

**THE HIGH COURT**

[2021] IEHC 308

[Record No. 2020/569 JR]

**BETWEEN**

**H**

**APPLICANT**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS, THE MINISTER FOR JUSTICE, AND  
EQUALITY, IRELAND AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**AND**

**DÁIL EIREANN**

**NOTICE PARTY**

**RULING ON COSTS of Mr Justice Barr delivered electronically on the 21st day of April, 2021**

1. The principal judgment in this matter was delivered on 24th March, 2021 (2021 IEHC 215). In the course of that judgment, the court ruled that the applicant's application in these judicial review proceedings was out of time. The court refused to make an order extending the time for the bringing of the application. Accordingly, the applicant's application for relief was refused.
2. This is a ruling in relation to the costs of the judicial review application. Having regard to the conclusions reached by the court in the substantive judgment, the respondents and the notice party have each sought an order that their costs should be paid by the applicant. Those submissions are based on the argument that as the applicant was unsuccessful in the judicial review proceedings, costs should follow the event; meaning that the respondents and the notice party should be entitled to an order that they recover their costs from the applicant.
3. The applicant is currently a prisoner in Castlerea prison, awaiting trial on a number of serious assault charges. It has been submitted on his behalf, that a recommendation should be made by the court that his costs should be paid under the Legal Aid – Custody Issues Scheme.
4. In considering the issue of costs in this case, the court has had regard to the provisions set out in Part II of the Legal Services Regulation Act, 2015. The court has also had regard to the decisions in *Corcoran & Oncor Ventures Ltd T/A "The Democrat" v. Commissioner of An Garda Siochána* [2021] IEHC 11 and *O'Shea v. The Legal Aid Board* [2020] IESC 51.
5. Having considered the submissions of the parties and in particular, the relevant parts of the statute and the authorities referred to above, the court is of the view that the issue of costs in this case cannot be disposed of as if it were simply inter partes litigation in the ordinary sense. At all material times, the applicant was incarcerated in prison. Having consulted with his lawyers, an ex parte application was made seeking relief by way of judicial review. Liberty to bring such proceedings was granted on an ex parte basis by the High Court.

6. In such circumstances, it cannot be said that the substantive application brought by the applicant was not stateable. Firstly, it had been advised by senior and junior counsel and solicitor, who were representing the applicant; secondly, he was successful at the ex parte stage in obtaining an order granting him liberty to proceed by way of judicial review. The court also has to take into account the fact that the applicant was a prisoner. The purpose of the Legal Aid – Custody Issues Scheme is to ensure that people who are incarcerated in prison have an opportunity to obtain legal advice and bring whatever applications may appear appropriate that are connected to either their incarceration, or their criminal trial.
7. As such, the Legal Aid – Custody Issues Scheme represents an important administrative procedure which ensures that although people may be incarcerated, either serving a term of imprisonment, or on remand awaiting trial, they have access to legal advice and can bring the necessary application where they are advised that such applications have some prospect of success. It is important that that right of access to legal advice and legal representation is protected. The scheme does that by providing that in the types of cases that come within the terms of the scheme, the Legal Aid Board can grant the necessary payment of fees in appropriate cases.
8. Having regard to those aims and to the fundamental protection that the scheme provides for the rights of people who are in prison, and having regard to the fact that the applicant in this case was successful in obtaining leave at the ex parte stage, the court is satisfied that it is appropriate in the circumstances of this case to make a recommendation that the fees incurred by the applicant be discharged under the scheme. Accordingly, the court will recommend that the fees incurred by the applicant in respect of retaining a solicitor, senior counsel and junior counsel, being: John M. Quinn & Company Solicitors, Michael O’Higgins SC and Michael D. Hourigan BL, be paid under the scheme.
9. Were the court to accede to the request of the respondent and the notice party, that the applicant be made personally liable for their costs, that would have a chilling effect on prisoners seeking to challenge aspects of their detention. That would not be in the interests of justice.
10. While it is undoubtedly the case that the respondents and the notice party incurred costs in defending the proceedings, in which they were ultimately successful; nevertheless, having regard to the totality of the circumstances involved in the case, it is reasonable that the respondents and the notice party each bear their own costs, and the court so orders.