Neutral Citation No. [2010] NICA 24 | *Ref:* **GIR7778**

Judgment: approved by the Court for handing down | *Delivered:* **02/06/10**
*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN:

CAOIMHIN MAC GIOLLA CATHAIN

Appellant;

-and-

THE NORTHERN IRELAND COURT SERVICE

Respondent.

IN THE MATTER OF AN APPLICATION BY CAOIMHIN MAC GIOLLA CATHAIN FOR JUDICIAL REVIEW

IN THE MATTER OF A DECISION BY THE NORTHERN IRELAND COURT SERVICE

IN THE MATTER OF THE ADMINISTRATION OF JUSTICE (LANGUAGE) ACT IRELAND 1737

Morgan LCJ, Girvan LJ and Coghlin LJ

GIRVAN LJ

[1] For many centuries the Irish language was the dominant language of the island of Ireland, a fact to which the place names of Ireland bear clear witness. As a result of various forces – the English conquest of Ireland, the plantation of English speakers, a policy designed to impose English law, language and culture on a subject territory and economic forces that became more pressing after the Famine – the number of people in Ireland for whom Irish is their natural mother tongue has considerably shrunk. The emotional attachment of many in the island to the language, however, remains. In the latter part of the 19th century the revival of the fortunes of the Irish language featured prominently amongst the aims and goals of the supporters of what historians call the National Revival. Following independence in the territory of what is now commonly called the Republic of Ireland Irish was declared

the first official language although it has remained the first spoken language of only a small minority of the total population.

[2] The position of Irish in the territory which became Northern Ireland was somewhat different. Following the plantation of Ulster spoken Irish was a minority language within much of the area and the pressures which led to the decline of Irish in the rest of Ireland applied with even greater force. By the time of partition there was no area of Northern Ireland which could be considered as a fíor-Ghaeltacht. There remained however amongst a not insignificant minority a strong attachment to the language, an attachment linked to a sense of Irish identity. In recent years there have sprung up a number of Gaelscoileanna and in some districts people have devoted themselves with considerable dedication to using Irish as the language of the home. However, English remains the language of the vast majority of the population and it is the general language of public administration.

[3] The 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.

[4] The applicant, who is clearly much attached to the Irish language and uses it as his daily language whenever he can, wished to present an application to the court for an occasional licence drafted in Irish. Before doing so and being aware of the fact that the prescribed form for such an application was in English the appellant through his solicitor wrote to the Northern Ireland Court Service asking for confirmation that such an application in Irish would be accepted. His solicitor pointed out that he firmly believed that the requirement that only English can be used in court proceedings is incompatible with Article 14 of the European Convention on Human Rights and is incompatible with the Government's obligations under the European Charter for Minority and Regional Languages. The Court Service replied to the effect that the requirement that the court proceedings should take place in English was imposed by the Administration of Justice (Language) Act (Ireland) 1737. Accordingly it was stated that it would not be possible to accept an application in Irish. The appellant subsequently brought his judicial review application seeking a declaration that the decision was unlawful and sought an order of certiorari quashing the decision and an order mandamus requiring the Court Service to accept the application in Irish. He sought a declaration that the 1737 Act was incompatible with his Convention rights.

[5] It is necessary at the outset to identify the appellant's actual legal grievance in this case. Although the case was presented as a challenge to the validity of the 1737 Act in all its aspects affecting the conduct of proceedings

from start to finish, in fact the appellant's legal challenge can only relate to the question whether he should have been permitted to lodge the application for an occasional licence in Irish. Strictly that was a question which should have been addressed to the Clerk of Petty Sessions under Article 30(3) of the Licensing (Northern Ireland) Order 1996. The Court Service's letter was an advisory one though it purported to state that as a matter of law the application in Irish could not be treated as a valid application. Since the legal question raised in this appeal is whether as a matter of law an application in Irish would or could have been entertained as a valid occasional licence application the absence of a decision by the Clerk of Petty Sessions is not fatal to the application for judicial review.

[6] An application for an occasional licence must be brought in accordance with the provisions of the Licensing (Northern Ireland) Order 1996 (Article 30 and Schedule 7). The prescribed forms are set out in the Magistrates' Courts (Licensing) Rules (Northern Ireland) 1997, namely Form 10, supported by a statement from the organisers of the function in the prescribed form. The applicant for the licence must be a holder of a licence. The occasional licence may only authorise the sale of alcohol as ancillary to a function of an occasional nature falling within Article 30(6) of the 1996 Order which provides as follows:

> "(6) The functions to which sub-paragraph (5A) applies are functions of an occasional nature which are organised by any body established for social, charitable or benevolent purposes or for furthering the common interests of persons associated with any trade, professional, educational or cultural activity, game or sport."

The prescribed form under Form 10 of the Rules requires the specification of the organising body and its purpose. A statement supporting the application must be signed by and in the name of an officer of the identified body. The application must be notified to the relevant Police Sub-Divisional Commander with the statement attached.

[7] The appellant in his affidavit stated that his musical group Bréag decided to play a concert in the Culturlann Mac Adam Ó Fiaich with a proposed date of 28 June 2008. He stated that the Culturlann is the foremost provider of Irish language events in the Belfast area with Irish being spoken generally by all users of the Culturlann. He stated in paragraph 4 of his affidavit:

> "As part of the organisation of the event it was decided to apply for an occasional liquor licence. I was designated to make the application."

Nowhere in his affidavit does he purport to state that he is an officer of Culturlann. While it is likely that Culturlann was a body falling within Art 30(6) the appellant's evidence does not clearly establish that he was an officer of that body or authorised by that body to sign the appropriate statement which would have had to be attached to the application. It was Culturlann as a body which had a legitimate interest in securing the grant of an occasional licence. Mr Lavery argued that as a participant in the Culturlann the appellant like any other participant would have had a joint personal interest in securing its right to use Irish as the language in the licensing application. The evidence however discloses no details of the constitution of the Culturlann or its rules, no details of its membership or the role of members or officers in the organisation. The appellant has failed to establish that he would have had a sufficient legal interest in the proposed application for an occasional licence if it in fact had proceeded. If, though this has not been shown, he was an office bearer in the organisation the breach of any rights would have been a breach of the body's rights and the appellant's interest would have been as a representative of the interests of that body. This incidentally would have been a relevant consideration for the Legal Services Commission in relation to the question whether legal aid funding should have been provided to support the judicial review application. The appellant lacked locus standi to bring the application. We conclude that he cannot in the circumstances be a victim under section 7 of the Human Rights Act I998.

[8] Even if the appellant had locus standi and could argue successfully that Article 6 rights were engaged, as Mr Lavery strenuously argued, the provisions of the 1997 Rules and the 1737 Act have not been shown to be incompatible with any of the applicant's Convention rights. It is true that the imposition of a requirement that applications and proceedings in court proceedings should be in English does have the consequence of treating English speakers differently from non-English speakers. This might, thus, theoretically engage Article 14 insofar as there is differential treatment between different language speakers. The different treatment, however, is manifestly necessary and proportionate in a democratic society. In a jurisdiction where English is the language of the overwhelming majority of the population the requirement that court documents initiating proceedings be in English as the working language of the court is a practical necessity in the interests of fairness. Where a party or witness cannot speak English he must, of course, be entitled to give his evidence in the language he speaks subject to translation. Otherwise his right to access to the court would be illusory. That, however, does not prevent English being the working language of the court or make it incompatible with Article 14 to require English, the language of the vast bulk of the community, to be the working language of the court.

[9] Following earlier equivalent reforms in England the 1737 Act was intended to prevent people being misled or in the language of Section 1 "ensnared" by writs and formal documents formulated in Latin, French or other foreign languages. It was a statute intended to reform the then prevailing antiquated and linguistically cumbersome court procedures to remove some of the procedural complexities arising from ancient writs and procedures formulated in legal language no longer comprehensible to ordinary litigants. There is nothing to suggest that those who could only speak Irish were prevented from giving their evidence in Irish subject to translation. English was the common working language of the higher courts in Ireland, a consequence of the imposition of English common law on Ireland. Whatever may be said of the adverse consequence of that linguistic policy to the Irish language the present position is that English is not merely the working language of the courts. It is now clearly the working language of nearly the entire population.

[10] Conferring on individual litigants a right at their option to convert court forms from English into a language not understood by the vast majority of intended recipients would frustrate the interests of justice. While it will always be the case that in a pluralist society such as Northern Ireland there will be some people who may not understand English or would prefer to speak another language this cannot entitle them to require prescribed forms and applications to the court intended to inform the court and the other parties to be translated into their own preferred language which is not readily comprehensible to the intended recipients. Even if Article 6 and 14 were engaged in this case no breach of the appellant's Convention rights has in fact occurred. The appellant has not demonstrated any Convention incompatibility in the 1737 Act.

[9] Since this case is to be determined and can be answered by reference to the narrow question whether the prohibition on the use of a language other than English in an application for an occasional licence it is strictly unnecessary to consider wider questions relating to procedures to be followed in court where a witness who is fluent in English does not wish to speak the working language of the court. At common law English is the working language of the court and this will remain so unless and until the matter is changed by statute. Any change in the law would itself have to be compatible with the Convention rights of litigants.