal skills sufficient so as enable them to carry out their duties. By contrast in Canada extensive programmes are provided for members of the judiciary who either have

no French or English or those Judges who have a good understanding of the everyday language but lack the precise legal register required to administer justice through that language, training can include living with a Francophone family for three months to help the Judge become more sensitive to language issues⁵¹⁵.

8. *Gardaí*

The policing force in Ireland is known as An Garda Síochána [The Guardians of the Peace] which was established by the Garda Síochána (Temporary Provisions) Act, 1923 and the Garda Síochána Act, 1924. Prior to independence Ireland was policed by the Royal Irish Constabulary⁵¹⁶ which had no formal Irish language training or remit. The force was, however, broadly representative of Irish society and as a result many members of the force would have had knowledge of the Irish language in their private capacity. Upon independence the RIC was disbanded and replaced with the Civil Guard which in turn was renamed the Garda Síochána by the 1923 Act. During the initial years of the Force there was little consideration given to the Irish language training of Gardaí as most of the attention of the force was focused on establishment and taking over the role previously played by the RIC. In 1924 there was recognition that there would be a demand and a requirement that Gardaí in certain areas of the country would need to be able to carry out at least part of their duties through the medium of Irish. In Section 6(2) of the Garda Síochána Act, 1924 the legislator provided

⁵¹⁵ “Bilingual Law Making and Justice – A report on the lesson for Wales from the Canadian experience of bilingualism” (National Assembly for Wales, Cardiff, 1999) at p. 14

⁵¹⁶ Here in after the RIC

that where possible Irish speaking Gardaí should be appointed to districts with Irish speaking areas so as to “enable them to use it with facility as a medium of communication in the performance of their duties” . In a manner similar to the requirements placed upon Judges and lawyers there was little provision for training of Gardaí through the medium of Irish in the early years and it was normally the case that the only Gardaí who had knowledge of the Irish language were those Gardaí who had acquired fluency independent of Garda training.

The Garda Síochána published little literature in relation to the Irish language training regime in place in the first 40 years of the force and particularly in the early years of the force placed a blanket ban on the publishing of memoirs by former members of the Force. There is a detailed description of what is claimed to be a fictional account of the Garda training, with a particular focus on the Irish language training written by a former member of the Garda Síochána. Padraig Ua Maoileoin published the *De Réir Uimhreacha*⁵¹⁷ [By Numbers] in 1969 after he had retired as a member of an Garda Síochána. The author himself never referred to the work as a novel⁵¹⁸ however, the book won a literary award for best novel at the *Oireachtas*⁵¹⁹ and was listed in Prof Alan Titley’s research publication *An t-Úrscéal Gaeilge*⁵²⁰ as a novel. It is submitted that by virtue of the fact that this account was claimed to be fictional and written in the Irish language it was able to evade the strict censorship regime in place in the Garda Síochána and can be accepted as an accurate insight into the early years of Garda Irish language

⁵¹⁷ Ua Maolóin, P. “De Réir Uimhreacha” [Translation “By Numbers”] (Muintir na Dúna, Baile Átha Cliath, 1969)

⁵¹⁸ http://www.litriocht.com/shop/product_info.php?products_id=847

⁵¹⁹ A bi-annual Irish language convention/gathering which encompasses many elements including literary and other arts based awards, similar to the Welsh Eisteddfod. No connection with the state legislature which is also known as the Oireachtas.

⁵²⁰ Titley, A. “An t-Úrscéal Gaeilge” [Translation “The Irish language Novel] (Clóchomhar, Baile Átha Cliath, 2002)

training. The text details the experiences of *Complacht a Cúig* [Company Five] a new intake of recruits who had their Garda training exclusively through the medium of Irish from 1933 onwards⁵²¹. Prior to this time, although there was some Irish language training provided to Gardaí, the training was not considered sufficient to enable a Garda to carry out his or her duties through the medium of Irish. In addition, in the early years of the force, political factors relating to the Irish War of Independence and the Irish Civil War meant that recruitment to the force came predominantly from geographic regions where the Irish language would not have been as present and as visible in everyday life as it would be in Gaeltacht regions for example⁵²². As a result, many of the recruits lacked a strong foundation of Irish upon entry into the force and subsequently never developed their Irish language skills as part of the Garda training. In 1933 Eamon Broy, a former member of the RIC and an IRA double agent who passed much intelligence to Michael Collins' intelligence unit during the War of Independence, was appointed the new Garda Commissioner by the incoming Fianna Fáil government. Broy set about the "*Gaelú*" ["Gaelification"]⁵²³ of the force, which up until that point had not given its full attention to the Irish language. Broy established *Complacht a Cúig* and commenced a targeted recruitment process to ensure that a certain percentage of new recruits would have fluent Irish and gathered a sufficient number of Irish speakers already present within the force to help train the recruits through the medium of Irish. Concurrently Broy increased the Irish language training and demands made of all recruits. Although Broy's new recruits were mockingly referred to as "Fianna

⁵²¹ Ua Maolóin, P. "De Réir Uimhreacha" [Translation "By Numbers"] (Muintir na Dúna, Baile Átha Cliath, 1969) at p. 4

⁵²² Ibid at p. 6

⁵²³ Ibid at p. 25

Failures⁵²⁴, the changes brought about by Broy helped to bring about a change in attitude within the force. *Complacht a Cúig* continued in existence for a number of years and was instrumental in bringing about a level of linguistic awareness within the force even though Irish speaking recruits ceased to be trained separately sometime in the 1960s. From 1933 through until 2005 all members of an Garda Síochána were required to have a certain (albeit relatively low) level of Irish prior to their entry into the force. The level of Irish demanded by recruits was first publically codified in 1988 in the Garda Síochána (Admissions and Appointments) Regulations, 1988⁵²⁵. Upon entry every recruit took a module of Irish language training and those Gardaí who had a particular aptitude were generally appointed to areas of the country where Irish was most widely spoken⁵²⁶. Whilst this approach in the main has resulted in the Garda Síochána being able to deliver a service through the medium of Irish in Gaeltacht regions as we have seen in Chapters 2 and 3 the Irish language obligations extend to every part of the jurisdiction, not just to the Gaeltacht regions. Indeed based on the most recent census data there is a noticeable shift in the demographics of Irish speakers with the majority of daily Irish speakers now residing outside the Gaeltacht and primarily in urban centres such as Cork, Limerick, Galway and Dublin⁵²⁷.

Since the passing of the of the Garda Síochána (Admissions and Appointments) (Amendment) Regulations, 2005 trainee Gardaí are no longer required to have a

⁵²⁴ Ibid at p. 5

⁵²⁵ SI 164 of 1988

⁵²⁶ A sample of the Garda Training text book used is attached as an Annex H to this work

⁵²⁷ 2011 Irish Census data available at

<http://www.cso.ie/en/media/csoie/census/documents/census2011pdr/Pdf%208%20Tables.pdf>

prior knowledge of the Irish language. A particular effect of the change in the regulation was to allow ethnic minorities to undertake Garda training, with a certain level of Irish being provided to all recruits upon entry to the Garda training course. While there were no attempts made to prohibit entry by any sector of the community to An Garda Síochána the Irish language requirement served as a practical barrier to entry to those minorities who had not had primary education in Ireland (the Chinese community in particular) or other groups such as those educated in State schools in Northern Ireland where Irish may not have been an option.

All Gardaí, regardless of their linguistic competence must undertake significant hours of Irish language training with a minimum of sixty three formal hours of instruction in Irish being demanded of each recruit⁵²⁸. Given that the recruits have varying levels of understanding of the Irish language, provision is currently made for beginners' classes. Those recruits who possess a good foundation in Irish upon entry are given more advanced Irish language training⁵²⁹. In addition, the Garda training college runs an Irish language development unit which provides continuing professional development training, specialist Irish language training, and seeks to increase language awareness within the force more generally⁵³⁰. Further details outside of the officially released information concerning the role of the Gardaí in the area of Irish language training is extremely difficult to obtain. The Garda rules and disciplinary code known simply as the Garda Code expressly forbids Gardaí to provide details to any party concerning any aspect of their training. Indeed publication of the Garda Code

⁵²⁸ An Garda Síochána Training and Development Group Report, 2009 at p. 363

⁵²⁹ Ibid at p. 187

⁵³⁰ <http://www.garda.ie/Controller.aspx?Page=183&Lang=1>

itself is restricted and not available to anybody outside the force. As a result, in a similar manner to the Judiciary, official face to face interviews with Gardaí concerning their training was not possible however a number of Gardaí were happy to speak generally about their experiences and offer some guidance. One member also provided a copy of the Garda Irish language training manual anonymously which is attached to this work as an Annex.

Although generally the Gardaí have been able to provide a reasonable level of service in the Irish language (whereby most Garda business in the Gaeltacht is conducted through the medium of Irish and even in non-Gaeltacht regions Gardaí are usually able to supply a full service in Irish upon request) the regime in place is once again mainly thanks to the level of Irish that recruits have upon entry to the force. Differently to the legal professionals and judiciary the Gardaí have historically taken particular proactive steps towards training which have sought either to build on the language competency a particular Garda or recruit already possesses or at the very least give members of the force an understanding of the demand for bilingual policing.

9. Conclusion

The 20 Year Strategy for the Irish Government published in 2010, places a particular focus on the importance of a strong role being played by providers of higher education if the Irish language is to survive and indeed thrive⁵³¹. The strategy itself places particular emphasis on the role of higher education in providing sufficient resources so as to enable Irish to be viable as an Official EU

⁵³¹ 20 Year Strategy for the Irish Language (2010, Dublin, Government of Ireland) at p. 15

language. Within the formal third level education system in Ireland the development of a number of focused programmes would appear to be well placed to serve the demands of the niche areas of demand for Irish language services however the provision of such courses is dependent upon continued State support in the form of funding through initiatives such as the HEA Advanced Irish Skills Initiative and State support for the Irish language more generally. Vocational, professional and practical training in Ireland has not benefitted from as structured an approach however, to the extent the training does exist, often such training builds upon the Irish language education provided at University level. The development of Irish language training for the various professionals required by the legal system has come about in an ad-hoc manner and developing at a different pace for the varying services. Training for lawyers, judges and gardaí have to varying degrees undergone some positive developments in recent times while training for lawyer linguists and legal translators is very much in its infancy. Training for court room interpreters in the Irish language remains lacking.

Modern legal education and the Irish language have made significant progress in a relatively short time span, particularly in response to the developments and changing situation examined in Chapters 2 and 3. There are many challenges and opportunities which will test the present system. It is submitted that the systems which are now in place and developing coupled with a willingness to respond to a changing environment will enable legal education through the medium of Irish to rise to these challenges. Such changes will have a profound effect on Irish language legal education and more generally the provision of language equality.

Without an effective system of legal education, in a broad and wide ranging sense, the rights and duties examined in Chapters 2 and 3 would essentially be rendered useless. There is little point in having a right, never mind a “*double right*”, to use the Irish language before the Courts if a party to an action cannot engage with the State through the medium of Irish, have the necessary documents available in the first official language, hire a competent lawyer to take their action, or have a Judge and Jury hear the case (with or without the assistance of an interpreter). All of these elements are vital components of a legal system which, by law, has to treat two languages at least on the basis of equality. Lady Justice may be blindfolded to ensure impartiality and objectivity, to render her mute and deaf however would render her irrelevant.

Chapter 6:- Conclusion

The question posed in the introduction to this thesis was essentially what role does the Irish language play within the Irish legal system and how has that role developed over time. More pointedly research was carried out into the extent to which the right to use Irish before the Courts has developed and adapted over time and how the linguistic reality, international obligations and training infrastructure have affected this development. In order to answer these questions four key areas were identified as those which most dramatically affect the extent to which the Irish language is used within the legal system. Due to the nature of this work as research with elements of socio-linguistics, history and primarily legal research a brief prologue which provided the necessary context and then further context and background was provided in the discussion on the four key areas identified. The prologue provided an overview of the historic and linguistic position of the Irish language together with a short description of some of the important legal circumstances at play in Ireland which are required in order that the detailed analysis provided in later chapters would be understood within its own legal context. Following this each of the areas identified was considered in turn with the reasoning behind the selection of each of the key areas of discussion being offered in each chapter. Such research, focusing on the Irish language in the legal system of Ireland since independence with a particular focus on the right of access to justice has not been subject to examination heretofore and as such constitutes an original contribution.

Following the general background provided by the prologue Chapter 2 considered the implications for the Irish language as a result of the constitutional recognition granted to the Irish language by the Irish Constitution. In doing so an analysis was required not only of the text of the 1937 Constitution but also the text of the 1922 Constitution of the Irish Free State and the resulting case law which interpreted the provisions of the Constitutions which concerned the Irish language. The case law which developed overtime was considered in chronological order from 1922 through to 2003. Primarily such cases concerned citizens seeking access to services of the State through the medium of Irish in addition to a number of other language rights such as the right of access to justice through the medium of Irish. Interpreting the challenges faced by citizens from 1922 onwards but also recognising 2003 as the “high water mark of language rights in Ireland” due to implications of the *Ó Beoláin* decision and the enacting of the Official Languages Act, 2003 allows for consideration of the future development of the law.

The interpretations of the effect of decisions taken from 2003 onwards on the shape and development of Irish language rights provided a clearer picture of the real life experience of an Irish-speaking litigant. Chapter 3 was primarily focused on the case law arising from citizens who sought to build upon the advancement in language rights identified since 2003 and when taken together with the issues identified in Chapter 5 create a difficult environment.

Chapter 5 builds upon the work of Chapters 2 and 3 in focusing on the provision of legal education and legal training which has been identified as a barrier to access of right on many occasions within the case law established in the area of language rights and access to justice through the medium of Irish in Ireland while

also taking into account the international dimension established in Chapter 4. Chapter 5 takes a wide view of legal education so as to encompass training of all actors within the legal system including lawyers, judges, police, interpreters, legal translators and civil servants generally. The significant delays which are a trend in Irish language cases relate often to the lack of legal training and the lack of support services through the medium of Irish. The successful training provided in this area and areas where the lack of suitable training caused significant problems for those who seek access to justice through the medium of Irish were identified. This research has interpreted these various issues as key inhibiting factors to Irish speakers seeking access to justice through the medium of Irish. Any such Irish-speaker will face challenges in areas such as; asserting their right to have documentation provided to them in Irish; obtaining a timely hearing in Irish from an Irish-speaking Judge; appointing counsel capable of representing them through Irish; dealing with the State through Irish and having proceedings accurately translated/interpreted in Irish. Justice delayed being justice denied is apparent as a trend in the Irish language context and it is difficult to imagine such barriers or delays being tolerated under any other circumstance in the Irish legal system.

It is accepted that looking at the legal context in which the Irish language finds itself carries with it certain limitations. The law concerning the Irish language and the status it affords to the language is merely an expressions of the State's will and should not be considered exclusively a means to an end in of itself. Important factors such as the linguistic reality of the Irish language, political will, cost implications and wider supports all contribute to various extents the role the

law has in relation to the language. As identified in Chapter 2 many of these factors were acknowledged in the minority judgment in *Ó Beoláin*. It is also accepted that issues such as the status of Gaeltacht and the role of language planning within the Gaeltacht are not considered within this work due to the legal system making very little provision for the Gaeltacht. It is acknowledged that there is potential for future research in the area of language laws and their effect on the Gaeltacht in a broader sense.

Throughout this thesis the status of the Irish language, as granted by Article 8 of the Irish Constitution and other legal instruments, as the first official language and as the national language has been the key factor. While the very recognition of the language as an official language allows for parties in legal actions to use the language, to allow the language a position in the official life of everyday Ireland the status also speaks to much more. If we apply the theory of governmentality to the theoretic status of the Irish language and the Irish State's attempts to model its citizenry accordingly in theory one is presented with a vision of a bilingual Ireland whereby Irish is the first language of the citizens, taught throughout the country in schools and at the very least of equal status to the English language in every official sense. In reality however we are faced with a situation whereby the rhetoric of the Constitution is not matched by the State's commitment to the Irish language in almost every aspect of Irish life. While every citizen should in theory be able to avail of every service that is available in English equally through the medium of Irish, in reality Irish services are available sporadically. The very fact that the body of case law which was examined in Chapters 2 and 3 exists stands as testimony to the real status of the

Irish language in Ireland, which it is submitted is a language which is treated as a 2nd official language of a small minority and of symbolic importance. As was noted by Roddick “A minority language which depends on the whim and the priorities of government and of the executive and on concessions rather than on equal rights for its status enjoys only a permissive status.”⁵³² It is submitted that this is very much the case with regards to Irish. The notion of equality does not, of course, dictate that every language should be treated the same, nor perhaps is there a justification for such a step given the real linguistic situation.

The Irish language, without doubt, is a minority language within Ireland and it is further complicated by the reality that virtually every speaker of the Irish language is also capable of speaking Ireland’s other language (English). It is submitted that the legal status and the linguistic reality are very far removed from each other. Certain steps taken by various parties within the sphere of action of the legal system have created further issues. The State, through its policies, and the judiciary through the interpreting of laws and competing claims of various citizens attempting to assert Irish language rights have sought to address the imbalance between the theoretic status of the Irish language and the linguistic reality. In doing so it is submitted their approach is deeply flawed and results in examples of poor decision making, bad policy and at best misstatements of the law. On the occasions (*Ó Beoláin* decision and the 2003 Act in particular) where the legal status of the Irish language has caused the State to react, the State did,

⁵³² Roddick, Winston CB QC “One Nation – Two Voices? The Welsh Language in the Governance of Wales in Language and Governance, Williams, Colin H Ed. (University of Wales Press, Cardiff, 2007) at p. 267

for a limited time, manage to treat the language on a basis of full equality reflective of its theoretic status however much of this progress has been rowed back upon in more recent times.

As analysed in Chapter 2, Mr Justice Geoghegan commented in the *Ó Beoláin*⁵³³ decision not every law is supposed to have full legal meaning and that many laws can reflect merely the aspirations and emotions of the people who have enacted it rather than being a sign that the citizens intend for such an enactment to carry the full force of the law. It is submitted that in the case of the Irish language it is clear that the language is of huge sentimental and symbolic importance to the Irish people for many historic reasons. Arising from the research it is clear that a number of inconsistencies do arise in the context of the attitudes of the Irish people towards the language as evidenced by factors such the latest census figures which show a disconnect between the number of people claiming to speak Irish and the actual number of daily and weekly Irish speakers. There was for example widespread support for the campaign to have Irish recognised as an official EU language and the popularity of Irish language media remains strong despite the relatively low number of functional Irish speakers. A problem identified by the research arises when a legal system seeks to differentiate between the laws which should enjoy the force of law and those which should not by virtue of being only emotional or symbolic statements. Such an approach is extremely undesirable as it would place the decisions concerning issues and policy, such as language policy, in the hands of the unelected judiciary and would be contrary to the notion of the separation of powers enshrined in the Irish Constitution.

⁵³³ [2001] 21 IR 279

From the analysis conducted it is apparent that the Irish language is at a linguistic and policy crossroads. While the Irish Government has the expressed stated goal of increasing the number of Irish speakers⁵³⁴ their ability to do so and to support these speakers through the infrastructure of the State such as the legal system is questionable. The case law, international obligations and the training regimes available all point to the Irish legal system in particular struggling to meet the already limited demand for services through the medium of Irish. The current law, as developed by the narrowly construed decisions of the Courts suggests an uneasy compromise has been arrived at. This compromise seeks to balance the status as confirmed by the double right principle examined in Chapter 2 with the symbolic approach put forward in the minority judgment in *Ó Beoláin* and the narrow construction as seen in Chapter 3. This compromise thus informs the training regimes and international obligations of the State resulting in a haphazard and *ad hoc* provision at law for Irish speakers. It is entirely undesirable that any laws should arrive at such a juncture.

It is contended that the most desirable and effective approach to issues concerning the Irish language would be law reform, which would require a constitutional amendment. At present the constitutional position afforded to the language takes no account of the actual linguistic reality nor does it effectively serve to safeguard those seeking to assert Irish language rights. The Constitution fails to reflect the linguistic reality of the Irish language as a minority language and as a result the scope for development of language rights is extremely

⁵³⁴ 20-Year Strategy for the Irish Language 2010-2030 – Government of Ireland. Available at www.ahg.ie/publications At p. 3

restricted. Ireland could not, for example, sign the European Charter on Regional and Minority Languages by virtue of the fact that the Irish language is recognised as the first official language of Ireland. Furthermore the complete disparity between the linguistic reality and the legal status allows for the State and the judiciary to dismiss the legal status as not being fully reflective of the reality. At the same time there is almost a total reliance on Article 8 for the recognition of language rights. In the absence of any amendment there exists little scope for any future development of language rights for Irish as a language of a linguistic minority. The term minority language can be difficult as it lacks a precise agreed definition, Nic Craith⁵³⁵ for example, points out that term is quite misleading. For example, Danish is not considered a minority language due to its status as the established language of Denmark while Catalan is considered a minority language despite Catalan having a higher number of speakers. The European Bureau of Lesser Used Languages offer the most satisfactory definition of a minority language namely “a language which, as a result of its structures, its sounds, its words, its characters and its history, differs and is distinguished from the dominant language of a State and is spoken and/or written within a certain territory, by a smaller number of persons”⁵³⁶. Such a definition recognises that one language can be dominant in a particular jurisdiction without the need to prescribe one language or another as the first or second official language.

⁵³⁵ Nic Craith, Mairéad ‘Rethinking Language Policies: Challenges and Opportunities’ in *Language and Governance*, Williams, Colin H Ed. (University of Wales Press, Cardiff, 2007) at p. 163

⁵³⁶ “European Bureau of Lesser Used Languages -Key Words: A Step into the World of Lesser Used Languages” (EBLUL, Dublin, 1995), at p. 37

It is submitted that the international experience examined in Chapter 4 provides some guidance for possible future law reform in Ireland. The UN Universal Declaration on Linguistic Rights⁵³⁷ declares in Article 5 that every language should be treated on a basis of equality regardless of their legal or political status while also recognising in Article 2.2:

“In the quest for a satisfactory sociolinguistic balance, that is, in order to establish the appropriate articulation between the respective rights of such language communities and groups and the persons belonging to them, various factors, besides their respective historical antecedents in the territory and their democratically expressed will, must be taken into account.”

This was further developed in the Irish context the Constitutional Review Group⁵³⁸ suggested in 1996 that Irish and English be placed in a position of equality, effectively removing the reference to Irish as the first official language. The CRG also recommended that a new article be added which would recognise more accurately the linguistic situation in Ireland. It was proposed that this would read “Because the Irish language is a unique expression of Irish tradition and culture, the State shall take special care to nurture the language and to increase its use.”⁵³⁹ Such a proposed text would essentially not alter the legal status currently enjoyed by the Irish language but would better allow for positive discrimination towards the language and serve to focus Irish language policy. The judicial difficulty in attaching any beneficial legal meaning to the status of

⁵³⁷ <http://www.unesco.org/cpp/uk/declarations/linguistic.pdf>

⁵³⁸ Report of the Constitutional Review Group (*hereinafter CRG*) (1997, Rialtas na hÉireann, Baile Átha Cliath) at p.10 available at <http://www.constitution.ie/reports/crg.pdf> - the recommendations have not been acted upon thus far. The report was not binding in nature and it is unlikely that any of the recommendation will be acted upon in the near future. The CRG report does, however, often provide a useful starting point for legal debates concerning future reform of the Irish Constitution.

⁵³⁹ *Ibid* at p. 11

the Irish language as the first official language, as examined in Chapters 2 and 3, means that the removal of this term is unlikely to have any legal consequence. While it is not submitted that a constitutional amendment alone would help satisfy the demands of those looking to assert language rights the wider debate as part of such an amendment process would serve to refocus the formation of language policy. Such an opportunity could also serve to refocus the legal position of the Irish language with due recognition towards the actual linguistic situation so as to recognise the social linguistic reality rather than the State and even the judiciary disconnecting from the legal realities on foot of the dissonance *vis-à-vis* the linguistic reality. It is submitted that such an amendment as proposed by the CRG, while not expressly using the term minority, deals sensitively with the linguistic situation and the symbolic place in which the Irish language finds itself in the hearts and minds of the Irish people. The Constitutional Convention announced by the Irish Government⁵⁴⁰ to review and update the Constitution would prove a perfect vehicle to accomplish such change in a carefully thought out and representative manner.

⁵⁴⁰ <http://www.merriionstreet.ie/index.php/2012/02/constitutional-convention-government-proposals-28-february-2012/>

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Annexes

The Following documents are appended to the thesis in the form of Annexes:

Annex A – Interview transcript with Diarmaid Ó Catháin, Solicitor

Annex B – Case note of Unreported Judgment in Ruairi Mac Carthaigh application for simultaneous translation

Annex C – List of Placement Partners for the 3rd Year on the BCL (Law and Irish) Degree Programme

Annex D – Module description of LW1158 Dlí Bunreachtúil module as delivered on the BCL (Law and Irish)

Annex E – Sample notes given to students from the above LW1158 Dlí Bunreachtúil module

Annex F – Report Meeting of Law and Irish Placement Partners at Degree Review

Annex G – Legal Education Questionnaire conducted among BCL (Law and Irish) students at UCC

Annex H – Excerpts from Irish Language Training textbook for Gardaí

Annex A

Transcript of Interview with Diarmaid Ó Catháin, Solicitor, Cork;

Questions by Seán Ó Conaill in italic print, responses by Diarmaid Ó Catháin in standard print. The Interview was conducted through the medium of Irish. English translation below.

Tá tú sásta do chead a thabhairt go bhfuil an inneall seo ag taifead an comhrá?

Sea táim.

Ar dtús, an Gaeilge atá agat féin bhí sé agat ó dhúchas?

Sea tógadh mé...labhraíomar an dhá theanga sa bhaile

Agus bhí sé agat roimh duit a bheith i do Aturnae?

Sea

An mbíonn mórán baint agat leis an dteanga i rith cúrsa do chuid oibre?

Tá go leor clínt agam gurbh í an Gaeilge an gnáth teanga a labhraímid leana cheile, nuair a chuireann siad ceist orm. Bhí mé ag plé le clínt ar maidin go raibh ag labhairt Gaeilge liom.

Ceist ginearálta eile, roimh duit teacht isteach sa phroifisiún dlí an raibh fois agat go raibh scrúdú teanga le déanamh agat agus cad é an dearcadh atá agat ar sin?

Sea ach tá sé an fhada ó dhéan mé é, an-an fhada

An raibh mórán measa agat sa scrúdú?

No ní raibh, bhí an leabhar áiféiseach, ní chuimhne liom teideal an leabhar, rud éigin a chuirfeá a choladh, fiú..... an uair sin ní raibh...ní raibh an scrúdú oiriúnach

An fáiltíonn tú roimh na háitrithe ata ag teach, go bhfuileadar ag fáil réidh leis an scrúdú?

Bhuel is dóigh liom ar chuma éigin pé duine a cheap an réiteach go gcaithfeadh gach aon aturnae cúrsa a dhéanamh sa téarmaíocht gur leagadar a mhear ar rud an bhunúsach agus seo é an rud, má séirbhítear cáipéisí as Gaeilge ar dhuine agus má thugann sé iad do a Aturnae agus múna féidir leis an Aturnae iad a léamh ansin an mbíonn sé failíoch múna déan sé aon rud leis na cáipéisí in am an n-éileoidh sé agus an n-éalóidh a chlínt ar an mbonn nach dtuigeadh na cáipéisí agus braitheann sé sin ar deireadh ar cén seasamh a thógann an Chúirt Uachtarach. Chomh fada is go bhfuil riachtanais ann go gcaithfidh na hAturnae eolais a bheith acu ar téarmaíocht ní bheadh an Aturnae in ann a rá níor thuig sé agus ceapaim go bhfuil bun rudaí mar sin tábhachtach chun búnstádas na Gaeilge a choimeád, ar a laghad mar theanga oifigiúil ar co-chéim múna aithnítear í mar a aithníonn an Bunreacht.

An dóigh leat go bhfuil an Law Society failíoch ó thaobh rudaí ar nós CPD, nach bhfuileadar ag cur a dhóthain rudaí ar fáil do Aturnae cosúil leatsa nó dos na printísigh?

Braitheann sé is dócha ar an áit óna dtosaíonn tú mar a déarfá, féachann an Dlí Chumainn mar a féachana na ceantálaithe agus na bainc agus gach aon aicme gnó eile, féachann said ón éileamh ón phobail. Féachann an Gaeilgeoir ar an seasamh oifigiúil go mba ceart go mbeadh ag an nGaeilge, féachann sé chomh maith ar na céimeanna go mba ceart a thabhairt chun stádas agus úsáid na Gaeilge a threisiú. Dár leis an dlí chumainn is dócha nach cás leo treisiú stádas na Gaeilge ach...ach...áiseanna a chuir ar fháil dá mbaill agus is beag é an t-éileamh ón bpobail ar úsáid na Gaeilge sna cúirteanna cé go bhfuil sé feabhsaithe le cúpla bhliain.

An dóigh leat go raibh aon éifeacht ar sin ag Acht na dTeangacha Oifigiúla 2003?

Cinnté, thug sé misneach éigin do dhaoine

An dóigh leat go raibh an ceart ag Hardiman i gcás Uí Bheoláin go gcaithfeá.....?

Sea....go gcaithfeá muineál dochreidte a bheith agat chun cás a rith trí Gaeilge....bhí an ceart ar fad aige, bhíos a rá san go minic. D'éirigh mé féin as a bheith ag troid leis an stát fiacha bhliain ó shin agus is Aturnae gairmiúil mé! Bhrisidís do chroí! Ní dhéanfaidh mé anois é ach i gcás tábhacht, i gcás rud

éigin bunúsach déanfaidh mé troid leis an Stát ach sna gnáth rudaí laethúil d'éirigh mé as fadó. Bhrisidís do chroí! Ar a laghad leis an Acht nua tá stádas níos oifigiúla ach roimh sin chuirfí ó dhoras tú, timpeall timpeall timpeall. Tá sé cosúil le bheith ag déileáil le haon dream ón Stáit seirbhís, muna teastaíonn uathu labhairt leat cuireann siad mar a deirtear sa Bhéarla “the buggeration factor” i bhfeidhm...”you bugger off”. Ní gheobhaidh tú freagra, ní tharlaíonn aon rud. Chaithfeá a bheith díreach mar a dúirt Hardiman...ní chuimhne liom na focail cuí...ach go gcaithfeá misneach a bheith agat.....

****Cuireadh stop leis an gcomhrá ar feadh nóiméad ag an bpointe seo toisc go raibh cnag ar an ndoras****

Dá mba rud é gur tháinig clínt chugat ar maidin agus bhí sé ag iarraidh dul ar aghaidh trí Ghaeilge an dtabharfá an comhairle do b'fhearr duit dul ar aghaidh trí bhéarla?

Oh No, sin rud nach dhéanfainn go deo. Ní déarfainn aon rud leis, thógainn an cás agus dhéanfainn mo dhícheall. Tá sé déanta agam.

Ní dóigh leat go mbeadh an clínt seo faoi míbhuntáiste dul ar aghaidh trí Ghaeilge?

Chaitheá a bheith an-...mar a bheadh gabhar ag iarraidh...dreapadóireacht ar chnoc chaitheá a bheith an-chúramach cá chuireann tú do chosa agus tú ag tógaint cás trí Ghaeilge. San Ard-Chúirt is fusa é anois, agus ón méid a feicimse sna paipírí is dócha go cosúil go mbíonn rudaí Gaeilge a lua gach aon seachtain nó mar sin de agus ...I'd say...go bhfuil córas réasúnta snasta i bhfeidhm san Ard Chúirt maidir le cás as Gaeilge ach ní h-ionainn an Chúirt Chuarda agus an Chúirt Dúiche. Ní hé sin go bhfaighim lucht orthu ach ...just ...tá an rud ar fad san Ard Chúirt. Tá sé lárnaithe in aon oifig amháin. Sna cúirteanna Dúiche tá na hoifigí scaipthe ar fud na tíre agus tá seans ann nach dtiocfaidh rud éigin as Gaeilge chucu ach uair sa bhliain.

An dóigh leat, agus tuigim go gcaithfidh tú a bheith cúramach, go bhfuil soláthair Breitheamh cuí ann? Breitheamh go bhfuil Gaeilge acu? Má tharlaíonn mar shampla go mbíonn cás agat i gCorcaigh go mbíonn ort dul go Baile Átha Cliath toisc nach bhfuil Breitheamh i gCorcaigh?

Ní dóigh liomsa go mba ceart go mbeadh aon fadhb ann...ach go dtabharfadh na polaiteoirí dóthain airde... agus go leagfaí amach córas...mar shampla sin é an rud atá déanta ag an Acht nua, go bhfuil sé tar éis rudaí a leagann amach go soiléir. Cheapeas féin le fada gur cheart go mbeadh sé furasta mar shampla oifig a bhunú agus a shocrú leis an Roinn Dlí agus Chirt go mbeadh Breitheamh Cúirt Chuarda agus clártheoir aige agus Breitheamh Dúiche agus cléireach aige ainmnithe agus ceapaithe le cásanna as Gaeilge a éisteach agus dá mbeadh cás agat as Gaeilge is féidir leat glooch a chuir ar an Oifig agus a rá go dteastaíonn an Breitheamh Gaeilge uaim agus go ndéanfaí socrú go dtiocfaidh sé chughat. Ní bheadh aon fadhb ann

Tá córas mar sin i bhfeidhm i gCeanada

Sea, Bheadh sé chomh simplí [in Éirinn] agus dhéanadh sé an rud seo, tabharfaidh sé chomhchéim don dhá theanga agus ciallóidh sé go mbeadh go mbeadh an duine go dteastóidh uathu Gaeilge a úsáid díreach ar chomh chéim le duine go dteastóidh Béarla a úsáid. Bheadh sé chomh furasta sin agus an duine gan Gaeilge bheidís ag dul isteach sa chúirt díreach ar nós an duine gan Béarla. An-fhurasta

An dóigh leat go bhfuil a dhóthain tacaíochta ag teacht ó na eagraíocht Stáit ó thaobh téarmaíochta 7rl a chuir ar fáil?

Tá baint ag na h-eagraíochtaí Stát le rudaí ar nós Dlí Parkinson, féach ar an córas sláinte. An rud a déarfainn ná, chuala mé ón fear a bhunaigh ceann dos na céad Gaelscoil 30 bhliain o shin, ní luafaidh mé a ainm, agus dúirt sé go raibh a chroí briste ag na ranna Stáit ach mar sin féin nach bhfuairadar ach deá tholl ó 90% dos na Stát Séirbhísí ach pé galar a bhaineann le maorlathas gur mhúch sé an deámhian agus sin é an rud céanna a deirim faoi an córas dlí. Is féidir leat dul chuig aon Tigh Cúirte sa tír buaileann tú go rialta le cláraitheoir agus cléirigh atá an bhagúin ar an Gaeilge. Fiú má bhíonn ainm Gaeilge agat cuireann siad iad féin in aithne, is cuimhne liom lá amháin bhíos san Ard Chúirt i Luimneach agus rud as an gnáthach ar fad ar siúil againn agus ag deireadh chas an cláraitheoir liom féin agus bhí sé ag caint liom ar na trusanna a thug sé go Gaeltacht Chiarraí. Oscailíonn an Ghaeilge doirse duit go minic ach ar chuma éigin múchann an maorlathas é sin agus sin é an rud a dúirt an fear sin go raibh bainteach le na Gaelscoileanna liom freisin. Ní chuirfínn an lucht ar na Stáit Seirbhísigh agus dáiríre an-chuid dos na daoine gur chuir an Ghaeilge thar n-ais in Éireann san áit ina bhfuil sé

anois is Stáit Seirbhísigh iad... is rud eile é Parkinson's laws agus no rudaí eile atá ag feidhmiú sa eagraíocht féin

An mbíonn fadhb agat teacht ar Abhcóidí go bhfuil Gaeilge acu?

Ní hea, tá dóthain díobh ann, uaireanta bíonn ort iad a chuardach ach tá siad ann cinnte.

An bhfuil fadhbanna agat ó thaobh foirmeacha agus rialacha Cúirte a fháil?

Tá sé sin dochreidte deacair. Nósfaidh duit maidir le rialacha na nUas Chúirteanna. Tá sé seo go maith mar scéal. [Fuair an t-usual Ó Cathain leabhar óna leabharlann san oifig] Sin rialacha na nUas Cúirteanna. Ní féidir an leabhar sin a fháil. Níl sé le fail in aon áit. Thóg Aontóin Delap cás dlí toisc nárbh fhéidir leis freastal ar a chlínt gan na rialacha se. Léigh mé faoin gcás agus is maith liom féin leabhar... an té go mbíonn an leabhar aige bíonn an léinn aige mar a deir an seanfhocail agus tá sé sin iomlán fíor sa dlí... tá sean nath ag dlíodóirí, díolann aon cás amháin as leabhar, má bhuann sé an cás tá díolta as... Chuir mé glaoch ar Oifig Foilseacháin an rialtais agus lorg mé Rialacha na nUas Cúirteanna as Gaeilge... ach is dócha go raibh orm Béarla a labhairt leo. 'They're not available' a dúirt sé liom 'But its in the paper' a dúirt mé leis agus ar deireadh cuireadh

mé i dteagmháil le duine in rannóg eile agus mínigh mé an scéal dó. D'iarr sé orm 'what do you want it for' agus mínigh mé gur Aturnae mé 7rl agus go raibh cóip ag teastáil uaim. D'íoc mé £40 as ag cuireadar é chugam agus tháinig sé sin go h-áillínn. Chuireas suas ar an seif é agus níor dheanas aon machnamh air ar feadh cúpla bhliain nuair a bhíos ag labhairt le duine éigin agus dúirt siad liom in ainneoin cás Antóin Delap ní fáil ar na Rialacha na nUas Cúirteanna as Gaeilge, ach dúirt mé leis 'Tá! Tá siad agam'!' agus is ansin a fuaireas amach go ndéanadh something like 10 cóip de bharr cás Delap agus sin é! Ní fáil orthu in aon chur agus fiú sa leagan seo níl na appendices ann, níl ann ach na bun rialacha.

Ní dóigh liom go mba ceart go mbeadh aon fadhb ar na rudaí seo a bheith ar an idirlín.

An bhfuil tú dóchasach go bhfuil níos acmhainní ag teacht ó thaobh an Gaeilge de nach raibh ann 20 bhliain ó shin?

Is Cinnte go bhfuil feabhas ann, an rud is mó a thugann dóchas dom ná méid na gcásanna a feicim ar an liosta san Ard-Chúirt as Gaeilge. Sin é an rud a thugann dóchas dom agus i ndeireadh an lae is rud praiticiúil é an dlí agus múna mbíonn daoine ag déanamh rudaí go rialta dearmadaíonn siad iad

An dóigh leat go bhfuil ról éigin ag an CPD ó thaobh Gaeilge a úsáid go rialta?

Ba cheart cúrsa a bheith ann cinnte. Is maith an smaoineamh é sin. Is minic mé ag labhairt le cóleachaithe go bhfuil go leor Gaeilge acu ach gan puinn taithí acu ar an dlí trí Ghaeilge. Tá an dlí cosúil le aon réimse beatha eile...tá stór áirithe focail a bhaineann

leis an gceard...ach caithfidh an téarmaíocht a bheith agat. Ba cheart CD a chuir ar fáil le faisigh de talamh a n-aistriú, uacht 7r1 . Ní bheadh sé sin deacair. Le é sin agus CPD beadh a lán daoine atá ag cleachta dlí in ann Gaeilge a labhairt agus cabhróidh sé sin leis an éileamh ón bpobal freisin. Le tamaill d'fhás an nós, go h-áirithe sa Ghaeltacht an plé leis an clínt a dhéanamh trí Ghaeilge agus an plé leis an gCúirt a dhéanamh trí bhéarla. Ní theastóidh le clínt aon rud a dhéanamh a lagfaidh a chás féin.

Translated from the Irish version. Irish text the authoritative version

You are happy to give permission for this conversation to be recorded?

Yea I am

Firstly, your own Irish, you have had that from birth?

Yes I was raised...we spoke both languages at home.

So you had Irish before becoming a solicitor?

Yes

Do you have many dealings with the language during the course of your work?

I have many clients who I normally talk to in Irish when they ask me questions. I was dealing with a client this morning who spoke Irish to me.

Another general question, before you entered the legal profession were you aware that there was a language test to complete and what was your opinion of it?

Yes but it is a very long time since I did it, very very long time.

Did you have faith in the exam?

No I did not. The book was regrettable, I cannot recall the title but something that would put you to sleep, even then...the exam...it was not suitable.

Do you welcome the impending changes, that they are doing away with the exam?

Well I think somehow whoever came up with the solution that every solicitor should do a course in terminology put their finger on a very basic thing and this is it; if somebody is served a document in Irish and if he gives them to his solicitor and if his solicitor cannot read them is he liable if he does not do anything with the documents in time, would he escape and would his client escape on the grounds that the documents were not understood and that would depend on which view the Supreme Court took. So long as there is a requirement that solicitors have to have a knowledge of terminology no solicitor could say that that he did not understand and I think that such basic things like that are important to keep the basic status of Irish language as at least an official language with equal status even if it is not recognised in the manner that the constitution recognises it.

Do you think that the Law Society have failed in the duties in such matters and things like CPD, that they are making putting sufficient things available to Solicitors like yourself and apprentices?

It depends I suppose on where you start from, the Law Society look at things in the same way as chief executives and banks and any other class of business, they look at the demand from the public. The Irish speaker looks at the official status that Irish should have and he also looks at the steps that should be taken to improve the status and the use of Irish. I suppose the Law Society think its not their job to improve the status of Irish but..but...to supply resources to its members and there has not been much demand from the public on the use of Irish in the Courts but it has improved in the last few years.

Do you think the Official Languages Act 2003 had any effect on that?

Certainly, it gave a certain courage to people

Do you think Hardiman J was correct in Ó Beoláin to say that....

Yes...that you'd have to unusual independence of mind and pertinacity to run a case through Irish...he was completely correct, I've said it often. I myself gave up fighting the State twenty years ago and I'm a practising Solicitor! They'd break your heart. I would only do it now in an important case, only in the case of something very basic would I fight the State but in the normal everyday things I gave up long ago. They'd break your heart! At least with the new Act there is a more official status but before that they'd send you from door to door, round and round and round. Its like dealing with any group from the civil service, if they don't want to talk to you they put as they say in English the "buggeration factor" into force..."you bugger off". You will not get an answer, nothing happens. You have to be exactly like what Hardiman said, I cannot recall the exact words but you have to have courage.

The interview was briefly suspended at this point because of a knock at the door

If you were to have a client in the morning who came to you and wanted to take a case in Irish would you advise him that he might be better to do so in English?

Oh no. That is something that I'd never do. I wouldn't say anything to him but take his case and do my best. I've done that.

Do you think that a client would be at a disadvantage going ahead with a case through Irish?

You have to be very careful, like a goat climbing a hill, you have to be very careful as to where you put your feet when you take a case through Irish. In the High Court it is easier now and from what I see in the papers it looks like Irish language issues are mentioned there every week or so...I'd say they have a reasonable polished system in operation in the High Court with regards to cases in Irish but the same cannot be said for the Circuit Court and the District Court. That's not to say that I find fault with them...just...that's it's all in the High Court. It's centralised in one office. With the District Courts the offices are spread all over the country and there is a chance that they might not see something in Irish save for once a year.

Do you think, and I appreciate you have to be careful in what you say, that there is a sufficient provision of Judges there? Judges with Irish? If for example you have a case in Cork do you have to go to Dublin because there is not Judge [with Irish] in Cork?

I do not think that there should be a problem...but that the politicians would pay enough attention...and a system would be laid out...just like the new Act has laid things out clearly. I've long thought that it would be easy for example to establish an office and

have a Circuit Court Judge and a Registrar and a District Court Judge and a Clerk named and appointed to hear cases in Irish and if you had a pending case in Irish you ring the office and say I need the Irish speaking Judge and arrangements would be made for the Judge to come to you. There would be no problem.

A system like that operates in Canada

Yes it'd be that simple [In Ireland] and it'd achieve this; it'd put the two languages in a position of equality and it would mean that the person who wanted to use Irish would be on a equal footing to the person who wanted to use English. It'd be that simple and someone without Irish would be going into the Court just like someone without English. Very simple.

Do you think there is sufficient support coming from the State Agencies when it comes to providing terminology etc?

The State agencies are associated with things like Parkinson's Law, look at the health system. The thing I'd say is; I heard from a man who founded one of the gaelscoils 30 years ago, I wont mention his name, and he said that his heart was broken by the departments of the State but that said they got nothing but goodwill from 90% of the civil servants but what disease effects bureaucracy extinguished the goodwill and that's the same thing I say about the legal system. You can go to any Court House in the country and you will regularly meet Registrars and clerks who are found of Irish. Often

even if you just have your name in Irish they will identify themselves. I remember one day I was in the High Court in Limerick and I was doing something as out the ordinary and at the end of the case the Registrar turned to me and spoke about the trips he used to take to the Kerry Gaeltacht. Irish can open doors for you often but somehow the bureaucracy extinguishes that and that's what the man from the Gaelscoileanna told me too. I would not place the blame on the Civil Servants and to be honest many of the people who put Irish back to the place it is in Ireland now are Civil Servants...Parkinson's law and the other things at work in the organisations themselves are another matter.

Do you have any troubles locating Irish speaking Barristers?

No, there is enough of them there, sometimes you may have to search for them but they are certainly there.

Do you have trouble obtaining Court forms and Rules of the Courts?

That is very difficult. I'll tell you about the rules of the Superior Courts. This is a good story. [Mr. Ó Catháin retrieved a book from his office library]. That's the rules of the Superior Courts. You cannot get that book. It is not available anywhere. Aontóin Delap took a case because he was unable to represent his client without those rules. I read about the case and I like books myself...he who has the book has the knowledge as the proverb says and that's very true when it comes to law...lawyers have an old saying on

case pays for a book, if he wins the case the book has been paid for...I rang the Government Publications Office and I sought the Rules of the Superior Courts in Irish...I think I had to speak English to them. 'They're not available' he said to me 'But it is in the paper' I said back to him and eventually I was put in contact with someone in another department and I explained the situation to him. He asked me 'what do you want it for?' and I explained that I'm a practicing Solicitor etc and that I wanted a copy. I paid the £40 for it and they sent me and it came all lovely. I placed it on my shelf and I did not think about it much for a few years until I was speaking to someone who told me that despite Delap's case the Rules of the Superior Courts were not available in Irish, but I said to him "They are, I have them" and it was then I found out that only something like 10 copies were produced after Delap's case and that was it. They are not available and even this version does not have the appendices in it, just the basic rules.

There is no reason why such documents could not be made available on the internet.

Are you content/hopeful seeing as there are more resources available with regards to Irish that were not there 20 years ago?

It is certain that there is an improvement, the thing that gives me the most hope is the amount of cases I see on the list in the High Court through Irish. That's what gives me hope, at the end of the day law is a practical thing and if people do not do things regularly they forget them.

Do you think CPD will have a role in terms of regular use of Irish?

There should certainly be a course alright. That's a good idea. I'm often speaking to colleagues who have plenty of Irish but they have no experience of law through Irish. Law is like any other sector or career, there is a certain store of words that go with the trade...but you have to have the terminology. There should be a CD with precedents regarding conveyances, wills etc. That would not be difficult. With that and CPD there would be a lot of people who are practicing law who would be able to speak Irish and that would help with the demand from the public too. For some time the practice has developed, especially in the Gaeltacht to deal with the client in Irish but to deal with the Court in English. No client would want to do anything that would weaken their own case.

Annex B

Case note Ruairí Mac Cárthaigh v. The Minister for Justice, the DPP and the Attorney

General

Dublin Circuit Criminal Court Bill No 333/92

Friday 13th June 2008 Dublin Circuit Criminal Court, Court Room 25

Judge Ruairí McCabe

For the Applicant;

Seamus O Tuathail SC

Daithi Mac Carthaigh BL

Pól Ó Murchú Solicitor

For the State;

Chief State Solicitors Office

Cormac Ó Dúlacháin SC

Junior Council

Initial discussion centred on whether there was a need for an interpreter and an official record of the proceedings. Initially the system was set up to record the proceedings but the operative was excused because of his lack of Irish. Counsel for the State also pointed out that during an application of this nature the recording would not be official and is not required.

The Judge, at least one clerk, all the applicant's legal team and counsel for the State all were capable of carrying out their duties through the medium of Irish and on that basis the Judge was happy for the application to precede through Irish without the need for an interpreter.

One issue which came to mind was the constitutional requirement that Justice be administered in public as per Article 34.1 although there is a caveat in Article 34.1 which allows for "special and limited cases as may be prescribed by law" where justice can be administered *in camera* (examples include Family Law and Juvenile Justice). However no such exemption exists in cases with Irish language implications. When the Judge decided to proceed he did not enquire as to the Irish language competence of the public gallery. It is unclear whether Article 34.1 would require the justice being administered in public to be facilitated by some form of interpretation. It is likely in any

⁵⁴¹ There was later to be a debate as to whether the Attorney General had any locus standi to be represented during the application.

event that even if such a right exists for members of the public it would be trumped by the Applicant's right to conduct his case in Irish and the prompt administration of Justice.

The Applicant's Case – Case Outline

The Applicant's counsel outlined the arguments which he intended to place before the Court. Particular importance was placed on Section 8 of the Official Languages Act 2003 which allows a Court to provide for either sequential or simultaneous translation as the Court deems fit. It was with this provision in mind that the Supreme Court referred the Applicant's request back to the Circuit Court. The High Court initially refused such an application⁵⁴² however due to the protracted nature of this case the Official Languages Act 2003 was passed in the period between the High Court application and the subsequent appeal to the Supreme Court. Counsel for the Applicant suggested that Section 8 of the Act was inspired by the majority verdict in *Ó Beoláin*⁵⁴³. Counsel also noted that Section 8 of the Act made no discrimination between criminal and civil cases.

Counsel for the Applicant suggested that simultaneous translation rather than sequential translation would best satisfy the right of his client to have the proceedings of the Court translated from once official language to another. However he did accept that both methods had their advantages and disadvantages. He stressed that the Court, under the Act, has the complete discretion to decide these matters on a case to case basis and that there was no need to a general pronouncement which would set a precedent. He contented that if a case was only to last for a few hours or one day then

⁵⁴² Reported at 2002 4 IR 8

⁵⁴³ Reported at 2001 2 IR 279

sequential translation would be acceptable however he estimated that the present case would last at least six or seven days and that simultaneous translation would be a much quicker method and thus lead to a shorter trial. In addition he expressed concern that if sequential translation was to be used the jury could become agitated with the length of the trial especially because they would know that the Defendant has full knowledge of English. There was a risk that the jury could become biased against the Defendant whom they might blame for the extended length of the trial should sequential translation be used.

The Role of the Courts Service

The role played by the Courts Service in this particular application drew the ire of the Applicant's Counsel. Counsel drew attention to the functions of the Courts Service which are listed in Section 5 of the Courts Service Act 1998 which, Counsel contended where inconsistent with the actions of the Court Service in this case whereby the Courts Service had requested that the order for simultaneous translation sought would not be granted in the prayer attached to an Affidavit placed before the Court. Counsel also highlighted Section 9 of the Courts Service Act 1998 which guarantees the independence of the exercise of judicial functions and prohibits the Courts Service from interference with the "conduct of that part of the business of the courts required by law to be transacted by or before one or more judges or to impugn the independence of [the judiciary]".

Affidavits

Much of the rest of the Court case was occupied by the discussion of various Affidavits given by assorted experts in the field of translation/interpretation⁵⁴⁴.

The first such Affidavit was by Professor Michael Cronin of Dublin City University. Professor Cronin noted how simultaneous translation has become the norm in recent years and expressed a general preference of simultaneous translation over sequential. His Affidavit was placed before the Court in Irish. The second Affidavit was from a former Head of Translation Services at the ECJ. The Counsel for the Applicant pointed out that she had clearly received an inaccurate translation of Prof Cronin's Affidavit seeing as she incorrectly quoted him on a number of occasions. The second Affidavit suggested that there were inherent flaws with simultaneous translation which can be more prone to errors due to the high speed at which the translation is carried out. In addition she submitted that primary reason for simultaneous translation becoming the norm globally was due to difficulties that would be posed by using sequential translation for multiples of different languages. At the Europe Court of Justice for example there are twenty three officially recognised official languages which would make sequential translation an extremely slow process. She submitted that in Ireland's case where only two official languages existed sequential translation would be preferable.

An additional Affidavit from Mr. Ward of the Courts Service (see page 3 above) expressed various concerns with regards to the provision of simultaneous translation. Firstly the provision of simultaneous translation would require a booth (or possibly two) to be set up in the Court room to accommodate the interrupters. Mr. Ward

⁵⁴⁴ These affidavits were not made available to the public gallery but some matters discussed therein included published academic papers.

expressed concerns as to Health and Safety concerns which would arise particularly if there were additional wires etc. In addition Mr. Ward's Affidavit expressed concerns in relation to the additional costs that would be involved. He noted that the Courts Service had spent in excess of €2,000,000 in the previous year on translation services in 75 separate languages however he was unable to provide details of what percentage of this expenditure was attributable to Irish.

At this juncture the Court took a break for lunch with the Applicant's argument not yet completed.

Locus Standi

Upon resumption after lunch a discussion commenced between Counsel (in the absence of the Judge) with regards to the *locus standi* of the State. It was agreed between Counsel to discuss the matter in the presence of the Judge after certain compromises had already been reached. Seeing as this matter is in relation to a criminal charge the State contended that only the Office of the Director of Public Prosecutions had *locus standi* to appear on behalf of the State. The presence of Counsel for the Office of the Attorney General in this application, it was submitted by Gerard Hogan SC, was an honest error. The State suggested that the title of the application be amended to remove any reference to any other State party with the exception of the Office of the DPP. The situation was further complicated by the fact that both Counsel for the AG and the DPP were being instructed by the Chief State Solicitors Office. The Applicants opposed the move to have the title amended and

welcomed the presence of Counsel for the AG. The learned Judge however agreed to the amending of the title of the application.⁵⁴⁵

Case Law

Some of the previous case law concerning access to the Courts was discussed at the application including *Stát (MacFhearraigh) v. MacGamhnia*⁵⁴⁶, *Ó Murchú v. Cláraitheoir na gCuideachtaí*⁵⁴⁷, *Delap v. An tAire Dlí agus Cirt*⁵⁴⁸ and *Ó Beoláin v. Fahy*⁵⁴⁹. Some reference was also made to the Canadian case of *R v. Beaulac*⁵⁵⁰ which it was submitted by Counsel for the Applicant was a more forceful decision than the Irish jurisprudence and in that light should be considered a persuasive authority.

The State's Response

The State response was brief and to the point. They pointed out that in Section 8 Subsection 3 of the Official Languages Act 2003 the Court has the complete discretion as to whether to choose simultaneous or sequential translation. In addition Counsel for the State highlighted some of the difficulties that can be associated with simultaneous translation. In support of this argument they highlighted a Canadian authority in the

⁵⁴⁵ Gerard Hogan SC continued to represent the State's argument wearing what he termed a "Second hat" on behalf of the Office of the DPP who were now being represented by two Solicitors, two Senior Counsel and one Junior Counsel.

⁵⁴⁶ (1983) TÉTS at p. 99

⁵⁴⁷ (1988) TÉTS at p. 112

⁵⁴⁸ (1990) TÉTS at p. 116

⁵⁴⁹ [2001] 2 IR 279

⁵⁵⁰ [1999] 1SCR 786

case of R v. Tran⁵⁵¹ where Lamer CJ accepted that there were problems with simultaneous translation.

The Judgment

Judge McCabe did not deliver a Judgment on the issue on the day of the application but reserved his Judgment until 30th June 2008 where he delivered the following Judgment.

Firstly Judge McCabe once again briefly outlined the case and the various arguments that were put to him on June 13th.

The Judge felt that the various affidavits and legal precedents which were offered to him, whilst informative were not of primary importance. He held that the key consideration he had was Section 8 of the Act which allowed him to choose between simultaneous and sequential translation.

The Judge expressed clearly that nowhere in the Act was he permitted to take account of the difference in costs between simultaneous translation and sequential translation and in that regard his decision was based solely on how the Applicant would best receive a fair trial. He rejected the submission by counsel for the Applicant that the jury would become biased against the Applicant if sequential translation were to be used.

The Judge felt the key consideration in this case was the question of whether the Jury would understand clearly exactly what the Applicant and his counsel would say at trial. With this in mind the Judge felt that sequential translation, given the fact that it is a slower process would be less error prone and result in the Jury gaining a better

⁵⁵¹ [1994] 2 SCR 951

understanding of what exactly was being said. In some obiter remarks the Judge expressed some reservations as to whether the Applicant would be entitled to a translation to Irish of evidence given in English given the fact that the Applicant understood the English language however this matter was not being raised during the application in question. Such utterances are similar to those of the minority judgment of Geoghegan in *Ó Beoláin*.

Annex C

List of Placement partners for 3rd Year Irish Language Legal Placements on the BCL (Law and Irish) Programme:

- An Coimisinéir Teanga
- Ben Ó Floinn, Barrister, Dublin
- Comhdháil Náisiúnta na Gaeilge
- Conradh na Gaeilge
- Gael-Linn
- Legal Irish project at Fiontar DCU
- McGuire Desmond Solicitors, Cork
- National Assembly for Wales – Office of the Counsel General
- Ó Cearúil Solicitors, Galway
- Ó hAnlúin Ó Dubhda Solicitors, Cork
- Office of the Attorney General
- Radio Teilifís Éireann – Legal Department
- Rannóg an Aistriúcháin [Translation Directorate]
- The Press Ombudsman
- University of Montana Irish Studies Programme, Missoula, Montana
- William Fry Solicitors, Dublin

Annex D

Module Description and Learning Outcomes for Irish Language Law Module

LW1158 Dlí Bunreachtúil

Creidiúintí: 10

Tréimhse Teagaisc: Treimhsi 1 agus 2.

Líon na Mac Léinn:

Réamhriachtanas: Ni hann do

Comhriachtanas: Ni hann do

Modhanna Múinte: 48 x 1 (h)uair(e) an chloig Léachtaí; 44 x 1 (h)uair(e) an chloig Eile (Tutorials); Obair Fé Stiúir.

Eagraí an Mhodúil: Mr Seán Ó Conaill, Roinn Na Dlí.

Léachtóirí: Mr Seán Ó Conaill, Roinn Na Dlí.

Aidhm an Mhodúil: Tuiscint a chur as fáil ar príomh orgáin an Stáit agus a n-idirghaol; bunchearta an duine agus meá a dhéanamh idir bunchearta agus leas an phobail.

Ábhar an Mhodúil: Nádúr, foinsí, idé-eolaíocht agus stair dlí an Bhunreacht. Orgáin an Stáit, Uachtarán, Rialtas, Ard-Aighne, Dáil. Scair na gCumhachtaí; feidhmeanna feidhmeannach, reachtach agus breithiúnach; dlínse ne gcúirteanna éagsúla. Idirghaol idir an Bunreacht agus Dlí Eorpach agus Dlí Idirnáisiúnta. Cumhachtaí práinne, Oidhreacht an tSainchumas. Nádúr, fairsinge agus fírinniú athbreithniú breithiúnacha. Cearta Bunreachtúil Sibhialta; Saoirse, Comhionannais, Tuairimí a Nochtadh, Comhlachas, Príobháideachas, Cóirthriail. Cearta Bunreachtíl Polaitiúil, Cearta vótála, Maoincearta agus Cearta Eacnamaíochta. Cearta Bunreachtúil Sóisialta; Teaghlach, Oideachas.

Torthaí Foghlama: Nuair a bheidh an modúl seo déanta ag na mic léinn beidh:

- Téacs an Bhunreacht a léamh (ag Gaeilge agus Béarla)
- Ciall a bhaint as forálacha de Bhunreacht na hÉireann i gcomhthéacs na cásanna cuí
- An córas polaitiúil a thuiscint agus conas mar a chuireann an Bunreacht é i bhfeidhm nó conas mar a theipeann air, msh riail an dlí, roinnt cumhachta idir

orgáin an Stáit, neamhspleáchas v freagracht an Bhreithiúntacht

- An gaol idir dlí agus polasaí a aithint
- Gá chun leasú a dhéanamh ar an mBunreacht a mheas le dul i ngleic le hathraithe sa tsochaí
- Prionsabail Bunreachtúil a chuir i bhfeidhm i suíomh fórasach
- Comhlíonacht rialacha ó reachtaíocht agus dlí comóna a mheas i leith prionsabail an Bhunreacht
- Dul i ngleic díospóireachtaí breithiúnach agus acadúla ar phointí Dlí an Bhunreacht.

Marcáil: Marc ar fad 200: Scrudu scríofa dheireadh na bliana 160 marc; An obair a dheanfaí i gcaitheamh na bliana 40 marc.

Eilimintí Riachtanacha: An obair a dhéanfaí i gcaitheamh na bliana.

An obair a dhéanfaí i gcaitheamh na bliana á chur isteach go déanach: Má bhíonn an ceacht / aiste / tionscnamh 7 lá déanach, nó féna bhun san, bainfear 5% den marc iomlán den marc atá ag dul don mac / iníon léinn. Má bhíonn an ceacht / aiste / tionscnamh 14 lá déanach, nó féna bhun san, bainfear 10% den marc iomlán den marc atá ag dul don mac / iníon léinn. Náid (0) an marc a bhronnfar ar aon cheacht / aiste / tionscnamh a bheidh 15 lá déanach, nó os a chionn san.

Marc an phais, agus riachtanais ar leithligh chun pas a bhaint amach sa mhodúl: 40%.

Scrúdú scríofa dheireadh na bliana: 1 x páipéar 3 (h)uair(e) an chloig.

Riachtanais um Scrúdú Breise: 1 x páipéar 3 (h)uair(e) an chloig (Scrúdú scríofa dheireadh na bliana agus an obair a dhéanfaí i gcaitheamh na bliana san áireamh sa Fhómhar).

Annex E

AIRTEAGAL 40.3.3^o – CEARTA BEO GAN BREITH CHUN BEATHA

LW1158 Dlí Bunreachtúil

Seán Ó Conaill

1. Cúlra an t-Ochtú Leasú
2. Ag cur na Forála i bhFeidhm
3. Bagairt ar Shaol an mháthair agus an *X-Case*
4. Bagairt ar Shaol an Beo gan Breith seachas Ginmhilleadh

Léitheoireacht

Hogan & Whyte, J.M. Kelly: *The Irish Constitution* (4th Ed.), Dublin, Butterworths, 2003 – 7.3.246 go dtí 7.3.324 (lth 1495 – 1534)

Casey, *Constitutional Law in Ireland* (3rd Ed.), Dublin, Round Hall, Sweet & Maxwell, 2000 – lth 433 – 444

Léitheoireacht Breise

[Fox and Murphy 'Irish abortion: Seeking refuge in a jurisprudence of doubt and delegation' \(1992\) 19 Journal of Law and Society 454](#)

[Gearty 'The politics of abortion' \(1992\) 19 Journal of Law and Society 441](#)

Doyle, Constitutional Law: Text, Cases and Materials, Dublin, Clarus, 2008 –
Chapter 5, pp.114-123

Hogan, "Law, Liberty and the Abortion Controversy" in Whelan (Ed.), Law and
Liberty in Ireland, Dublin, Oak Tree Press, 1993, p. 113

Cásanna le léamh

- [Attorney General \(S.P.U.C. \(Ireland\) Ltd.\) v. Open Door Counselling Ltd. \[1988\] IR 593 – le fáil ar justis.com](#)
- [S.P.U.C. \(Ireland\) Ltd. v. Grogan \(No. 1\) \[1989\] IR 753](#)
- [Attorney General v. X \[1992\] 1 IR 1](#)
- [A and B. v. Eastern Health Board \[1998\] 1 IR 464](#)
- [Baby O. v. Minister for Justice \[2002\] 2 IR 169](#)
- [M.R. v. T.R. \[2006\] IEHC 359](#)
- [Roche v Roche \[2009\] IESC 82](#)

Cúlra an t-Ochtú Leasú

Bhí cosc coiriúil ar ghinmhilleadh [criminal ban on abortion] in Éirinn faoi alt 58 den Offences Against the Person Act 1861 a deir “Every woman, being with child, who, with intent to procure her own miscarriage...shall be guilty of a felony...”. Ach tar éis don rialú sa chás *McGee* áit gur caitheadh amach an cosc ar fhrithghiniúint [ban on contraception] de bharr é a bheith ag sárú ceart neamháirithe bhí an bhuairt ann go mbeadh an foirceadal cearta neamháirithe in ann dul chomh fada le fáil réidh leis an gcosc coiriúil ar ghinmhilleadh.

Tharla sé seo fiú sna Stáit Aontaithe ar slí go raibh díreach cosúil leis an suíomh in Éirinn. Ansin chin Cúirt Uachtarach Meiriceá sa chás [*Griswold v. Connecticut \(1965\) 381 US 79*](#) go raibh cead chun frithghiniúint le fáil sa cheart chun príobháideachtas ar an slí chéanna le *McGee*. Níos déanaí sa chás cáiliúil [*Roe v. Wade \(1973\) 410 US 113*](#) d’fhorbair an Chúirt an ceart seo amach chun cead dlíthiúil do ghinmhilleadh a chur ar fáil i gcásanna faoi leith.

De bharr seo bhí feachtas in Éirinn le ceart an beo gan breith chun beatha a aithint. D’éirigh leis an bhfeachtas seo agus curadh an t-ochtú leasú Airteagal 40.3.3 sa Bhunreacht;

“Admhaíonn an Stát ceart na mbeo gan breith chun a mbeatha agus, ag féachaint go cuí do chomhcheart na máthar chun a beatha, ráthaíonn sé gan cur isteach lena dhlíthe ar an gceart sin agus ráthaíonn fós an ceart sin a chosaint is a shuíomh lena dhlíthe sa mhéid gur féidir é.”

Deir Kelly ag lth 1518 “the text tried to achieve the impossible – it expressly equated two rights which, on those rare occasions when they come into conflict, cannot be reconciled.”

Ag cur na Forála i bhFeidhm

Attorney General (S.P.U.C. (Ireland) Ltd.) v. Open Door Counselling Ltd. [1988] IR 593

Eolas a chuir ar fáil maidir le ginmhilleadh thar lear. Bhí SPUC ag lorg;

1. Dearbhú [declaration] go raibh gníomhartha an chosantóra neamhdhleathach de bharr Airteagal 40.3.3
2. Dearbhú go raibh gníomhartha an chosantóra ina chóir le moráltacht an phobail a éilli [conspiracy to corruption of public morals]
3. Urghaire [injunction] le stop a chur le gníomhartha an chosantóra

Chin an Chúirt go raibh 40.3.3 in ann feidhmiú as a stuaim féin [self-executing] agus go raibh oibleagáid ar an Oireachtas agus ar na Cúirteanna dár bharr. Tá dualgas ar an gCúirt beatha an beo gan breith a chosaint nuair a iarrtar orthu – ní raibh aon suim ag an gCúirt san argóint nach raibh aon acht rithe ag an Oireachtas ag an am.

Freisin chin an Chúirt nach fheadfaí go mbeadh ceart neamháirithe chun eolas a fháil ar seirbhísí thar lear áit go mbeadh na seirbhísí sin ag scríosadh an ceart sainsiúil bunreachtacha beatha an beo gan breith. Ceadaigh an Chúirt 1 agus 3 thuas ach diúltaigh an Chúirt an dearbhú i 2 a thabhairt.

[S.P.U.C. \(Ireland\) Ltd. v. Grogan \(No. 1\) \[1989\] IR 753](#)

Aontas na Mac Léinn ag cur eolas ar fáil. Ceist dlí Eorpach faoi Airteagal 177 Conradh na Róimhe? Chur an Chúirt Uachtarach *Open Door Counselling* i bhfeidhm agus chin siad freisin go bhfuil locus standi ag SPUC sa chás seo. Freisin chin siad nach mbeadh aon cheart Eorpach in ann a bheith níos láidre ná an ceart chun beatha féin i gcás SPUC ag lorg urghaire anseo.

S.P.U.C. (Ireland) Ltd. v. Grogan (No. 2) [1992] - le fáil ar justis.com

Rialaigh an ECJ go raibh ginmhilleadh mar sheirbhís ach go raibh cead ag Éire stop a chur le 3ú Páirtí go raibh ag iarraidh an t-eolas sin a scaipeadh. Ach bhí an doras ar oscailt dóibh siúd go raibh ag iarraidh eolas a scaipeadh maidir lena seirbhísí féin.

De bharr an rialú i *Grogan (No. 2)* cuireadh Protocol 17 sa Chonradh Maastricht;

“Nothing in the Treaty on the European Union or in the Treaties establishing the European Communities or in the Treaties or Acts modifying or supplementing those

Treaties shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland.”

Bagairt ar Shaol an mháthair agus an X-Case

[Attorney General v. X \[1992\] 1 IR 1](#)

Cás éigniú [rape] cailín 14 ½ bliana d’aois. Bhí sí ag iarraidh taistil go dtí an Bhreatain le ginmhilleadh a fháil. Bhí fianaise [evidence] ann go raibh baol láidir go raibh an cailín ag smaoineamh ar lámh a chur ina bás féin de bharr an thoirchis [pregnancy]. Bhí an AG ag lorg urghaire le stop a chur le aon thaisteal thar lear de bharr 40.3.3. San Ard Chúirt cead Costello J an urghaire sin.

Sa Chúirt Uachtarach tháinig an Chúirt ar chinneadh difriúil. Chin siad le móramh [majority] 4-1 go raibh fíor baol ann chun saol an mháthair agus sna coinníollacha seo bheadh cead bunreachtúil le ginmhilleadh a chur ar fáil- fiú sa Stát seo.

⇒ É sin ráite caithfidh go bhfuil fíor baol ann do “shaol” an mháthair, ní leor go mbeadh baol ar an tsláinte fisiciúil nó intinne aici. [a risk to her physical or mental health will not suffice]

⇒ Chin móramh an Chúirt go raibh ceart an mháthair chun taisteal thar lear, in easpa baol ar an saol aici, níos ísle ná ceart an beo gan breith chun beatha

⇒ Sa bhreis ar sin chin an móramh go mbeadh an Chúirt in ann urghaire a chur ar bhean thorrach gan taisteal thar lear. [The Court could grant an injunction restraining a pregnant woman from travelling abroad]

Féach Casey 437-438

Gaeilge;

McCarthy J – ag fiosrú maidir leis an míniú ceart ar “as far as practicable” agus “sa mhéid gur féidir é” ach dúirt sé; “Historically, the Irish text is a translation of that in English”!

[RE Article 26 and the Regulation of Information \(Services outside the State for Termination of Pregnancies\) Bill \[1995\] IR 1](#)

⇒Dúirt Hamilton C.J. don Chúirt áit go raibh an ginmhilleadh dlíthiúil i gceist (de réir an X-Case) bhí sé dlíthiúil freisin eolais a fháil nó a chur ar fáil.

Agus é seo ar fad ag tarlú bhí tionchar láidir ag teacht ón EC agus ón ECHR agus ba léir go mbeadh leasú eile ag teastáil.

Rith na leasuithe seo a leanas dár bharr;

“Ní theorannóidh an fo-alt seo saoirse chun taisteal idir an Stát agus stát eile

Ní theorannóidh an fo-alt seo saoirse chun faisnéis a fháil nó a chur ar fáil sa Stát maidir le seirbhísí atá ar fáil go dleathach i stát eile ach sin faoi chuimsiú cibé coinníollacha a fhéadfar a leagan síos le dlí”

Nóta: Diúltaigh na Daoine leis an Dóú Leasú Déag go raibh ag iarraidh láidriú a dhéanamh ar an gcosc ar ghinmhilleadh trí bhaol ar tsláinte mná seachas baol ar shaol mná a rialú amach.

[A and B. v. Eastern Health Board \[1998\] 1 IR 464](#)

Chin Geoghegan J. go raibh an cháilíocht i leith taistil diúltach ina éifeacht- níor bhronn sé ceart taistil ach chur sé stop le haon urghaire go mbeadh ag iarraidh bac a chur ar thaisteal de bharr Airteagal 40.3.3. In airde ar sin fiú bhí teorann aige chuig 40.3.3 d’fhéadfaí urghaire a fháil ar bhonn eile.

Rinneadh agóid i gcoinne na reachtaíochta a rialaigh an cur ar fáil eolais maidir le seirbhís ginhilleadh ach chin an Chúirt gur reachtaíocht bhunreachtúil é. [RE Article 26 and the Regulation of Information \(Services outside the State for Termination of Pregnancies\) Bill \[1995\] IR 1](#)

Bhí Reifreann eile ann fiú i 2002 áit a chin na daoine gan glacadh leis an leasú le móramh níos lú ná 11,000 as vóta iomlán de 1.25 milliún (50.4% i gcoinne 49.6). Bhí sé i gceist ag an leasú úd féin mharú a bhaint mar fhoras [as grounds] de ginhilleadh dlíthiúil. Sa bhreis ar seo bhí acht le chur leis an mbunreacht mar iarscríbhinn [annex] áit nach bhfeadfaí an t-acht sin a leasú gan reifreann.

Bagairt ar Shaol an Beo gan Breith seachas Ginhilleadh

[Baby O. v. Minister for Justice \[2002\] 2 IR 169](#)

Máthar tagtha go hÉirinn ag lorg stádas teifigh. Í ag iompar. Diúltaigh an t-Aire leis an iarratas. Chin an Chúirt Uachtarach go raibh cead ag an Stát Ordú lonnarba [deportation order] a chuir i bhfeidhm fiú amháin nuair a bheadh mná a chur go dtí tír le leibhéal níos ísle cóir leighis nó le leibhéal níos airde bás linbh;

“This case has nothing to do with abortion or the right to life of the unborn or what is sometimes referred to as a woman’s right to choose...

The case is concerned about the legal right or entitlement of the Minister for Justice to deport a person who has failed to secure a declaration of refugee status from the State...”

Tá teicneolaíocht nua tar éis teacht ar an bhfód ar nós an morning-after pill, taighde suth [embryo research] agus gineadh in vitro (go minic bíonn fuilleach suth ann sa

phróiseas seo agus caithtear amach iad) agus dár bharr tá a lán ceisteanna nua againn. Cén pointe go dtosaíonn ceart an beo gan breith chun beatha? Giniúint [conception]? Iompar [implantation] ? Inmharthanacht [viability] ? Cathain a thosaíonn inmharthanacht?

[M.R. v T.R. \[2006\] IEHC 359](#)

D'iarradh ar an Ard Chúirt cinneadh arb "leanbh gan breith" iad suth reoite [frozen embryos] go raibh fágtha tar éis IVF faoi fhoráil 40.3.3^a.

Chin McGovern J go raibh ceart an beo gan breith chun beatha in Airteagal 40.3.3 curtha isteach i 1983 de bharr buairt maidir le ginmhilleadh agus ní raibh ag smaoineamh ar an mbeo gan breith ach amháin taobh istigh den broinn [womb]. Ní raibh na daoine ag smaoineamh ar suth reoite i 1983 agus dár bharr ní féidir leo a bheith "gan breith" de réir forála Airteagal 40.3.3. Dúirt McGovern J nár bhain leathnú amach 40.3.3 chuig suth reoite leis na Cúirteanna ach gur bhain sé leis an Oireachtas nó na daoine i reifreann.

Nótáil

1. Is dearcadh stairiúil é seo, b'fhéidir nárbh bunús láidir é seo
2. Tá an doras fós ar oscailt anseo maidir leis an morning after pill agus an stádas bunreachtúil atá aige

[Roche v. Roche \[2009\] IESC 82](#) Cúirt Uachtarach ag tacú le seo ach roinnt rudaí suimiúil ráite.

[ABC v. Ireland \[2010\] ECHR 2032](#)

Cúirt san Eoraip maidir le ceart daonna. Chin an Cúirt go raibh ar Éire rud éigin a dhéanamh.

Nithe eile gur fiú smaoineamh orthu;

Conas gur féidir fíor baol [real and substantial threat] ar shaol an mháthair trí féin mharú a mheas? Conas gur féidir laghdú a dhéanamh ar mhí-úsáid na forála?

Cén éifeacht a bheadh ag forálacha eile, go saineúil forálacha i dtaobh an teaghlaigh agus oideachas, ar athair go mbeadh ag iarraidh stop a chur le máthair a leanbh taisteal chun ginmhilleadh a fháil?

Fadhbanna le ginmhilleadh dlíthiúil in Éirinn? Treoracha dos na dochtúirí? An an ghinmhilleadh? Díospóireacht i Sásanna maidir le 24 seachtain a laghdú.



UCC

Coláiste na hOllscoíle Corcaigh - Éire
University College Cork, Ireland

BCL (Law & Irish) Meeting

**River Room, Glucksman Gallery, UCC
11am, Thursday, 21st February 2008**

11.00 a.m.: Tea and Coffee Reception

11.30 a.m.: Meeting commences

Agenda:

Chair: Professor Grace Neville, Vice President for Teaching and Learning

1. Introduction from Professor Caroline Fennell
2. Presentations from BCL (Law and Irish) graduates
3. Report from Dr. Neil Buttimer on the degree programme since its inception
4. The importance of work placements for Law students: Gerard Murphy
5. Open Forum:
 - Feedback from partners on placements
 - Future of the programme, including identification of further placement opportunities

1.00 pm: Lunch, Glucksman Gallery

**Report of the
BCL (Law & Irish) Meeting**

**River Room, Glucksman Gallery, UCC
11am, Thursday, 21st February 2008**

Delegates/Toscairi:

- Mr. Vivian Uíbh Eachach Rannóg an Aistriúcháin - Oireachtas
- Mr. Pól Ruiséal Ionad na Gaeilge Labhartha
- Ms. Caitlin Ní Fhlaitheartaigh Office of the Attorney General
- Mr. Keith Bush Office of the Council General, Nat. Assembly for Wales
- Mr. Liam Suipéal Coláiste na Rinne
- Ms. Máire Harris Gael Linn
- Ms. Damhnait Uí Mhaoldúin Oifig an Choimisinéara Teanga
- Mr. Denis O'Sullivan Council of the E.U.
- Mr Benedict Ó Floinn An Leabharlann Dlí
- Ms. Julie Connolly Department of Foreign Affairs

- Professor Grace Neville Vice President for Teaching and Learning
- Professor Caroline Fennell Dean of Faculty of Law
- Dr Neil Buttimer Roinn na Nua-Ghaeilge
- Dr Owen McIntyre Law Faculty Co-ordinator of Law & Irish programme
- Dr Darius Whelan Acting Law Faculty Co-ordinator of Law & Irish programme

- Dr Shane Kilcommins Chair of Undergraduate Recruitment Committee
- Mr Gerard Murphy Clinical Legal Education Co-ordinator
- Ms Anne Wallace Student Recruitment and Liaison Officer
- Ms Aideen O'Byrne Faculty of Law
- Mr. Brian Ó Donnchadha Ionad na Ghaeilge Labhartha

Graduates of BCL (Law and Irish)

- Sinead O'Donoghue Now doing Masters in Planning
- Alan Desmond Now doing LLM in Criminal Justice
- Sean Ó Conaill Now doing Ph.D. on Irish in Legal Education in Wales

Apologies

- Ms. Margaret O'Rafferty Courts Service
- Ms. Betty Dinneen Legal Aid Board
- Mr. Eamonn Kennedy RTÉ Solicitors' Office

Chair: Professor Grace Neville, Vice President for Teaching and Learning

Professor Neville welcomed delegates to the meeting, which was held on the UN's International Day of Languages and marks ten years since the inception of the BCL Law & Irish programme. The programme has maintained its popularity since first appearing on the CAO list, and is currently in the top 3% of CAO demand. This year, for the first time, student placements have reached as far as North America, with two students currently placed in the University of Montana.

1. Introduction from Professor Caroline Fennell

Professor Caroline Fennell thanked all involved in the programme over the past ten years, and expressed particular appreciation to Dr. Neil Buttimer, who instigated the development of the programme.

2. Presentations from BCL (Law and Irish) graduates

Three recent graduates of the BCL Law & Irish degree presented overviews on their experience of the third year work placement.

Alan Desmond, who graduated in 2003, spent part of his placement in the offices of Udarás na Gaeltachta. He spoke of the divergence between the academic and the practical, and of the benefits of working in an Irish-speaking environment. After graduating, Alan went to teach Irish in the Catholic University of Lublin in Poland. He has had three books published by Cogar, including *Seal sa Pholainn* which was published last year. Alan is currently pursuing an LLM in Criminal Justice in UCC.

Sinéad O'Donoghue began her degree in 2002 and graduated in 2006. She is now enrolled as masters student in town planning in UCC. Sinéad, like all participants in the placement programme, spent three months at Rannóg an Aistriúcháin. She then went to the Legal Affairs Office at RTÉ for four months. Both placements allowed Sinéad to utilise both her legal and Irish backgrounds.

Seán Ó Conaill, is a 2005 BCL graduate. He completed an LLM (Criminal Justice) and is currently researching a PhD in Cardiff University. He agreed with Sinéad that the experience gained at Rannóg an Aistriúcháin was invaluable, and offered great insight into working within the public sector, an option which had not occurred to him at the start of the degree. From there, Seán travelled to the Office of the Council General at the Welsh Assembly. This experience within a different jurisdiction, especially one with a minority language, afforded Seán a fresh approach to working in a bilingual environment.

3. Report from Dr. Neil Buttimer on the degree programme since its inception

Dr. Buttimer provided a background of the programme and explained how the model for it came from looking at the existing partnerships that the Law Faculty had with the Department of French and the Department of German. Since its development, the BCL Law & Irish programme is one of the most popular programmes, not only in the university but across the country, with demand reflected in last year's CAO points of 540. Over the past ten years, students have been placed with 20 different partners, and Dr. Buttimer expressed particular thanks to Rannóg an Aistriúcháin for its continued support of the programme.

With the passing of the Official Languages Act in 2003 and the recognition of the Irish language as a working language of the EU in 2005, Dr. Buttimer acknowledged the importance of such a course now and in the future.

4. The importance of work placements for Law students: Gerard Murphy

Mr. Gerard Murphy is the BCL (Clinical) Placement Coordinator. Like the BCL Law & Irish programme, these placements cross over between the public and the private sectors. Some of the links between the BCL (Clinical) and both sectors have been built on existing links from the BCL Law & Irish programme.

Mr. Murphy reiterated the point that the experience that students gain through their placement is invaluable, and gave examples of students' experiences within the Department of Justice, the Labour Court and the Environmental Protection Agency. In similar fashion to the experience that BCL (Law & Irish) students get at the Assembly of Wales, students on the BCL (Clinical) programme also have the chance to encounter another legal environment while on placement at a law firm in Luxembourg. Students' experience of the placement widens their options and their vision of what to do and where to go in the future.

5. Open Forum:

- Feedback from partners on placements and the future of the programme, including identification of further placement opportunities:

- **Grammar and Accuracy of Language**

During the open discussion between placement partners and university representatives, it emerged that the *cruinneas teanga*, or accuracy of language, is very important. Mr. Vivian Uíbh Eachach, Rannóg an Aistriúcháin, confirmed that a good grounding in grammar is extremely important, and will produce better clarity of meaning in translation. Mr Benedict Ó Floinn BL agreed with this sentiment and went on to suggest that it is almost negligent of universities to produce students without these skills. He pointed out that accuracy of language is crucial, that missing points in language can result in the loss of cases. Mr. Ó Floinn credited Dr. Neil Buttimer for addressing this issue, and suggested that the value of attention to and appreciation of accuracy of language be replicated throughout UCC and in other universities.

- **Duration of placements**

Mr. Keith Bush, Office of the Council General, National Assembly for Wales, suggested that the length of the placement, at four months, verges on being too short. Once set up, the length of the placement does not make any difference in the amount of effort required by the placement partner, but it does make a big difference in the level of success of the placement, for both partner and student. Other partners agreed with this, citing a longer placement as more beneficial for both sides.

Mr. Bush also pointed out that a placement at the National Assembly is different from the others. It does not offer the student the chance to work in an Irish-speaking environment or in an Irish legal system. It does, however, offer students a chance to work in a truly bi-lingual environment, and experience a different legal system at work. Mr. Bush suggested that students coming to Wales should, therefore, have an interest in government and in linguistics, especially the use of minority languages in other jurisdictions.

- **Developing Placements**

Ms. Máire Harris, Gael Linn, pointed out that competition for placements exists between universities and also within universities, between departments. Mr. Pól

Ruiséal, Ionad na Gaeilge Labhartha, suggested that there may be other areas where students might be placed. Mr. Liam Suipéal, Coláiste na Rinne, suggested that the Gaeltacht can be a useful resource for placements. Small organisations also learn from having the student on placement; it can be a two-way process that benefits both, particularly given the increasing regulation of small organisations who do not have the benefit of in-house legal advice.

- **Research**

There was general agreement that the development of a research dimension, would be welcomed. Currently there is no repository of information for cases/case studies in different languages. It was also suggested that more developed and research-led study of both accuracy of language and grammar would be welcomed.

- **Placements and the EU**

Mr. Denis O'Sullivan, Council of the EU, spoke of the long-term interest the EU has had in the Irish language. The speed with which Irish became a working language of the EU has meant that the Council, the Commission and the Parliament are still catching up with the provision of texts, etc. in Irish. Each body has a statutory responsibility to provide all statutes in each of the EU's 23 official languages, each translation is equal, and none takes precedence over another. At the moment, only texts adopted by the Parliament and the Council are being translated to Irish, due to a shortage of Irish translators, and the EU is currently recruiting Irish lawyer linguists. Tadhg Harrington is the head translator for the Irish language.

Mr. O'Sullivan expressed the Council's interest in establishing a relationship with UCC. The Council's current problem with recruitment is that it can find lawyers who are Gaelgóirí, but they do not have accuracy in legal language. The duration of placements at the Council of the EU is normally six months. Should the Council's Legal Service be able to take students on placement, it would require that students should have a basic knowledge of EU law and that students' level of grammar should be beyond reproach. A basic knowledge of another language would be useful. Mr. O'Sullivan clarified that, ordinarily, paid placements are given to graduates, but perhaps funding could be sourced for paid undergraduate placements.

- **An Coimisinéir Teanga**

Ms. Damhnait Uí Mhaoldúin, Oifig an Choimisinéara Teanga expressed her interest in the possibility of taking students on placement. There is currently no case law under the Official Languages Act. The Office has been working in an Ombudsman capacity and has no legal representation. However, it has recently carried out investigations under the Official Languages Act and Ms. Uí Mhaoldúin could see a requirement for legal expertise developing.

- **Student skills for work placement**

It was suggested that students may benefit from more preparation before going out on work placement. Ms. Caitlín Ní Fhlaitheartaigh, from the Office of the Attorney General, suggested that students learn the organisational structure, the psychology and set-up of the company or organisation before placement begins. She also asked that students get some practical skills in day-to-day office protocol.

Feedback from Law & Irish programme representatives

Dr. Owen McIntyre responded to some of the issues raised at the meeting. He thanked Rannóg an Aistriúcháin for its dedication to the programme, and acknowledged that much of the accuracy of students' language was learned during this placement. While at Rannóg an Aistriúcháin, students must deconstruct and reconstruct a piece of legislation, which is critical in forming an accurate, critical eye for language and text. The second placements also benefit from the fact that students have carried out this exercise prior to the second term.

Dr. McIntyre highlighted the difficulty the programme faces in accommodating all the modules necessary for students to qualify for entrance to the Kings Inns, along with credits for Irish. It was suggested that perhaps students could learn law through Irish, where possible, and that this might create further flexibility.

Overall, it was agreed that the timing for this programme is optimum, with the passing of the Official Languages Act, and the prominence of citizen awareness rights and language rights.

It was suggested that the course should be reviewed in light of these recent changes, and the current and future skills needs of placement partners and potential employers.

Legal Education Questionnaire

There is no obligation to complete this survey and all information given is done so anonymously

Are you a fluent Irish speaker?

No

Was your primary Education in Irish?

No

Was your secondary Education in Irish?

No

Are you taking any Irish language modules for your degree or attending additional Irish classes?

Yes

Did you choose to study law through Irish? Why did you make that choice?

I wanted to study something challenging like Law, that required self-motivation, but didn't want to neglect my Irish or see it disimprove, particularly as I am so passionate about it.

If more Irish medium materials were available would you attend Irish medium tutorials in subjects other than Dlí Bunreachtúil?

Yes

Are you aware of Faculty of Law members who can speak Irish aside from Seán Ó Conaill? If so please list them.

No

Will you take additional Irish medium options in future (eg Legal Skills has an Irish language option)?

Yes.

Do you have any suggestions as to how Irish medium modules could be developed?

—

If you have already attended some Irish medium modules how can they be improved?

—

Do you intend to become a Solicitor or a Barrister?

No

Are you aware that legislation (Irish and European) is written both in English and Irish?

Yes

Are you aware that, as a result, there is and will be a need for bilingual lawyers in Ireland and Europe?

Yes

Do you speak any other languages? If yes please provide details.

Basic French.

Would you welcome the opportunity to study some elements of French language/French Law in addition to Irish medium modules?

Yes, I would be very enthused at the chance.

Legal Education Questionnaire

There is no obligation to complete this survey and all information given is done so anonymously

Are you a fluent Irish speaker?

Yes

Was your primary Education in Irish?

No

Was your secondary Education in Irish?

No

Are you taking any Irish language modules for your degree or attending additional Irish classes?

Yes

Did you choose to study law through Irish? Why did you make that choice?

Yes, really enjoy the Irish language and all that it represents. Dlí agus Craeilge is a great broad degree to have

If more Irish medium materials were available would you attend Irish medium tutorials in subjects other than Dlí Bunreachtúil?

Yes.

Are you aware of Faculty of Law members who can speak Irish aside from Seán Ó Conaill? If so please list them.

No.

Will you take additional Irish medium options in future (eg Legal Skills has an Irish language option)?

Yes

Do you have any suggestions as to how Irish medium modules could be developed?

—

If you have already attended some Irish medium modules how can they be improved?

—

Do you intend to become a Solicitor or a Barrister?

Not sure

Are you aware that legislation (Irish and European) is written both in English and Irish?

Yes

Are you aware that, as a result, there is and will be a need for bilingual lawyers in Ireland and Europe?

Yes

Do you speak any other languages? If yes please provide details.

French

Would you welcome the opportunity to study some elements of French language/French Law in addition to Irish medium modules?

Yes

Legal Education Questionnaire

There is no obligation to complete this survey and all information given is done so anonymously

Are you a fluent Irish speaker?

No.

Was your primary Education in Irish?

No.

Was your secondary Education in Irish?

No.

Are you taking any Irish language modules for your degree or attending additional Irish classes?

Dú Bunreachtúil.

Did you choose to study law through Irish? Why did you make that choice?

Just the Dú Bunreachtúil module.

Diversity, different than other law students, or vast ~~majority~~ Majority of them.

To keep up speaking Irish because I wouldn't get the chance otherwise.

If more Irish medium materials were available would you attend Irish medium tutorials in subjects other than Dú Bunreachtúil?

I would try but not confident enough if my own level of Irish to tackle more than one module at this time.

Are you aware of Faculty of Law members who can speak Irish aside from Seán Ó Conaill? If so please list them.

Will you take additional Irish medium options in future (eg Legal Skills has an Irish language option)?

Yes.

Do you have any suggestions as to how Irish medium modules could be developed?

They need to be encouraged more to highlight the benefits to students.

If you have already attended some Irish medium modules how can they be improved?

Do you intend to become a Solicitor or a Barrister?

Yes

Are you aware that legislation (Irish and European) is written both in English and Irish?

Yes.

Are you aware that, as a result, there is and will be a need for bilingual lawyers in Ireland and Europe?

Yes.

Do you speak any other languages? If yes please provide details.

→ French. (as part of my degree)

Would you welcome the opportunity to study some elements of French language/French Law in addition to Irish medium modules?

Yes (Above ↑)

Legal Education Questionnaire

There is no obligation to complete this survey and all information given is done so anonymously

Are you a fluent Irish speaker?

Yes

Was your primary Education in Irish?

Yes

Was your secondary Education in Irish?

No

Are you taking any Irish language modules for your degree or attending additional Irish classes?

Yes

Did you choose to study law through Irish? Why did you make that choice?

Yes, because I enjoy Irish. Also the^{law} classes through Irish are done in smaller groups so that the lecturer can get to know the class.

If more Irish medium materials were available would you attend Irish medium tutorials in subjects other than Dlí Bunreachtúil?

Yes. Maybe.

Are you aware of Faculty of Law members who can speak Irish aside from Seán Ó Conaill? If so please list them.

No.

Will you take additional Irish medium options in future (eg Legal Skills has an Irish language option)?

Maybe.

Do you have any suggestions as to how Irish medium modules could be developed?

No.

If you have already attended some Irish medium modules how can they be improved?

Maybe to have a legal ~~the~~ writing module through Irish to help with writing essays or an optional grammar/oral class.

Do you intend to become a Solicitor or a Barrister?

Not sure

Are you aware that legislation (Irish and European) is written both in English and Irish?

yes

Are you aware that, as a result, there is and will be a need for bilingual lawyers in Ireland and Europe?

yes

Do you speak any other languages? If yes please provide details.

yes. French.

Would you welcome the opportunity to study some elements of French language/French Law in addition to Irish medium modules?

I am already studying French language & French law as well.

Legal Education Questionnaire

There is no obligation to complete this survey and all information given is done so anonymously

Are you a fluent Irish speaker? *yes*

Was your primary Education in Irish? *yes*

Was your secondary Education in Irish? *yes*

Are you taking any Irish language modules for your degree or attending additional Irish classes? *yes*

Did you choose to study law through Irish? Why did you make that choice? *yes, because I wanted to keep it up after I did my Leaving Cert through Irish.*

If more Irish medium materials were available would you attend Irish medium tutorials in subjects other than Dlí Bunreachtúil? *yes.*

Are you aware of Faculty of Law members who can speak Irish aside from Seán Ó Conaill? If so please list them. *Not aware of any.*

Will you take additional Irish medium options in future (eg Legal Skills has an Irish language option)?

yes, if they are available

Do you have any suggestions as to how Irish medium modules could be developed?

More resources, especially online resources.

If you have already attended some Irish medium modules how can they be improved?

Provide a vocabulary list, or spend time teaching vocab, phrases etc. so that will eliminate any discrepancies between English and Irish courses as most people have better English.

Do you intend to become a Solicitor or a Barrister? yes.

Are you aware that legislation (Irish and European) is written both in English and Irish? yes.

Are you aware that, as a result, there is and will be a need for bilingual lawyers in Ireland and Europe? yes.

Do you speak any other languages? If yes please provide details.

Danish and some French.

Would you welcome the opportunity to study some elements of French language/French Law in addition to Irish medium modules? no.

Legal Education Questionnaire

There is no obligation to complete this survey and all information given is done so anonymously

Are you a fluent Irish speaker?

No

Was your primary Education in Irish?

No

Was your secondary Education in Irish?

No

Are you taking any Irish language modules for your degree or attending additional Irish classes?

Yes

Did you choose to study law through Irish? Why did you make that choice?

Yes. I enjoyed Irish as a subject in secondary school and it was one of my best subjects.

If more Irish medium materials were available would you attend Irish medium tutorials in subjects other than Dlí Bunreachtúil?

It depends on what module.

Are you aware of Faculty of Law members who can speak Irish aside from Seán Ó Conaill? If so please list them.

No.

Will you take additional Irish medium options in future (eg Legal Skills has an Irish language option)?

Yes.

Do you have any suggestions as to how Irish medium modules could be developed?

If you have already attended some Irish medium modules how can they be improved?

Do you intend to become a Solicitor or a Barrister?

~~Yes~~ Possibly

Are you aware that legislation (Irish and European) is written both in English and Irish?

Yes.

Are you aware that, as a result, there is and will be a need for bilingual lawyers in Ireland and Europe?

Yes

Do you speak any other languages? If yes please provide details.

Spanish - Reasonable level

Would you welcome the opportunity to study some elements of French language/French Law in addition to Irish medium modules?

No.

Legal Education Questionnaire

There is no obligation to complete this survey and all information given is done so anonymously

Are you a fluent Irish speaker?

Yes

Was your primary Education in Irish?

No

Was your secondary Education in Irish?

No

Are you taking any Irish language modules for your degree or attending additional Irish classes?

Yes

Did you choose to study law through Irish? Why did you make that choice?

Yes → Because I love Irish

Also is proud to be a part of the
níos láidir ná ar bhean Béarla sa Buaic

If more Irish medium materials were available would you attend Irish medium tutorials in subjects other than Dlí Bunreachtúil?

Yes definitely

Are you aware of Faculty of Law members who can speak Irish aside from Seán Ó Conaill? If so please list them.

No - would like to know more

Will you take additional Irish medium options in future (eg Legal Skills has an Irish language option)?

It is quite likely - Yes

Do you have any suggestions as to how Irish medium modules could be developed?

- More practical work
- like Leaving Cert → less theory - more practicality

If you have already attended some Irish medium modules how can they be improved?

- Maybe Brainstorming about different ideas
- Discussion
- Trying to find practical approaches

Do you intend to become a Solicitor or a Barrister?

Perhaps

Are you aware that legislation (Irish and European) is written both in English and Irish?

Yes

Are you aware that, as a result, there is and will be a need for bilingual lawyers in Ireland and Europe?

Yes

Do you speak any other languages? If yes please provide details.

- I speak fluent German
- Did it in school
- went to German College

Would you welcome the opportunity to study some elements of French language/French Law in addition to Irish medium modules?

Yes → Y it would help me on a European level

Legal Education Questionnaire

There is no obligation to complete this survey and all information given is done so anonymously

Are you a fluent Irish speaker?

Yes, but my Irish isn't perfect.

Was your primary Education in Irish?

No

Was your secondary Education in Irish?

Yes

Are you taking any Irish language modules for your degree or attending additional Irish classes?

No

Did you choose to study law through Irish? Why did you make that choice?

I chose a law module through Irish only because I love the language and was used to studying everything through Irish.

If more Irish medium materials were available would you attend Irish medium tutorials in subjects other than Dlí Bunreachtúil?

Yes.

Are you aware of Faculty of Law members who can speak Irish aside from Seán Ó Conaill? If so please list them.

No.

Will you take additional Irish medium options in future (eg Legal Skills has an Irish language option)?

If I have an option then I would.

Do you have any suggestions as to how Irish medium modules could be developed?

If you have already attended some Irish medium modules how can they be improved?

Do you intend to become a Solicitor or a Barrister?

~~Yes~~ No.

Are you aware that legislation (Irish and European) is written both in English and Irish?

Yes.

Are you aware that, as a result, there is and will be a need for bilingual lawyers in Ireland and Europe?

yes

Do you speak any other languages? If yes please provide details.

French, but not fluently.

Would you welcome the opportunity to study some elements of French language/French Law in addition to Irish medium modules?

I already study French law in addition to Irish medium modules.

Legal Education Questionnaire

There is no obligation to complete this survey and all information given is done so anonymously

Are you a fluent Irish speaker?

No

Was your primary Education in Irish?

No

Was your secondary Education in Irish?

No

Are you taking any Irish language modules for your degree or attending additional Irish classes?

Yes, I attended a Grammar class & 2 tutorials weekly.

Did you choose to study law through Irish? Why did you make that choice?

I chose to study Dlí Bunreachtúil because I really want to become a fluent Irish speaker. I am not doing Law and Irish, I am in Law International as I was worried I wouldn't be a good enough Irish speaker to do all of the degree through Irish.

If more Irish medium materials were available would you attend Irish medium tutorials in subjects other than Dlí Bunreachtúil?

Yes.

Are you aware of Faculty of Law members who can speak Irish aside from Seán Ó Conaill? If so please list them.

No.

Will you take additional Irish medium options in future (eg Legal Skills has an Irish language option)?

Yes

Do you have any suggestions as to how Irish medium modules could be developed?

Perhaps by giving lists of vocab to learn that would help people who are not fluent in Irish.

If you have already attended some Irish medium modules how can they be improved?

Do you intend to become a Solicitor or a Barrister?

Uncertain.

Are you aware that legislation (Irish and European) is written both in English and Irish?

Yes

Are you aware that, as a result, there is and will be a need for bilingual lawyers in Ireland and Europe?

Yes

Do you speak any other languages? If yes please provide details.

~~No~~ Did French for Leaving Cert but otherwise no.

Would you welcome the opportunity to study some elements of French language/French Law in addition to Irish medium modules?

Yes.

Legal Education Questionnaire

There is no obligation to complete this survey and all information given is done so anonymously

Are you a fluent Irish speaker?

Yes

Was your primary Education in Irish?

No

Was your secondary Education in Irish?

No

Are you taking any Irish language modules for your degree or attending additional Irish classes?

Yes

Did you choose to study law through Irish? Why did you make that choice?

Yes, I made that choice because of my love for the language & desire to keep the high standard of Irish I had.

If more Irish medium materials were available would you attend Irish medium tutorials in subjects other than Dlí Bunreachtúil?

Yes but it would depend on the subjects on offer.

Are you aware of Faculty of Law members who can speak Irish aside from Seán Ó Conaill? If so please list them.

I am not aware of any in particular but suspect many have reasonable Irish.

Will you take additional Irish medium options in future (eg Legal Skills has an Irish language option)?

Yes

Do you have any suggestions as to how Irish medium modules could be developed?

It would be a matter of showing its relevance to the subject at hand.

Dlí Bannachtúil has clear benefits due to the primacy of the Irish language version of Bna hÉ. You would need to show why taking the Irish

If you have already attended some Irish medium modules how can they be improved? *absolute would be beneficial.*

I am happy with what I have experienced so far.

Do you intend to become a Solicitor or a Barrister?

Yes - Barrister.

Are you aware that legislation (Irish and European) is written both in English and Irish?

Yes

Are you aware that, as a result, there is and will be a need for bilingual lawyers in Ireland and Europe?

Yes

Do you speak any other languages? If yes please provide details.

French however my command of it has weakened due to lack of practice.

Would you welcome the opportunity to study some elements of French language/French Law in addition to Irish medium modules?

It would be welcome but whether I would choose it is another story.

Legal Education Questionnaire

There is no obligation to complete this survey and all information given is done so anonymously

Are you a fluent Irish speaker?

Yes.

Was your primary Education in Irish?

No

Was your secondary Education in Irish?

No

Are you taking any Irish language modules for your degree or attending additional Irish classes?

Yes. Modules

Did you choose to study law through Irish? Why did you make that choice?

Yes. I enjoy using the language and there are many job opportunities through Irish.

If more Irish medium materials were available would you attend Irish medium tutorials in subjects other than Dlí Bunreachtúil?

Yes.

Are you aware of Faculty of Law members who can speak Irish aside from Seán Ó Conaill? If so please list them.

Will you take additional Irish medium options in future (eg Legal Skills has an Irish language option)?

Yes.

Do you have any suggestions as to how Irish medium modules could be developed?

If you have already attended some Irish medium modules how can they be improved?

Do you intend to become a Solicitor or a Barrister?

No.

Are you aware that legislation (Irish and European) is written both in English and Irish?

Yes.

Are you aware that, as a result, there is and will be a need for bilingual lawyers in Ireland and Europe?

Yes.

Do you speak any other languages? If yes please provide details.

~~Yes~~ 'Broken' German.

Would you welcome the opportunity to study some elements of French language/French Law in addition to Irish medium modules?

Legal Education Questionnaire

There is no obligation to complete this survey and all information given is done so anonymously

Are you a fluent Irish speaker?

~~Not quite~~. No

Was your primary Education in Irish?

No

Was your secondary Education in Irish?

No

Are you taking any Irish language modules for your degree or attending additional Irish classes?

Yes

Did you choose to study law through Irish? Why did you make that choice?

Yes. I thought that it would be interesting, and would help me get a better understanding of Ireland. Also, I wanted to do law with another subject and I thought that I might as well do our own language before other languages. I also wanted to become fluent.

If more Irish medium materials were available would you attend Irish medium tutorials in subjects other than Dlí Bunreachtúil?

Definitely. I wouldn't do the entire thing through Irish though.

Are you aware of Faculty of Law members who can speak Irish aside from Seán Ó Conaill? If so please list them.

Neil Buttiner? Not sure if he's in the Faculty of Law

Will you take additional Irish medium options in future (eg Legal Skills has an Irish language option)?

Yes

Do you have any suggestions as to how Irish medium modules could be developed?

Not sure

If you have already attended some Irish medium modules how can they be improved?

Not sure

Do you intend to become a Solicitor or a Barrister?

No

Are you aware that legislation (Irish and European) is written both in English and Irish?

Yes

Are you aware that, as a result, there is and will be a need for bilingual lawyers in Ireland and Europe?

Yes

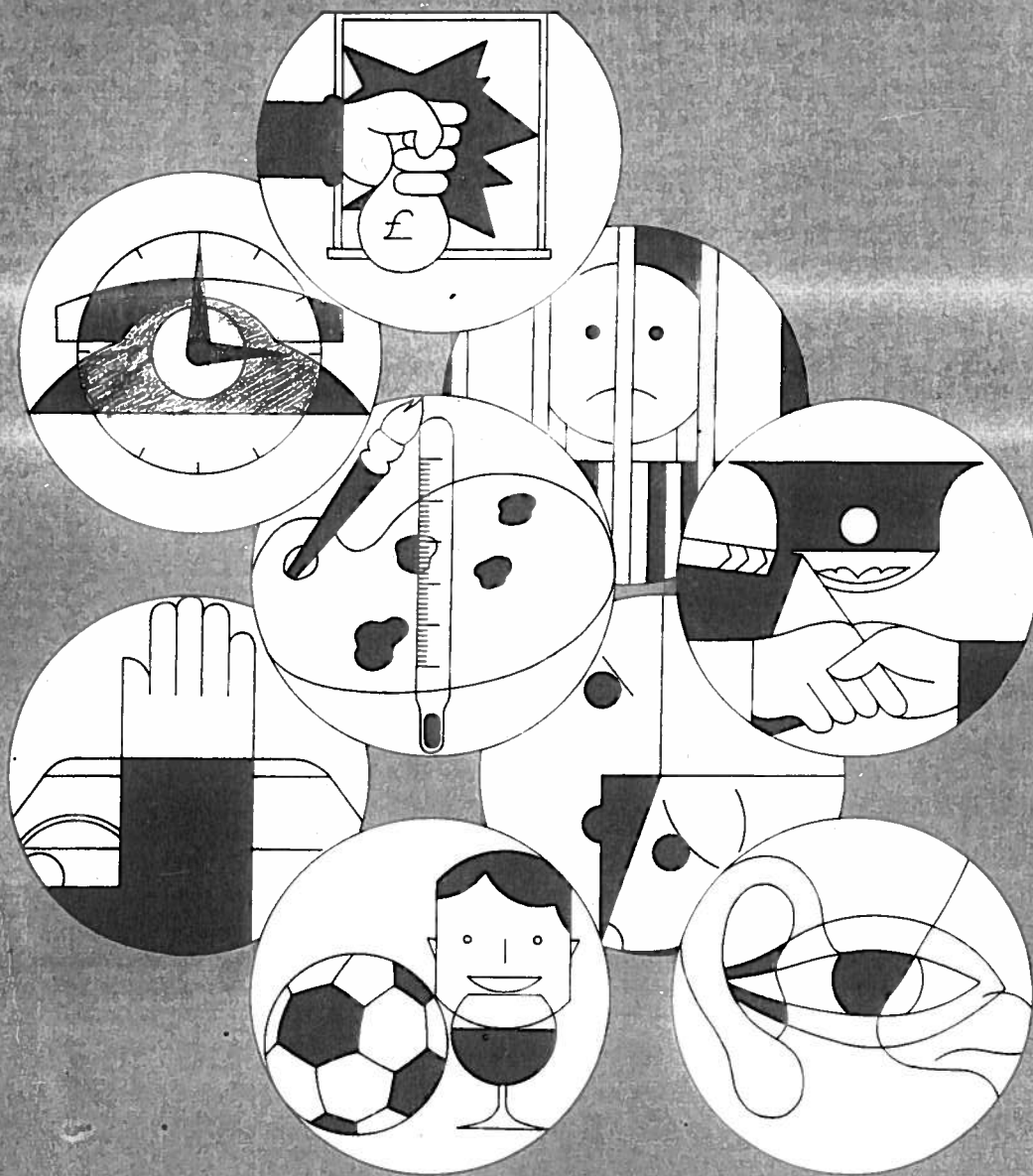
Do you speak any other languages? If yes please provide details.

English, Leaving Cert German, and ^{spoken} basic Chinese

Would you welcome the opportunity to study some elements of French language/French Law in addition to Irish medium modules?

Yes, I didn't do Leaving Cert French but I would be interested.

Ar Aghaidh Linn



Coláiste an Gharda Síochána

Comhthionscadal de chuid *Choláiste an Gharda Síochána*,
Gael-Linn, agus *ITÉ* is ea *Ar Aghaidh Linn*

Eagarthóirí Ginearálta
Gael-Linn

An Meitheal Oibre

Coimisinéir Cúnta P. S. Ó Móráin Bunaitheoir
An Sáirsint Dónall Ó Cualáin Bunaitheoir
Joe Sheils (ITÉ) Comhairleoireacht Cheannais
Rita Ní Dhúláine agus *Gearóid Ó Ciaráin* Scríbhneoirí Cúrsa
Dónall P. Ó Baoill (ITÉ) Comhairleoireacht Teanga
Piet Sluis agus *Ries Hoek* Obair Ealaíne

An tÁbhar Taifeadtha

Coiste Gaeilge an Gharda Síochána
Maitias Ó Cosgordha
Dónall Ó Cualáin
Máirtín Ó Laoi
Seosamh Mac Ionnrachtaigh
Bríd Gale
Bríd Ní Thuathail
Córa Ní Loinsigh
Páraic Ó Discín
Gearóid Luibhéid
Sondra Ní Chuilín
Colm Ó Giolláin

Clóchur

Institiúid Teangeolaíochta Éireann

Clóbhualadh

Cian Park Printers

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Brollach

Cúis áthais agus ríméid thar an gcoitiantacht dom an téacsleabhar Gaeilge seo a bheith á chur ar fáil don Gharda Síochána. Is leabhar stairiúil é ar bnealach ós é an cheac leabhar riamh dá chineál é dár foilsíodh don Gharda Síochána. Is gléas éifeachtúil é a chuirfidh ar chumas na nGardaí faoi oiliúint feabhas a chur ar a gcuid Gaeilge.

Is sa *Walsh Report on Student Probationer Training*, a foilsíodh i 1985, atá na moltaí le haghaidh cur chuige nua i leith múineadh na Gaeilge sa Gharda Síochána. Tá sár-obair déanta ag Institiúid Teangeolaíochta Éireann agus ag Gael-Linn ó 1988 ag dearadh an téacsleabhair seo, agus iad ag baint úsáid as na modhanna is éifeachtaí agus is nua-aoisí a bhí ar fáil. Dar ndóigh d'imir an Coimisinéir Cúnta Pádraig Ó Móráin agus foireann Rannóg na Gaeilge, Coláiste an Gharda Síochána, páirt lárnach san obair freisin. Gabhaimid buíochas chomh maith le Roinn na Gaeilge i gColáiste Thuamhumhan as an gcúnamh a thugadar dúinn ó thús leis an scéim seo. Agus, ar ndóigh, tá focal buíochais speisialta tuille ag an Roinn Dlí agus Cirt as ucht na foinsí cuí a chur ar fáil chun an cúrsa *Ar Aghaidh Linn* a fhorbairt agus a fhoilsiú.

Tréaslaím leo ar fad as ucht a ndíograise agus guím go mbeidh toradh a gcuid saothair le n-aithint ó cheann ceann na tíre as seo amach.

Eoghan Ó Crualaoich
Coimisinéir

Nollaig, 1990

Réamhrá

Comhthionscadal idir Gael-Linn, An Garda Síochána agus ITÉ is ea *Ar Aghaidh Linn*. Is éard atá ann ná cúrsa gairmiúil Gaeilge le nagnaidn micléinn i gColáiste na nGardaí. Baintear leas as an gcur chuige ilmheánach agus dá bhrí sin is cuid dhílis den chúrsa na cuairteanna a dhéantar chun na Gaeltachta agus úsáid na meán cumarsáide agus na téipeanna éisteachta agus físe a ghabhann leis an téacs seo.

Is iad aidhmeanna an chúrsa ná:

- cuidiú le mic léinn ar promhadh an leibhéal cumais atá riachtanach a bhaint amach ionas gur féidir leo gnáthghnóthaí sóisialta agus gairmiúla a dhéanamh trí Ghaeilge le linn a dtraenála agus ina dhiaidh,
- dearcadh dearfach a chothú do theanga agus do chultúr na Gaeilge,
- scileanna maithe foghlama teanga a chur chun cinn a bheas ina gcuidiú do fhoghlaim leanúnach na Gaeilge agus theangacha eile nuair a bheas an tréimhse fhoirmeálta traenála thart.

Cúrsa cumarsáideach is ea *Ar Aghaidh Linn*, agus tá cuid mhaith de bunaithe ar thaighde atá déanta ag Comhairle na hEorpa i dteagasc dara teangacha agus teangacha iasachta. Níl aon amhras orainn ná go mbeidh cumas teangacha antábhachtach in obair an Gharda amach anseo, agus dá réir sin tá an bhéim leagtha againn tríd síos ar chuspóirí cumarsáideacha atá bainteach leis an obair sin.

Gabhann ITÉ buíochas leis an gCoimisinéir agus le Coláiste na nGardaí as an deis a thabhairt dúinn an oideaseolaíocht nua a chur i bhfeidhm ar an gcúrsa, agus le Gael-Linn as an tionscadal san iomlán a phleanáil agus a bhrostú chun críche.

Institiúid Teangeolaíochta Éireann
Nollaig, 1990

Clár

1 Ag cur aithne ar dhaoine

- Tú féin a chur in aithne
- Mionchaint a dhéanamh leo sin atá tar éis bualadh leat
- Ainmneacha a scríobh i nGaeilge
- Canúintí Chonnacht, Uladh agus na Mumhan a aithint
- Beannú do dhaoine san fhórsa

2 Caitheamh aimsire

- A rá cé na príomhchaitheamh aimsire atá agat
- A rá cé mar a bhraitheann tú faoi chaitheamh aimsire áirithe
- A fháil amach cad is maith le daoine eile sa rang a dhéanamh
- Moladh a dhéanamh
- Bia/deoch a ofráil/a ghlacadh/a dhiúltú

3 Daoine eile

- Cuntas cruinn ar dhuine atá ar iarraidh a fháil
- Cur síos ar do phearsantacht féin/phearsantacht dhuine eile

4 Treoanna

- Treoracha a thabhairt
- A rá cad is maith/nach maith leat faoi áit

5 Cad a bhraitheann tú

- Do mhothúcháin a chur in iúl
- A rá conas a dhéileáilann tú le mothúcháin éagsúla

6 Coinne, cuireadh, áiteamh

- Coinne a dhéanamh
- Glacadh/diúltú do chuireadh i scríbhinn
- Áiteamh ar dhaoine

7 Ag lorg is ag tabhairt comhairle

- Comhairle a thabhairt do shaoránaigh déileáil le gnáthdheacrachtaí m.sh. maoin atá cailte, aláram ar siúl
- Do thuairim a thabhairt/aontú easaontú le tuairimí daoine eile faoi ghnéithe sóisialta

8 Daoine ag gearán

- Na gearáin is minice a dhéantar a thuiscint
- Gearán a dhéanamh go béasach agus/nó gearán láidir a dhéanamh go foirmeálta/neamhfoirmeálta
- Déileáil le gearán ón bpobal

9 Ionad seiceála

- Nithe a láimhseáil ag ionad seiceála m.sh. - cáin, árachas agus ceadúnas tiomána a sheiceáil

10 Gnó an Gharda

- Freagra a thabhairt ar shaoránaigh a bhíonn ag lorg eolais
- Déileáil le gnáth-imeachtaí, m.sh. timpistí bóthair, obair chúirte
- Tuairimí an phobail faoi Ghardaí a láimhseáil

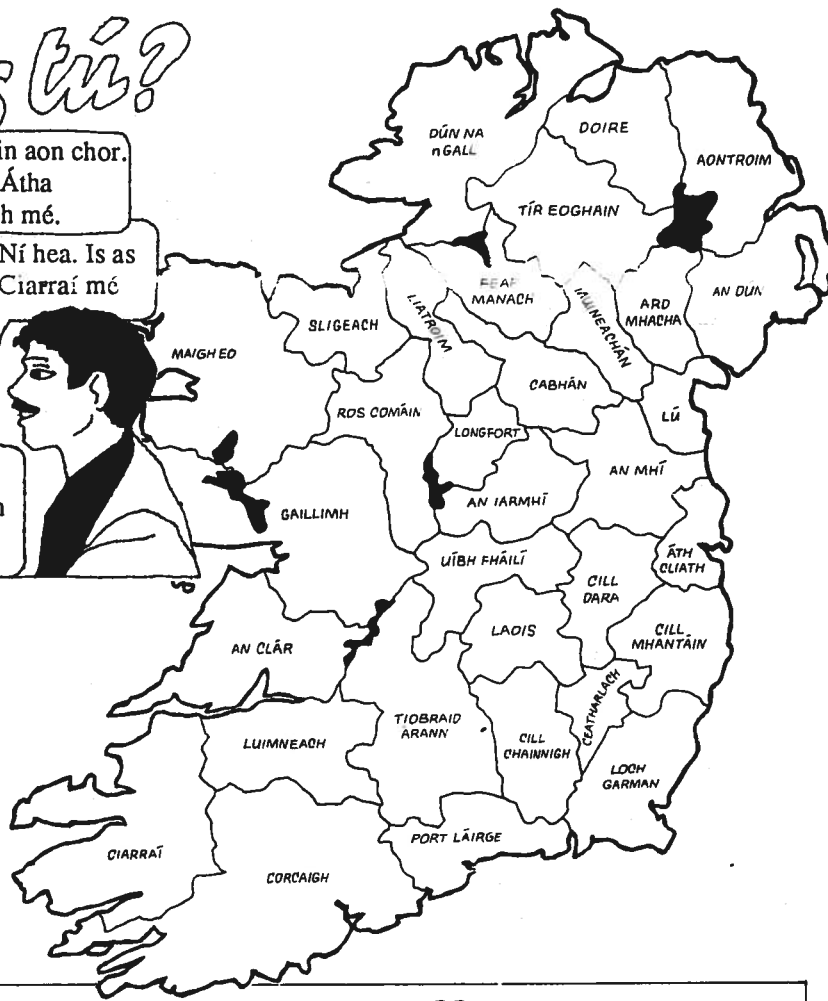


Ag cur aithne ar dhaoine

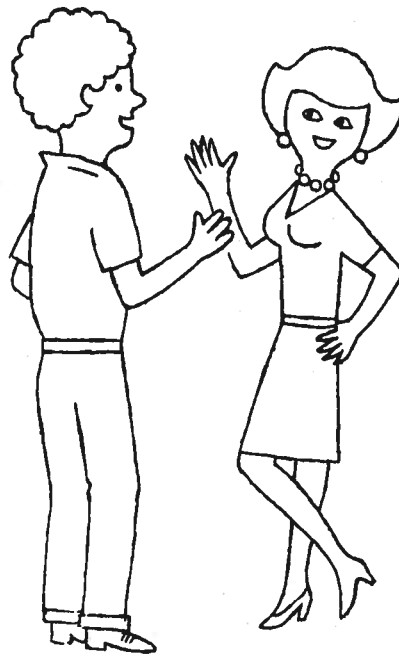
Ag beannú



Cár b'as tú?



- ✦ Cár b'as tusa? agus d'athair? do mháthair?
- ✦ Cá bhfuil do dheartháireacha anois? dheirfiúracha
- ✦ Cá bhfuil an áit sin?
- ✦ Cad a bhí á dhéanamh agat an bhliain seo caite?
- ✦ Bhí mé ag obair i monarcha i gColáiste Réigiúnach ar an bhfeirm sa bhaile san ollscoil i mo thógálaí thar lear dífhostaithe



Sloinnte Coitianta

1. Seo roinnt sloinnte coitianta Gaeilge.



Fir

Seán de Buitléir
Pól de Róiste

Tomás Mac Giolla
Seán Mac Suibhne

Seán Ó Loingsigh
Séamas Ó Briain



Mná singil

Áine de Buitléir
Niamh de Róiste

Anna Nic Ghiolla
Gráinne Nic Suibhne

Róisín Ní Loingsigh
Máire Ní Bhriain



Mná Pósta

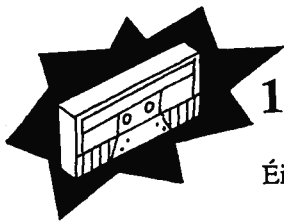
Máire (Bean) De Buitléir
Bríd (Bean) de Róiste

Méav (Bean) Mhic Ghiolla
Síle (Bean) Mhic Suibhne

Máirín (Bean) Uí Loingsigh
Nóra (Bean) Uí Bhriain

- An féidir leat cúpla ceann eile a fháil?
 - a) a thosaíonn le 'de'....
 - b) a thosaíonn le 'Mac'...
 - c) a thosaíonn le 'Ó'....
 - d) a thosaíonn le 'Ní'...
 - e) a thosaíonn le 'Nic'..
 - f) a thosaíonn le 'Uí'...

2. Píoc ceithre shloinne as ainmneacha cáiliúla agus déan cur síos gairid orthu.



1.2

Éist go cúramach agus scríobh síos na hainmneacha:

a) daoine ag cur aithne ar a chéile.

• Cá bhfuil siad dar leat?

b) Garda ag ionad seiceála.





Dia duit, a Sheáin. Conas tánn tú.
Go maith. Agus tú féin?
Ó! Ar fheabhas.



Cén chaoi a bhfuil tú, a Liam?
Go maith slán a bneas tu.



Cad é mar atá tú, a Mháire?
Go breá. Agus tú féin?
Go maith, go raibh maith agat.



Cúige Laighean also has a small Gaeltacht area - Rath Cairn. This area does not have a distinctive canúint as its people originated in Conamara and were given land and housing in Rath Cairn in the 1930's.

Gaointe Shóisialta

Cár b as iad seo dar leat?

Cuir tic sa bhosca cuí.



1-3

	Mumhan	Connachta	Uladh
Mír 1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mír 2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mír 3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Céim

Sáirsint

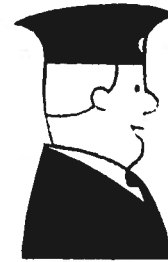


Máinlia

Na Gardai

Céimeanna san Fhórsa

Dia Duit,
A Sháirsint!
A Chigire!
A Cheannfoirt!



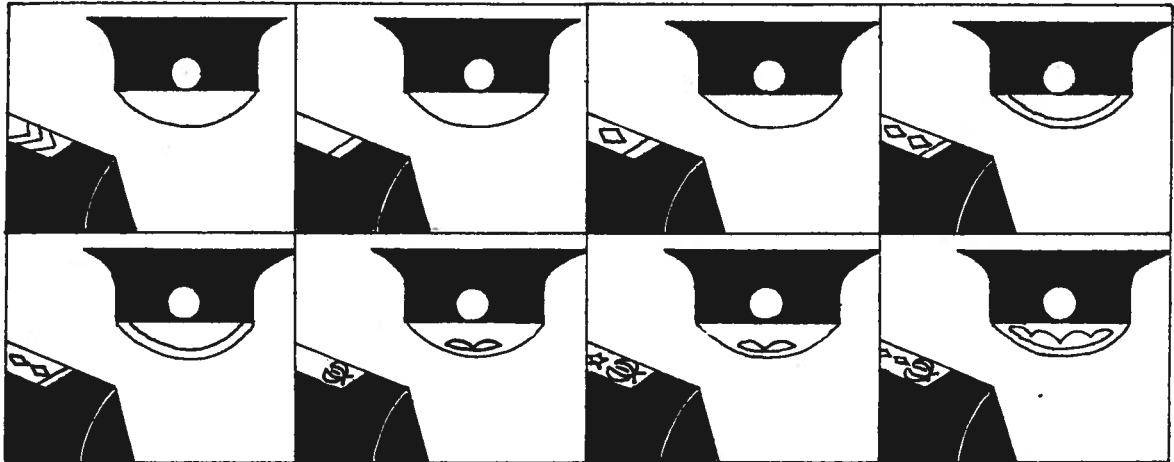
Céim

Sáirsint

Cigire

Ceannfort

Ardcheannfort



Máinlia

Coimisinéir Cúnta

Leaschoimisinéir

Coimisinéir

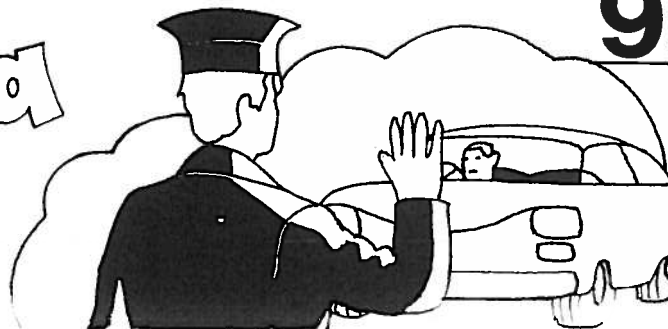
Féinmheasúnú: Aonad 1.

Cé chomh maith agus is féidir leat na tascanna seo a leanas a dhéanamh dar leat?

	go han- mhaith	measartha maith	ní go rómhaith	Féach leathanach
● Tú féin a chur in aithne				1-1
● Mionchaint a dhéanamh leo sin atá tar éis bualadh leat (Cárb as iad srl.)				1-2
● Ainmneacha a scríobh i nGaeilge				1-3
● Canúintí Chonnacht, Uladh agus na Mumhan a aithint				1-4
● Beannú do dhaoine san fhórsa				1-5

Ionad Seiceála

9



Taispeáin do cheadúnas tiomána dom, le do thoil.

An bhféadfá do cheadúnas tiomána a thaispeáint dom, le do thoil?

An bhfuil ceadúnas tiomána agat?

Táim ag iarraidh ort do cheadúnas tiomána agus do pholasaí árachais a thaispeáint i Stáisiún Gardaí de do rogha féin taobh istigh de dheich lá.

Feicim go bhfuil an diosca cánach infoctha.

Cén treo ina bhfuil tú ag dul?



Seo comhrá a tharla ag ionad seiceála

Éist leis an gcomhrá seo agus déan nóta d'ainm an tiománaí agus den choir i ngach cás.

9.1

Ar láimhseáil an Garda gnóthaí i gceart?

● Cad a dhéanfaí?

1 Stopann tú duine ag ionad seiceála. Níl sé sásta an fhuinneog a oscailt. Cad a dhéanfaidh tú?

2 Iarrann tú ceadúnas tiomána agus polasaí árachais ar dhuine ag ionad seiceála. Deir sé nach bhfuil siad aige in aon chor agus is deacair dó mar sin iad a thaispeáint duit nó in aon stáisiún ach oiread. Cad a dhéanfaí?

3 Stopann tú tiománaí ag ionad seiceála. Ceapann tú go bhfaca tú é ar phostaer "Ar Iarraidh" ach níl tú cinnte. Cad a dhéanfaí?

4 Stopann tú duine a bhfuil cuma an-óg air. Deir sé leat gur thug sé gluaisteán a thuismitheoirí leis i ngan a fhios dóibh agus níl aon cheadúnas nó árachas aige. Cad a dhéanfaí leis?

5 Stopann tú duine ag ionad seiceála. Níl aon cheadúnas aige. Diúltaíonn sé a ainm agus a sheoladh a thabhairt duit. Cad a dhéanfaí?



9.2



Stopann Garda tiománaí ag ionad seiceála.

Líon na bearnaí, déan comparáid le do chara agus ansin éist leis an téip.

G: Dia duit.

T: Dia is Muire duit.

G: _____

T: Tá sé sin fíor. Níor chuir siad amach chugam fós é.

G: _____

T: Ag tús na míosa.

G: Agus seo an tríú lá fichead den mhí.

T: Bhuel, tá sé sin fíor ach bhí sé beagáinín déanach nuair a chuir mé an seic isteach chucu.

G: _____

T: Caroline Ní Mhurchú.

G: _____

T: Gleann an Locha, Baile Átha Luain.

G: _____

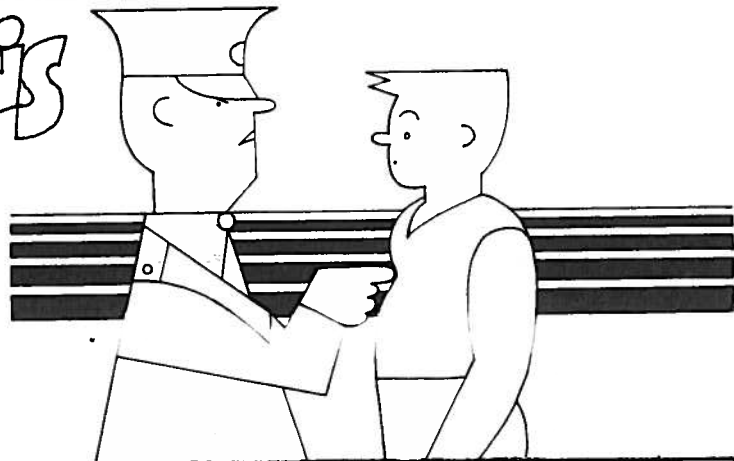
T: Níl sé anseo ach tá ceann agam. Tá sé sa bhaile.

G: _____

T: Tabharfaidh mé isteach go dtí an stáisiún i mBaile Átha Luain iad.

G: Tá go maith mar sin.

Rólaitheis



Saoránach

Bhí tú ag tiomáint ag caoga míle san uair ar imeall an bhaile. Ní leat féin an carr agus níl a fhios agat an bhfuil árachas ar an gcarr áirithe seo nó nach bhfuil.
-Tá ceadúnas tiomána agat sa bhaile.

Feiceann tú an carr chugat ag luas ard.
Faigh amach cé atá ag tiomáint.
Conas a tharla sé go raibh sé/sí ag tiomáint chomh tapa sin.

Aon eolas eile atá riachtanach.

Saoránach

Fuair tú carr ar iasacht ó do chara.
Níl aon cháindiosca air.
Níl tú cinnte cén seoladh go díreach atá ag do chara.
Tá polasaí árachais agat féin.

Garda

Stopann tú carr.

Níl aon cháindiosca air.
Faigh amach fios fátha an scéil.

Tá tú seacht mbliana déag d'aois.
Fuair tú carr ar iasacht ó do chara don oíche.
Níl árachas agat ná ceadúnas tiomána.
Bhí cúpla deoch agat.
Déan iarracht gach rud a cheilt.

Tá carr chugat ina bhfuil beirt.
Tá cuma an-óg orthu.

Tá diosca árachais agus cáindiosca ar an gcarr.

Cúirtéis Ar Ionad Seiceála

Tá sé an-tábhachtach bheith béasach le daoine ar ionad seiceála mar cabhraíonn sé le cur i láthair an Gharda agus faigheann sé tacaíocht ón bpobal.

Mar shampla

- **A dhuine uasail** - tá ionad seiceála agam anseo, níl ann ach an gnáthrud. (Routine).
 - **A bhean uasal** - ní choimeádfaidh mé rófhada thú / ní chuirfidh mé moill ort.
 - **Ar mhiste leat do charr a stopadh más é do thoil é.**
 - **Gabh mo leithscéal, a dhuine uasail,** ach feicim nach bhfuil aon chrios sábhála ort.
 - **Tá brón orm, a dhuine uasail,** ach caithfidh mé mo dhualgas a dhéanamh.
- Samhlaigh suíomh áit a mbeadh deacrachtaí le tiománaithe ag ionad seiceála agus conas mar a dhéileálfai leo.

Féinmheasúnú: Aonad 9.

Cé chomh maith agus is féidir leat iad seo a leanas a dhéanamh dar leat?

	go han-mhaith	measartha maith	ní go rómhaith	Féach leathanach
● Nithe a láimhseáil ag ionad seiceála m.sh. - cáin, árachas agus ceadúnas tiomána a sheiceáil				9-1/9-4

Gnó an Gharda

10

Gnáthghnó a bhíonn ag daoine i stáisiún Garda.

- Meaitseáil an gnó atá ag na saoránaigh (a-f) leis an méid a deir an Garda (1-7).

a	b	c	d	e	f	g
4	1	7	5	2	3	

6



- Teastaíonn uaim ceadúnas gunna a fháil. An bhféadfá an modh imeachta a mhíniú dom?
- Chaill mé mo cheadúnas tiomána. Teastaíonn uaim ceann nua a fháil. An bhféadfá an fhoirm seo a shíniú dom?
- Teastaíonn uaim an cháin a foc ar mo charr. An bhfuil foirm oiriúnach agat le do thoil?
- An mbeifeá sásta an fhoirm pas seo a shíniú dom?
- Iarradh orm ag ionad seiceála mo cheadúnas tiomána agus mo pholasáí árachais a thaispeáint anseo. Sco duit iad.
- Táim ag cur isteach ar cheadúnas tiomána. Teastaíonn uaim foirm a fháil. Tá ceadúnas sealadach anseo agam.
- Tá carr nua agam. Ba mhaith liom foirm athrú úinéireachta a fháil uait.

- Tá - fan nóiméad agus gheobhaidh mé duit é.
- An ndearna tú scrúdú tiomána fós? Caithfidh tú é sin a dhéanamh ar dtús. Má éiríonn leat sa scrúdú sin gheobhaidh tú ceadúnas iomlán. Tabharfaidh mé foirm duit le cur isteach ar an scrúdú sin. Líon isteach í agus cuir ar aghaidh go dtí An Roinn Chomhshaoil í.
- Ceart go leor - seo duit.
- Ar dtús caithfidh tú foirm a líonadh isteach anseo. Caithfidh tú admháil a fháil ó dhíoltóir gunnaí.
- Gheobhaidh mé an leabhar ar dtús. Cathain a tharla sé seo? Cén áit ar tharla sé?
- Ar thug tú tuairisc in aon stáisiún eile nuair a chaill tú é? Inis dom mar sin cén áit agus cén chaoi ar chaill tú é? Déanfaidh mé nóta de i leabhar na dtuairiscí anseo agus ansin beidh mé ábalta an fhoirm sin a shíniú duit.
- An bhfuil aithne agat ar chomhalta ar bith sa stáisiún seo? Mura bhfuil teastaíonn comhartha aithcantaís uaim le do thoil - ceadúnas tiomána nó a leithéid. Ansin beidh mé in ann é a shíniú duit.

- Léigh an sliocht seo faoi ghnáthlá an Gharda Uí Riain i stáisiún gnóthach agus cuir na pictiúir san ord ceart.

Imíonn an Garda Tomás Ó Riain ar patról coise go dtí an Phríomhshráid. Bíonn raidió, leabhar ticéad, agus leabhar nótaí aige.

Coimeádann sé súil ar an trácht, ar dhaoine a bhíonn páirceáilte go mídhleathach - fágann sé ticéad ar an gcarr. Má bhuaileann clog rabhaidh, imíonn sé chun é a fhiosrú. Má thosaíonn troid ar an tsráid nó i dtábhairne déanann se iarracht í a réiteach. Uaireanta bíonn air an raidió a úsáid chun cabhair a fháil. Is minic a tharlaíonn timpiste tráchta. Téann an garda go dtí an láthair ansin. Uaireanta bíonn air daoine/duine a ghabháil agus iad a thabhairt go dtí an stáisiún.

Chomh maith le bheith ag déanamh na rudaí seo uile - buaileann sé isteach sna siopaí agus áiteanna poiblí chun labhairt le daoine agus aon fhadhbanna atá acu a réiteach.



10.1

- Tá saoránach ag tuairisciú briscadh isteach ina charr. Líon isteach an comhrá. Éist leis an téip ansin agus déan comparáid le do chuid freagraí.

- ◆ Briscadh isteach i mo charr.
- ◆ _____
- ◆ Ghoid siad cóta leathair agus an steirco.
- ◆ _____
- ◆ Cóta gorm leathair.
- ◆ _____
- ◆ Tá sé taobh amuigh den doras.
- ◆ _____

[Sonraí cile.]

Timpistí Tráhta

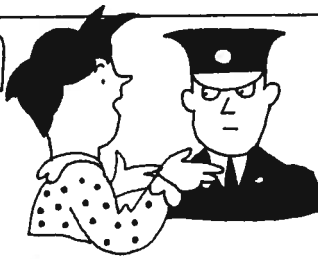


10.2

- G. Ní choimeádfaidh mé rófhada thú. Cé leis an carr dearg seo?
T. Is liomsa é - Tomás Ó Riain is ainm dom.
G. Cén seoladh atá agat?
T. 21 Sráid na Mainistreach, Baile Phib.
G. An leatsa an carr seo, SCI 135?
T. Is liom.
G. An bhfuil ceadúnas tiomána agus árachas agat?
T. Níl siad agam anseo, tá siad sa bhaile.
G. Ceart go leor. Tabhair isteach go dtí aon stáisiún is rogha leat iad taobh istigh de dheich lá. Cén stáisiún a oireann duit?
T. Stáisiún Mountjoy. Céard a tharlaíonn anois?
G. Rinne tú damáiste don chuaille seo, is le B.S.L. é. Beidh siad ag lorg airgid uait chun é a dheisiú. Conas a tharla sé gur bhuail tú é?
T. Shleamhnaigh mo chos ar na coscáin agus bhuail mé é.
G. Bhuel - cuir scéal mar gheall air chuig do chomhlacht árachais agus beidh mé i dteagmháil leat.

Céard a scríobhann an Garda sa leabhar nótaí?

Dearcadh



● Cad a déarfá i gcoinne na ráití seo a leanas?

- A. "Ní bhíonn siad riamh timpeall nuair a bhíonn gá leo"
- B. "Tá an iomarca cumhachta acu"
- C. "Ní bhíonn siad cothrom le gach aon duine"
- D. "Ní bhíonn siad dian go leor ar dhaoine a bhriseann an dlí"



● Faigheann tú cuireadh labhairt le páistí i scoil lánghaelach i do cheantar. Seo cúpla frása úsáideach

- Is mac léinn sa Gharda Síochána mise.
- Tá mé ag obair i Stáisiún Chaoimhín.
- Tá mé díreach tar éis an chéad chuid den chúrsa traenála a chríochnú sa Teampall Mór.
- Fad is a bhí mé ann rinne mé cúrsaí (a) sa dlí (b) i nGaeilge (c) san eolaíocht shóisialta (d) i gcúrsaí cumarsáide agus (e) sa chorpoideachas.
- Tá an obair suimiúil agus éagsúil faoi láthair.
- Beidh mé cáilithe i gceann dhá bhliain eile.

Féinmheasunú: Aonad 10.

Cé chomh maith agus is féidir leat na tascanna seo a leanas a dhéanamh?

	go han-mhaith	measartha maith	ní go rómhaith	Féach leathanach
● Freagra a thabhairt ar shaoránaigh a bhíonn ag lorg eolais				10-1
● Déilcáil le gnáth-imeachtaí, m.sh. timpistí bóthair, obair chúirte				10-2/10-5
● Tuairimí an phobail faoi Ghárdaí a láimhscáil				10-6