AN CHÚIRT UACHTARACH

THE SUPREME COURT

O'Donnell C.J.
Dunne J.
Charleton J.
O'Malley J.
Hogan J.
Murray J.
Edwards J.

[2024] IESC 24

Between/

ANGELA KERINS

Applicant/Appellant

-and-

DÁIL ÉIREANN, IRELAND AND THE ATTORNEY GENERAL

Respondents

JUDGMENT OF Mr. Justice Gerard Hogan delivered on the 18th day of June 2024.

1. I agree with the judgment of the Chief Justice that the present appeal should be dismissed. I also fully agree with the analysis of the Article 15 issues which is to be found in the judgment which Murray J. is about to deliver.

2. I take this view because, as O'Donnell C.J. observes in his judgment, the present request for discovery essentially concerns documents dealing with utterances made within the Houses of the Oireachtas. As is clear from the words of Article 15.12 and Article 15.13 of the Constitution, such utterances are absolutely privileged. The circumstances in which these words were uttered by a member are, of course, irrelevant. It is therefore irrelevant that the words in question were, for example, uttered maliciously or perhaps even out of a sense of spite. Subject only to the quite exceptional *Callely v. Moylan* style proviso discussed by this Court in *Kerins v. McGuinness (No.1)* [2019] IESC 11, [2020] 1 IR 1 at 68-70 the constitutional privileges provided for by Article 15.12 and Article 15.13 are accordingly inviolable and indivisible so far as speech and utterances of members are concerned.

3. One cannot reasonably characterise the claim for damages in the present case as other than an endeavour to make either the individual members or Dáil Éireann or Dáil Éireann itself liable – if only indirectly – for the utterances of the members of the Public Accounts Committee ("PAC") in their dealings with Ms. Kerins. Such is, however, precluded by the concept of non-amenability to any court or other authority other than the House itself in Article 15.13 ("…ní inchúisithe é…"). In *Attorney General v. Hamilton (No.2)* [1993] 3 IR 227 at 247-248 Geoghegan J. observed the Irish language version of the word "amenable" ("inchúisithe") in Article 15.13 suggests something like "chargeable", but he also acknowledged that the context of this constitutional provision nonetheless "probably does connote the rendering of a person to some liability or sanction or potential liability or sanction."

4. As Ó Cearuíl notes, *Bunreacht na hÉireann: A Study of the Irish Text* (Dublin, 1999) (at 259) "inchúisithe" normally means something like "accuse, charge or prosecute". He nonetheless observes that the word itself comes from the prefix "in" plus the participle of the verb "cúisigh":

> "Cúis comes from the Latin causa and examples of the secondary sense of 'cause, case, dispute, controversy and more specifically 'law (law) case, suit, charge' etc. are cited in [*Dictionary of the Irish Language based mainly on the Old and Middle Irish Materials* (1983)]["DIL"] from the Glosses of the eight century onwards. The prefix 'in'-'has the sense of 'capable of, fit for, proper for, worthy of, according to DIL."

5. It is accordingly in this sense that the words of Article 15.13 ("amenable to any court or by any authority except the House itself")(… ní inchúisithe é mar gheall uirthi in aon chúirt ná ag údaras ar bith ach amháin an Teach féin") must be understood as referring to a dispute worthy of or suitable for legal proceedings: at its root it must all be related to a legal dispute ("cúis", "causa"). This all conveys the sense of making the member liable to some form of legal sanction, damages, order or punishment by a court or other authority in respect of their utterances.

6. It follows, therefore, that a claim for damages arising out of a statement in the Oireachtas is clearly barred by Article 15.13, irrespective of how that claim is characterised and again irrespective of whether the claim is direct or indirect. As the present action is in substance a claim for damages arising out of the utterances of members of the PAC, it seeks to do that which is clearly barred by Article 15.13. It is, accordingly, doomed to fail. In these circumstances, and quite apart from any other consideration, it is clear that it would be inappropriate to grant discovery in aid of proceedings that no longer have any reasonable prospect of success.

7. As this Court nonetheless made clear in *Kerins (No.1),* this constitutional immunity does not, however, extend to the *actions* of an Oireachtas Committee. And while, as the Chief Justice has just noted in his judgment, the distinction between speech and actions is not always the easiest to draw – one leading commentator fairly described it as "elusive" (Hickey, "Justiciability and proceedings in the Oireachtas: the case of *Angela Kerins*" [2020] *Public Law* 610 at 619) – it is nonetheless clear this constitutional immunity does not extend to the illegal *actions* of Dáil Éireann. In *Kerins v. McGuinness (No.2)* [2019] IESC 42, [2020] 1 IR 1 this Court held that the conduct of the ("PAC") was ultra vires the powers of that Committee.

8. While, accordingly, the present action cannot succeed since in substance the damage alleged relates to utterances made by members of the PAC – as distinct from their actions – it should also be observed that Dáil Eireann, as a corporate entity created by the Constitution and as one of the principal organs of State, is nonetheless itself under a duty to ensure that Ms. Kerins' constitutional rights – which include her constitutional rights to her good name and to the protection of her person (Article 40.3.2º) – are upheld and vindicated. This duty is a particularly elevated one where, as here, the further jurisdiction of the courts is ousted by the provisions of Article 15.13. As Clarke

C.J. said in *Kerins (No.1)* "it is for the Oireachtas rather than the courts to protect the rights of the individual in circumstances where the Oireachtas and its members enjoy the privileges and immunities conferred by Article 15": see [2020] 1 IR 1 at 68. In a case such as the present one, the remedy lies with the Oireachtas. To echo the words of FitzGibbon J. in *Cane v. Dublin Corporation* [1927] IR 582 at 612, it is "the Oireachtas alone [which] can do justice to the plaintiff."

9. As O'Byrne J. observed in *Buckley v. Attorney General* [1950] IR 67 at 80 the doctrine of the separation of powers is founded upon the respect "which one great organ of State owes to another." This Court has already found that the actions of the PAC (and, by extension, Dáil Éireann) were attended by illegality. In circumstances, however, where, by reason of the operation of Article 15.13, the courts cannot themselves provide a remedy, it falls, as I have just stated, to the Oireachtas to defend those constitutional rights. It will now be a matter for the Oireachtas to determine whether it has adequately discharged that constitutional obligation.

10. Subject to those observations, I agree with the Chief Justice and would otherwise dismiss the appeal.