

**THE HIGH COURT**

**Record No. JR 2017/798**

Between

**STEPHEN MANNING**

Applicant

-v-

**CIRCUIT COURT JUDGE SEAN O'DONNABHAIN**

Respondent

**SUBMISSIONS OF THE APPLICANT**

**1. Introduction:** The Applicant lodged a judicial review application in October 2017 challenging the decision by Circuit Court Judge Sean O'Donnabhain to, (i) order the Applicant unlawfully incarcerated on May 4<sup>th</sup> 2017 mid-way through an *unfinished* Circuit Court Appeal hearing on strength of, (ii) a previous District Court Order issued out of Castlebar Court on January 24<sup>th</sup> 2017 by Judge Aeneas McCarthy that the Applicant '*be found guilty in absentia*' from a hearing which the said Judge and the Prosecution Team knew he had NOT been notified of; and who then unlawfully sentenced the Applicant to two months imprisonment in respect of an alleged 'Section 6' public order offence which said decisions [(i) & (ii) above] the Applicant maintains were arrived at in utterly fraudulent, unlawful and unconstitutional circumstances and in repeated breach of the law and of his fundamental rights as laid out in general in the Applicant's grounding affidavit of October 20<sup>th</sup> 2017 – the contents and detail of which are assumed as the basis for these submissions.

**2. The General Position of the Applicant** is that he has been unlawfully 'targeted' by certain agents and agencies of the State (who are operating *ultra vires* and outside of their legal authority and statutory mandates) because of the Applicant's prominent pro-justice activities as the founder and administrator of the *Integrity Ireland Association*—in which voluntary role the Applicant has had cause to lawfully and publicly challenge the improper, illegal and/or criminal activities of certain persons employed by the Irish State.

**3. Originating Incident:** That in light of the recurrent systemic failures of the various 'statutory oversight bodies' to take the appropriate action, the Applicant initiated private civil and criminal proceedings in his own name, and it was during one such appearance as a 'common informer' lay-prosecutor in September 2015 that several agents of the State including the presiding District Court Judge, engaged in a series of visibly underhanded and unlawful acts for the purposes of preventing two legitimate prosecutions from proceeding.

3a. The public present were outraged and a disturbance ensued which required the Court to be abandoned for the day. The Applicant maintains that he did NOT commit any listed offence whatsoever on the day, but was in fact engaged in a sincere, determined and wholly lawful attempt to prevent the commission of additional crimes as against the administration of justice by agents of the State present in that Courtroom that day.

4. However, some nine months later the Applicant was charged with an alleged ‘public order offence’ on strength of an apparently-backdated summons, accompanied by demonstrably-false witness statements and other falsified evidence, and was then subjected to a series of unlawful appearances in Court where he was (in brief) variously denied access to; (i) the Court (on 2 occasions), (ii) to legal representation (6 occasions), (iii) to ‘evidence’ (which was unlawfully suppressed by the State), (iv) to his own case file, and (v) to other fundamental justice-related rights. That the Applicant was afforded no proper opportunity to, (vi) enter a plea, (vii) to enter a defence nor, (viii) to call his defence witnesses during the two unlawful ‘half-trials’ in the District and Circuit Courts which were conducted in an overtly-biased and prejudiced manner, and which were, (ix) unlawfully terminated *before* a defence could be entered; that (x) several legitimate applications and formal requests of the Court were denied or refused without explanation; and the Applicant was subsequently incarcerated ‘for two months’ (and actually imprisoned for 26 days) on the strength of, (xi) fraudulent committal papers, in circumstances where, (xii) the Applicant had already made several criminal complaints and formal approaches to the Irish authorities—including to An Garda Síochána, to the Minister for Justice and to the Superior Courts—where his incontestable evidences of serial improper, unlawful, unconstitutional and *proven* criminal activities by agents of the State in this case, were either ignored, suppressed, denied or dismissed.

5. The Applicant maintains that it is a self-evident truism that no person should be forced or coerced against their will by agents of the State, to be subject to—or participate in—unlawful or criminal activity.<sup>1</sup> That the law states that no lawful process can rest or continue on the foundations of unlawful acts or improper processes (by the authorities) which in effect, would render any such subsequent ‘legal processes’ null and void – or *void ab initio*;<sup>2</sup> and that there can be no doubt that at every identifiable stage of the proceedings in this case—from the initiating charges, to unlawful incarceration, to this judicial review process—that multiple unlawful acts or illicit processes were cynically indulged in by various agents of the State including by the named Respondent Judge; by his predecessor in the District Court and by the DPP Prosecution Team and associates throughout, and as such, the said parties were not only knowingly engaging (variously) in definitively *criminal* actions (as summarised above) but they were of course thereby also creating ‘fundamental defects’ in the processes and proceedings, and acting ‘*ultra vires*’ (outside of their respective jurisdictions) in violation of the law, of the Constitution and of the applicant’s fundamental human rights.

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<sup>1</sup> ‘Notice and Constitutional Declaration’ of the Applicant, endorsed *qui tacit consentit* by the Irish State, August 2016, filed in Castlebar Courthouse January 17<sup>th</sup> 2018.

<sup>2</sup> See paragraph 30 in this document, ‘The Void Court Order’.

6. That the Applicant is sincerely endeavouring to meet the requirements of the High Court that he ‘make submissions’ in this matter by April 17<sup>th</sup> 2018 in circumstances where the Applicant still has no legal assistance or representation (despite being in possession of a legal aid certificate in a parallel case) and where the Respondent’s representatives (previously the CSSO and now the Office of the DPP) are in ongoing breach of two existing Court Orders that, (i) they provide each other with case-related documentation and, (ii) “*file a responding affidavit by March 6<sup>th</sup> 2018.*”

6a. That these apparent acts of ‘contempt of Court’ ongoing—including by one particular agent of the DPP’s Office who *partially* prosecuted the ‘original incident’—are (once again) interfering with the progress of this judicial review matter and the ability of the Applicant to make these submissions on schedule; which (as of April 17<sup>th</sup>) is the subject of another approach to the High Court by the Applicant, who maintains that these repeated acts of non-cooperation, deception and obstructionism on the part of the Respondent’s representatives are a deliberate continuance of the aforesaid breaches of the Applicant’s fundamental rights to access justice. And it is in this particular context i.e. that the Applicant has NO legal guidance and is facing multiple acts of ongoing obstructionism by agents of the State, that the Applicant delivers these ‘submissions’ in his own best understanding as a lay litigant, as to what is now required by the Court.

7. Speaking in the first person; I say that the materials already submitted to the Court in my Grounding Statement and Affidavit of October 20<sup>th</sup> 2017 which refer to violations of *Articles 35, 38 & 40 of the Irish Constitution* as well as *Articles 1, 5, 6, 7 & 13 of the European Convention on Human Rights (ECHR)* and protocols of the *Council of Europe (CoE)* should I believe, be more than sufficient on their own face to demonstrate the unopposable validity of my claim; however, as I understand it, according to the Order of Justice Noonan of February 13<sup>th</sup> last, I am also now required to seek out and quote any legal precedent, authorities and/or rulings of the respective Courts in matters related – which I have endeavoured to do to the best of my ability with the time and resources available to me.

**8. SOURCES:** Amongst Irish and Common Law sources, I have also quoted verbatim from the ‘*EU Handbook on European Law Relating to Access to Justice*’ under the respective headings following, which generally or specifically align with my allegations of unjust or improper treatment or procedures by the named Respondent in this matter—and/or of injustices and improprieties that were *known* to the Respondent to have already occurred in the District Court and therefore had a direct bearing on the case before him—as summarised in paragraphs 25 & 26 of my original grounding affidavit of October 20<sup>th</sup> 2017 which asserts and demonstrates that the Respondent’s actions were not only violations of the law, of the Irish Constitution and of the Judge’s Oath of Office, but that they constituted repeated and flagrant breaches of my fundamental rights; (i) to ‘**fair procedures**’; (ii) to ‘**a presumption of innocence**’; and (iii) to ‘**unbiased decision making**’; as well as breaching Articles 1, 5, 6, 7 & 13 of the ECHR, and the protocols of the CoE, of which Ireland is a Contracting Party.

**9. LIST OF LEGAL PRINCIPLES VIOLATED IN THIS CASE AND OF FUNDAMENTAL RIGHTS BREACHED BY THE RESPONDENT.** *(by paragraph herein, with references to case law, to professional sources, and to the respective decisions of the various Courts, as footnotes)*

9a. I say that I am aware of the 10,000 word limitation for this document and I have curtailed my research accordingly, trusting upon the superior knowledge and experience of the Court (in added context of the contents of my original grounding affidavit) to recognize the gravity and seriousness of my claim – if only upon this limited basis.

10. THE RIGHT OF ACCESS TO JUSTICE
11. THE RIGHT TO FAIR PROCEDURES
12. THE RIGHT TO A FAIR TRIAL
13. THE RIGHT TO A FAIR HEARING
14. THE RIGHT TO EQUALITY OF ARMS
15. THE RIGHT TO ACCESS A LAWYER
16. THE RIGHT TO ADVERSARIAL PROCEEDINGS
17. THE RIGHT TO A REASONED DECISION
18. THE RIGHT TO BE INFORMED OF PROCEEDINGS
19. THE RIGHT TO THE INDEPENDENCE AND IMPARTIALITY OF 'TRIBUNALS' (COURTS)
20. THE RIGHT TO LEGAL AID IN CRIMINAL PROCEEDINGS
21. THE RIGHT TO BE ADVISED, DEFENDED AND REPRESENTED IN CRIMINAL PROCEEDINGS
22. THE QUALITY OF LEGAL ASSISTANCE
23. THE RIGHT TO SELF-REPRESENTATION
24. THE RIGHT NOT TO BE SUBJECTED TO 'EXCESSIVE FORMALISM'
25. THE RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE ONE'S DEFENCE
26. THE RIGHT OF ACCESS TO THE CASE FILE
27. THE RIGHT TO LEGAL AID IN APPEAL HEARINGS
28. THE RIGHT TO AN EFFECTIVE REMEDY
29. REGARDING MISFEASANCE & NONFEASANCE
30. REGARDING ABUSE OF PROCESS
31. THE VOID COURT ORDER
32. REGARDING NEWLY DISCOVERED FACT
33. REGARDING MISCARRIAGE OF JUSTICE
34. REGARDING ACTING UNDER DURESS
35. THE RIGHT TO A PRESUMPTION OF INNOCENCE
36. APPLYING FOR JUDICIAL REVIEW / TIME LIMITS / SERIOUSNESS OF ISSUE
37. EUROPEAN COURT OF JUSTICE TEST FOR JUDICIAL REVIEW
38. RIGHT OF THE COURT TO OVERRULE OR OVERTURN DPP DECISION TO PROSECUTE
39. ENTITLEMENT TO DAMAGES IN JUDICIAL REVIEW
40. COMPENSATION
41. COMPENSATION FOR UNLAWFUL DETENTION
42. CHRONOLOGY

**10. THE RIGHT OF ACCESS TO JUSTICE:** (i) According to international and European human rights law, the notion of access to justice obliges states to guarantee **each individual's right to go to court to obtain a remedy if it is found that the individual's rights have been violated**. Access to justice encompasses a number of core human rights, such as **the right to a fair trial** under Article 6 of the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights (CFR) and **the right to an effective remedy** under Article 13 of the ECHR and Article 47 of the Charter which should primarily be **enforced at national level**.

(ii) In European human rights law, the notion of access to justice is enshrined in Articles 6 and 13 of the ECHR and Article 47 of the CFR, which guarantee **the right to a fair trial** and to an effective remedy, as interpreted by the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), respectively. These rights are also provided for in international instruments, such as Articles 2 (3) and 14 of the United Nations (UN) International Covenant on Civil and Political Rights (ICCPR)<sup>3</sup> and Articles 8 and 10 of the UN Universal Declaration of Human Rights (UDHR).<sup>4</sup> Core elements of these rights include **effective access to a dispute resolution body, the right to fair proceedings and the timely resolution of disputes, the right to adequate redress**, as well as **the general application of the principles of efficiency and effectiveness to the delivery of justice**.

**11. THE RIGHT TO FAIR PROCEDURES:** The courts will protect the right of its citizens to fair procedures. The court will intervene where a procedure is unfair and oppressive.<sup>5</sup> An accused's right to fair procedures is superior to the community's right to have crimes prosecuted.<sup>6</sup> The constitutional duty to observe *fair procedures* includes the power to dismiss a charge.<sup>7</sup>

**12. THE RIGHT TO A FAIR TRIAL:** Article 6 of the ECHR and Article 47 of the EU Charter of Fundamental Rights guarantee **the right to a fair trial**. Every accused is entitled to a fair trial; the right is of fundamental constitutional importance.<sup>8</sup> The appropriate burden of proof in establishing the likelihood of an unfair trial is for the applicant to show that there is a real or serious risk that there will be an unfair trial.<sup>9</sup>

**13. THE RIGHT TO A FAIR HEARING:** Access to justice requires a hearing that is **procedurally fair** and public. The right to a fair and public hearing is enshrined in Article 6 (1) of the ECHR and Article 47 of the EU Charter of Fundamental Rights. Specific safeguards for a fair trial in criminal proceedings are additionally found in Article 6 (2) and (3) of the

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<sup>3</sup> UN, General Assembly (GA) (1966), International Covenant on Civil and Political Rights (ICCPR), 16 December 1966.

<sup>4</sup> UN, GA (1948), Universal Declaration of Human Rights (UDHR), 10 December 1948.

<sup>5</sup> McGrath v Garda Commissioner [1990] ILRM 817.

<sup>6</sup> Z v DPP [1994] 2 ILRM 481; [1994] 2 IR 476; Larkin v O'Dea [1995 SC] 2 ILRM 1.

<sup>7</sup> DPP v Ní Chondúin [2007] IEHC 321; [2008 HC] 3 IR 498.

<sup>8</sup> D v DPP [1994 SC] 1 ILRM 435.

<sup>9</sup> (ibid D case). See also Magee v O'Dea [1994 HC] 1 ILRM 540; Z v DPP [1994 SC] 2 ILRM 481 and 2 IR 476; Nolan v DPP [1994 SC] 3 IR 626.; K v Judge Moran [2010 HC] ICLR (1 Mar). See "Article 6 of the European Convention on Human Rights, Administrative Tribunals and Judicial Review" by William McKechnie in Bar Review (Oct / Nov) 333 and (Dec 2002) 364.

ECHR and Article 48 of the Charter. The right to a fair hearing includes **the right to equality of arms, the right to adversarial proceedings and the right to a reasoned decision.**

**14. EQUALITY OF ARMS:** (i) Under CoE law and EU law, one of the core requirements of the right to a fair hearing is ‘**equality of arms**’ between the parties. Equality of arms involves ensuring that **each party has a reasonable opportunity to present its case in conditions that do not disadvantage either party.** Any complaint regarding the absence of equality of arms “will be considered in the light of the whole of Article 6 (1) because the principle of equality of arms is only one feature of the wider concept of a fair trial, which also includes **the fundamental right that proceedings should be adversarial**”.<sup>10</sup> The CJEU has similarly defined the principle.<sup>11</sup>

(ii) In criminal cases, the principle of **equality of arms** is safeguarded through the specific defence rights set out in Article 6 (3) (d), namely **the “right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him”.** Article 6 (2) and (3) of the ECHR and Article 48 of the EU Charter of Fundamental Rights.. ..include **the right to be informed** promptly of the nature and cause of the accusation faced and the right to adequate time and facilities for preparing one’s defence. The principle of **equality of arms** is but one example of the umbrella of rights that are now recognised as applying to all types of proceedings in which personal or property rights may be affected.<sup>12</sup>

**15. THE RIGHT TO ACCESS A LAWYER:** (iv) Under EU law, secondary legislation further details the scope of fair trial rights. For example, Directive 2012/13/EU on **the right to information in criminal proceedings** establishes that Member States must inform suspects and accused persons of their rights, including **the right to access a lawyer** and the right to remain silent.<sup>13</sup> Under the directive, suspects and accused persons who are arrested must also be provided with a **‘Letter of rights’ containing information on additional rights,** including **their right to access documents relating to their specific case that are in the possession of the competent authorities – such as evidence..**

**16. THE RIGHT TO ADVERSARIAL PROCEEDINGS:** Under both CoE and EU law, this is another essential component of the right to a fair hearing.<sup>14</sup> In practice, this includes:

- the right to have knowledge of, and comment on, **all evidence** filed to influence the court’s decision;<sup>15</sup>

<sup>10</sup> ECtHR, Ruiz-Mateos v. Spain, No. 12952/87, 23 June 1993, para. 63; see also paras. 63–68.

<sup>11</sup> CJEU, C-199/11, Europese Gemeenschap v. Otis NV and Others, 6 November 2012, para. 71.

<sup>12</sup> O’Brien v Personal Injuries Assessment Board [2008] IESC 71; [2009 SC] 2 ILRM 22. See also JF v DPP [2005] IESC 24; [2005 SC] 2 IR 174.

<sup>13</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ 2012 L 142.

<sup>14</sup> ECtHR, Ruiz-Mateos v. Spain, No. 12952/87, 23 June 1993, para. 63; CJEU, C-300/11, ZZ v. Secretary of State for the Home Department, 4 June 2013, para. 55. In relation to criminal proceedings, see ECtHR, Brandstetter v. Austria, Nos. 11170/84, 12876/87 and 13468/87, 28 August 1991, paras. 66–67

<sup>15</sup> ECtHR, Vermeulen v. Belgium, No. 19075/91, 20 February 1996, para. 33.

- the right to have **sufficient time to familiarise oneself with the evidence** before the court;<sup>16</sup>
- **the right to produce evidence.**<sup>17</sup>

The courts must consider whether the procedure **applied as a whole** complied with the requirements of the right to adversarial proceedings.<sup>18</sup>

**17. THE RIGHT TO A REASONED DECISION:** This is another core aspect of the right to a fair hearing.<sup>19</sup> A reasoned decision **demonstrates that a case has been heard properly and permits the parties to bring an appropriate and effective appeal.**<sup>20</sup>

**18. THE RIGHT TO BE INFORMED OF PROCEEDINGS:** Where an accused does not appear at trial in person, there is no violation **if the accused was informed of the date and place of the trial or was defended by a legal counsellor to whom s/he had given a mandate to do so.**<sup>21</sup> Conversely, **if the accused has NOT been informed of the date of the trial, and has had NO legal representation assigned to them (such as occurred in this case) then clearly there HAS been a violation of Article 6.**

**19. THE RIGHT TO THE INDEPENDENCE AND IMPARTIALITY OF ‘TRIBUNALS’ (COURTS):** CoE and EU law require tribunals to be **independent and impartial.** A tribunal is presumed to be impartial **unless proved otherwise – or unless they repeatedly demonstrate otherwise such as in this case.**

**20. THE RIGHT TO LEGAL AID IN CRIMINAL PROCEEDINGS:** (i) Under CoE law, an explicit right to legal aid in criminal proceedings is set out in Article 6 (3) (c) of the ECHR and is **guaranteed** under Article 48 (2) of the EU Charter of Fundamental Rights. This provides that **everyone charged with a criminal offence has a right to free legal aid if they do not have ‘sufficient means’ to pay for legal assistance** (the financial or means test), where the ‘interests of justice’ so require. The ‘interests of justice’ test includes consideration of the seriousness of the offence and the severity of the potential sentence, the complexity of the case and the defendant’s personal situation.

(ii) **Where liberty is at stake, the interests of justice call for legal representation. The right of access to a lawyer in criminal proceedings applies throughout the entire proceedings, from police questioning to the appeal.**<sup>22</sup>

<sup>16</sup> ECtHR, Krcmar v. Czech Republic, No. 35376/97 3 March 2000, para. 42.

<sup>17</sup> ECtHR, Clinique des Acacias and Others v. France, Nos. 65399/01, 65406/01, 65405/01 and 65407/01, 13 October 2005, para. 37.

<sup>18</sup> ECtHR, Rowe and Davies v. the United Kingdom, No. 28901/95, 16 February 2000, para. 62.

<sup>19</sup> See Council of Europe, CCEJ (2008), Opinion N°11 on “the quality of judicial decisions”, 18 December 2008.

<sup>20</sup> ECtHR, Hadjianastassiou v. Greece, No. 12945/87, 16 December 1992, para. 33. Compare with ECtHR, Jodko v. Lithuania (dec.), No. 39350/98, 7 September 1999. On EU law, see CJEU, C-619/10, Trade Agency Ltd v. Seramico Investments Ltd, 6 September 2012, para. 53.

<sup>21</sup> ECtHR, Håkansson and Sturesson v. Sweden, No. 11855/85, 21 February 1990, para. 66; CJEU, C-399/11, Stefano Melloni v. Ministerio Fiscal, 26 February 2013, para. 49.

<sup>22</sup> ECtHR, Salduz v. Turkey, No. 36391/02, 27 November 2008.

(iii) Article 6 (3) (c) of the ECHR sets out the right to be defended **by a lawyer of one's own choosing**, which can be subjected to limitations if the interests of justice so require. Where *"the proceedings were clearly fraught with consequences for the applicant"* and the case is complex, **legal aid should be granted**.<sup>23</sup> Even where applicants are educated persons who can understand the proceedings, the important issue is whether they can **actually defend themselves without a lawyer**.<sup>24</sup> Applicants do not have to show that the absence of legal aid caused *"actual damage"* to their defence; they must only show that it appears *"plausible in the particular circumstances"* that a lawyer would be of assistance.<sup>25</sup> **Where an individual's liberty is at stake, the interests of justice in principle call for legal representation**.<sup>26</sup> This obligation arises even if there is only a possibility of a custodial sentence.<sup>27</sup>

(iii) The Irish *Citizens Information* website states: "In Ireland if your constitutional right to legal representation applies and you don't have the means to pay for legal representation, **then the State (or Government) is obliged to provide that legal representation. The Supreme Court has held that there is a need to put the defendant on equal terms with the prosecution.** Without legal representation, an ordinary person without any experience of criminal law and court proceedings would be at a serious disadvantage up against the legal resources of the prosecution."<sup>28</sup>

**21. THE RIGHT TO BE ADVISED, DEFENDED AND REPRESENTED IN CRIMINAL PROCEEDINGS:** (i) Article 6 (3) (c) of the ECHR and Article 48 (2) of the EU Charter of Fundamental Rights explicitly guarantee the right to legal assistance in criminal matters. Article 6 (3) (b) of the ECHR sets out **the right to adequate time and facilities to prepare one's defence**. This is closely linked to Article 6 (3) (c) because adequate time and facilities are required to make **effective** the right to legal assistance.

(ii) **The right to legal assistance applies to the entire proceedings, from the police investigation to the conclusion of the appeal. Access to a lawyer in the early stages of proceedings is particularly important.** The right to legal assistance requires the provision of 'effective representation' and **not just the mere presence of a lawyer. Waiver of the right must: (a) be established in an unequivocal manner; (b) be attended by minimum safeguards commensurate to its importance; (c) be voluntary and (d) constitute a knowing and intelligent relinquishment of a right.**

(iii) Article 6 of the ECHR explicitly **guarantees the right to be advised, defended and represented in criminal proceedings** – which is **absolute**. Legal assistance can take many forms – for example, advice during questioning, representation in court, and preparation of

<sup>23</sup> ECtHR, *Pham Hoang v. France*, No. 13191/87, 25 September 1992, paras. 40–41.

<sup>24</sup> ECtHR, *Zdravko Stanev v. Bulgaria*, No. 32238/04, 6 November 2012, para. 40.

<sup>25</sup> ECtHR, *Artico v. Italy*, No. 6694/74, 13 May 1980, paras. 34–5.

<sup>26</sup> ECtHR, *Benham v. the United Kingdom*, No. 19380/92, 10 June 1996, para. 61.

<sup>27</sup> See, for example, ECtHR, *Quaranta v. Switzerland*, No. 12744/87, 24 May 1991, para. 33; ECtHR, *Perks and others v. the United Kingdom*, Nos. 25277/94, 25279/94, 25280/94, 25282/94, 25285/94, 28048/95, 28192/95 and 28456/95, 12 October 1999.

<sup>28</sup> OBLIGATION ON THE STATE TO PROVIDE LEGAL AID: <http://www.citizensinformation.ie/en/justice/legal>



appeals – **but the right applies to the whole proceeding.**<sup>29</sup>

(iv) Under EU law, the right to legal assistance in criminal proceedings has been recognised as one of the fundamental elements of a fair trial;<sup>30</sup> **appointed lawyers must be given adequate time and facilities to prepare their clients' defence.**

**22. QUALITY OF LEGAL ASSISTANCE:** (i) The right to legal assistance is a right to *effective* assistance and representation.<sup>31</sup> The presence of a lawyer who has no opportunity to intervene to ensure respect for the accused or suspected person's rights is of no benefit to the accused or suspected person.<sup>32</sup>

(ii) Under CoE law, how to conduct the defence is essentially a matter between the accused or suspected person and his/her lawyer, but **if relevant authorities are alerted to a "manifest shortcoming" on the part of the lawyer, they should act.**<sup>33</sup> This obligation arises only where the failure to provide effective representation was **"manifest or sufficiently brought to [the state's] attention"**.<sup>34</sup> For example, when an appeal is deemed inadmissible due to a lawyer's omissions, this may violate the right to a practical and effective defence.<sup>35</sup> Only shortcomings imputable to state authorities can give rise to a violation of Article 6 (3) (c).<sup>36</sup> For example, state liability may arise **where a state is aware that a lawyer has failed to act for the accused.**<sup>37</sup> Under EU law, the Directive on the right of access to a lawyer confirms that a suspect or an accused person have the right for his/her lawyer to *"be present and participate effectively"*.<sup>38</sup> **The lawyer's participation must be "in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise and essence of the right concerned."**

**23. THE RIGHT TO SELF-REPRESENTATION:** (i) Although not requested of the Court, the de facto situation was that the Applicant ended up having to try to 'represent' himself (without access to the case file, to certain evidence and witnesses) because although being verbally granted legal aid on September 6<sup>th</sup> 2016, he was given only one hour to secure the same – which was clearly not reasonable, feasible nor practical in circumstances where the Judge directed the trial to 'continue nevertheless'. Six valid written and oral applications for legal aid were concurrently suppressed, ignored or effectively refused by the local Courts Service Manager (also the lead prosecution witness) and by four named judges in succession.

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<sup>29</sup> ECtHR, *Salduz v. Turkey*, No. 36391/02, 27 November 2008; see also ECtHR, *Yevgeniy Petrenko v. Ukraine*, No. 55749/08, 29 January 2015, para. 89.

<sup>30</sup> CJEU, C-7/98, *Dieter Krombach v. André Bamberski*, 28 March 2000, para. 39.

<sup>31</sup> ECtHR, *Imbrioscia v. Switzerland*, No. 13972/88, 24 November 1993, para. 43.

<sup>32</sup> ECtHR, *Aras v. Turkey* (No. 2), No. 15065/07, 18 November 2014, para. 40.

<sup>33</sup> ECtHR, *Daud v. Portugal*, No. 22600/93, 21 April 1998, para. 42.

<sup>34</sup> ECtHR, *Imbrioscia v. Switzerland*, No. 13972/88, 24 November 1993, para. 41.

<sup>35</sup> ECtHR, *Czekalla v. Portugal*, No. 38830/97, 10 October 2002, paras. 63-65; ECtHR, *Vamvakas v. Greece* (no.2), No. 2870/11, 9 April 2015, paras. 39-43.

<sup>36</sup> ECtHR, *Tripodi v. Italy*, No. 13743/88, 22 February 1994, para. 30.

<sup>37</sup> ECtHR, *Artico v. Italy*, No. 6694/74, 13 May 1980, para. 33.

<sup>38</sup> Directive 2013/48/EU, Art. 3 (3) (b).

(ii) In criminal and non-criminal proceedings, a person may be self-represented **unless the interests of justice require otherwise** – for example, **to protect the rights of the accused or suspected person or if representation is required for the effective administration of justice. Determining whether the interests of justice require the compulsory appointment of a lawyer falls within the margin of appreciation of domestic courts.**<sup>39</sup>

**24. THE RIGHT NOT TO BE SUBJECTED TO ‘EXCESSIVE FORMALISM’:** Excessive formalism (a strict interpretation of procedural rules) may deprive applicants of their right of access to Court. Limitation periods must be proportionate and serve a legitimate aim – such as **the proper administration of justice** or preventing injustice arising from old claims.

**25. ADEQUATE TIME AND FACILITIES TO PREPARE ONE’S DEFENCE:** (i) Under CoE law and EU law, **the accused or suspected person is entitled to adequate time and facilities to prepare his/her defence.** This is because a lawyer’s ability to provide effective legal assistance may be undermined by the circumstances in which s/he can meet or communicate with a client. This right is set out in Article 6 (3) (b) of the ECHR and included in the rights of the defence under Article 48 (2) of the EU Charter of Fundamental Rights.

**26. ACCESS TO THE CASE FILE:** (i) Under CoE law, the right to effective assistance implies **access to the file.**<sup>40</sup> The file includes all documents useful for determining the appropriate legal characterisation. Whether the time and facilities are adequate is assessed in light of the circumstances of each particular case.<sup>41</sup> A balance must be achieved between ensuring that proceedings are conducted within a reasonable time and **allowing sufficient time to conduct and prepare one’s defence. The question to be addressed is whether the overall effect of any difficulties contravened the right to a fair trial.**<sup>42</sup> For example, **the absence of any time for consultation between the person charged with a criminal offence and the lawyer may amount to a violation of Article 6 (3) (b) because a person charged with a criminal offence cannot be properly assisted without this.**<sup>43</sup>

(ii) Under EU law, several directives impose specific obligations on EU Member States.<sup>44</sup> For example, Article 3 (1) of the Directive on **the right of access to a lawyer** requires that access to a lawyer is provided in such time and manner **so as to allow the persons concerned to exercise their rights of defence practically and effectively.** Article 3 (3) gives suspects or accused persons the right to meet in private and communicate with the lawyer representing them. Article 3 (4) requires EU Member States to **make available general information to facilitate the obtaining of a lawyer by suspects or accused persons.**

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<sup>39</sup> Handbook on European Law relating to access to justice p.89

<sup>40</sup> ECtHR, *Dayanan v. Turkey*, No. 7377/03, 13 October 2009.

<sup>41</sup> ECtHR, *Iglin v. Ukraine*, No. 39908/05, 12 January 2012, para. 65.

<sup>42</sup> ECtHR, *Öcalan v. Turkey*, No. 46221/99, 12 May 2005, para. 148.

<sup>43</sup> ECtHR, *Campbell and Fell v. the United Kingdom*, Nos. 7819/77 and 7878/77, 28 June 1984, para. 99.

<sup>44</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 20143 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ 2013 L 294/1.

(iii) Additionally, the Directive on the right to information in criminal proceedings imposes obligations to inform suspects and accused persons on their rights in criminal proceedings, including, for example, **their right to access case materials to prepare their defence.**<sup>45</sup>

**27. LEGAL AID IN APPEAL HEARINGS:** Where substantial issues of law arise in appeal hearings, **free legal assistance has been required.**<sup>46</sup> Once it becomes clear that an appeal raises an issue of complexity and importance, **the applicant should be given legal aid in the interests of justice.**<sup>47</sup> The ECtHR has stated, however, that the interests of justice do not require the automatic granting of legal aid whenever a convicted person, with no objective likelihood of success, wishes to appeal **after receiving a fair trial at first instance** in accordance with Article 6 of the ECHR.<sup>48</sup>

**28. THE RIGHT TO AN EFFECTIVE REMEDY:** (i) **Individuals are entitled to redress for violations of their human rights.** This means that **they must be able to obtain a remedy.** This is set out in Article 13 of the ECHR and Article 47 of the EU Charter of Fundamental Rights. It is also found in international instruments – such as Article 8 of the UDHR and Article 2 (3) of the ICCPR.<sup>49</sup> Under CoE law, Article 13 of the ECHR offers protection to individuals who wish to complain about alleged violations of their rights under the convention. **“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”.**

(ii) Article 13 permits individuals to claim a remedy before a national authority for arguable claims that one or more of their rights set out in the ECHR have been violated.<sup>50</sup> Article 13 therefore involves claims alleging substantive breaches of ECHR provisions. This reinforces Article 35 of the ECHR, which requires individuals to exhaust domestic remedies before they have recourse to the ECtHR – and **provides an additional guarantee to ensure that rights are protected, first and foremost, at the national level.**<sup>51</sup> Under EU law, Article 47 of the Charter of Fundamental Rights states: **“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article”.**<sup>52</sup> The right to an effective remedy has long been a core element of an EU legal order based on the rule of law.<sup>53</sup> The

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<sup>45</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ 2012 L142.

<sup>46</sup> ECtHR, *Pakelli v. Germany*, No. 8398/78, 25 April 1983, paras. 36–38.

<sup>47</sup> ECtHR, *Granger v. the United Kingdom*, No. 11932/86, 28 March 1990, para. 47.

<sup>48</sup> ECtHR, *Monnell and Morris v. the United Kingdom*, Nos. 9562/81 and 9818/82, 2 March 1987, para. 67.

<sup>49</sup> Specific protections for detainees are also found in ECHR Art. 5 (4), which guarantees a right of habeas corpus. See also EU Charter of Fundamental Rights, Art. 6, and ICCPR, Art. 9 (4).

<sup>50</sup> ECtHR, *Klass and Others v. Germany*, No. 5029/71, 6 September 1978, para. 64.

<sup>51</sup> ECtHR, *Kudła v. Poland*, No. 30210/96, 26 October 2000, para. 152.

<sup>52</sup> CJEU, C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, 3 September 2008, para. 335.

<sup>53</sup> CJEU, C-294/84, *Parti écologiste “Les Verts” v. European Parliament*, 23 April 1986; CJEU, C-50/00 P, *Unión de Pequeños Agricultores v. Council*, 25 July 2002; CJEU, C-222/84, *Marguerite Johnston v. Chief Constable of the Royal Ulster Constabulary*, 15 May 1986.

CJEU has also emphasised the close connection between **effective judicial protection** under Article 47 of the EU Charter of Fundamental Rights and Articles 6 and 13 of the ECHR.

(iii) **Under EU law, the CJEU has recognised Member States' obligation to provide remedies that are sufficient to ensure the effective judicial protection of rights in fields covered by Union law.** This is based on the principles of effectiveness and equivalence. **The principle of effectiveness requires that domestic law does not make it impossible or excessively difficult to enforce rights under EU law.**<sup>54</sup> The principle of equivalence requires that the conditions relating to claims arising from EU law are not less favourable than those relating to similar actions of a domestic nature. Thus, **under EU law, Member States are legally bound to establish systems of legal remedies and procedures to ensure respect for the right to effective judicial protection guaranteed by EU law.**<sup>55</sup> This would be undermined by national legal provisions or **judicial practices that impair the effectiveness of EU law.**<sup>56</sup>

**29. MISFEASANCE & NONFEASANCE:** (i) The Applicant maintains that there have been serial acts of misfeasance and nonfeasance throughout this case. 'Misfeasance' is defined in the legal dictionary as: *"An improper performance of an otherwise lawful act e.g. where there is an act of positive negligence."* (ii) 'Nonfeasance' is defined as: *"The neglect or failure to perform an act which one is bound by law to perform."*<sup>57</sup>

(iii) The High Court has held that the tort of *misfeasance in public office* consists of a purported exercise of some power or authority by a public officer otherwise than in an honest attempt to perform the functions of his office resulting in loss to the claimant.<sup>58</sup> To constitute the tort (a) there must be the exercise of an otherwise legitimate public power in bad faith for an ulterior or improper motive or (b) the public officer acted in bad faith by carrying out an act **in the actual knowledge that he has no legal power to do so.**<sup>59</sup>

(iv) Misfeasance in public office encompassed two forms of misconduct namely, where there was **targeted malice towards an individual involving the exercise of the public power for an improper or ulterior motive** or, **where there was reckless indifference as to the illegality in question and the consequences of same.**<sup>60</sup>

(v) The Applicant further alleges various acts of nonfeasance, in particular, inasmuch as the

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<sup>54</sup> CJEU, C-33/76, Rewe-Zentralfinanz eG and Rewe-Zentral AG v. Landwirtschaftskammer für das Saarland, 16 December 1976. For more recent examples, see CJEU, C-415/11, Mohamed Aziz v. Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa), 14 March 2013, para. 50, and CJEU, Joined cases C-482/13, C-484/13, C-485/13, C-487/13, Unicaja Banco SA v. José Hidalgo Rueda and Others, Caixabank SA v. Manuel María Rueda, Ledesma and Others, Caixabank SA v. José Labella Crespo and Others and Caixabank SA v. Alberto Galán Luna and Others, 21 January 2015.

<sup>55</sup> TEU, Articles 4 (3) and 19. See CJEU, C-50/00 P, Unión de Pequeños Agricultores v. Council of the European Union, 25 July 2002, paras. 39-41. See also CJEU, T-461/08, Evropaiki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v. European Investment Bank (EIB), 20 September 2011, para 46.

<sup>56</sup> CJEU, C-213/89, The Queen v. Secretary of State for Transport, ex parte: Factortame Ltd and Others, 19 June 1990, para. 20.

<sup>57</sup> Murdoch & Hunt's Dictionary of Irish Law 6<sup>th</sup> Ed.

<sup>58</sup> Giles Kennedy v Law Society [2004 HC] 1 ILRM 178.

<sup>59</sup> Ibid Kennedy case, following Three Rivers District Council v Bank of England [2003] 3 All ER 1

<sup>60</sup> Kennedy v Law Society of Ireland [2005 SC] 3 IR 228.

Respondent failed / refused / neglected to conduct the Appeal hearing with respect for the Applicant's fundamental rights.

**30. ABUSE OF PROCESS:** It has been held that the court's power to dismiss proceedings which constitute an abuse of process is an inherent power of the court. Whilst there is no time limit within which an abuse of process claim may be made, it was desirable that any such claim would be raised at the earliest reasonable stage in the proceedings to avoid time and cost implications.<sup>61</sup>

**31. THE VOID COURT ORDER:**

- a) "A void order results from a 'fundamental defect' in proceedings,<sup>62</sup> or from a 'without jurisdiction' / *ultra vires* act of a public body or judicial office holder."<sup>63</sup>
- b) "A fundamental defect in proceedings will make the whole proceedings a nullity."<sup>64</sup>
- c) "A 'fundamental defect' includes.. ..where proceedings.. ..fail to comply with a statutory requirement."<sup>65</sup>
- d) "Failure to comply with a statutory requirement includes rules made pursuant to a statute"<sup>66</sup>
- e) "A 'without jurisdiction' / *ultra vires* act is any act which a Court did not have power to do."<sup>67</sup>
- f) "A void order does not have to be obeyed because.. if an order is *void ab initio* (from the beginning) then there is no real order of the Court."<sup>68</sup>
- g) "If the higher Court's order" (*in this case the Circuit Court*) "is founded on a lower Court's void act or invalid claim" (*the District Court*) "then the higher Court's decision will also be void."<sup>69</sup> (*Parentheses and text in italics added here by the Applicant*)
- h) "If a procedure is irregular it can be waived by the defendant but if it is null it cannot be waived and all that is done afterwards is void."<sup>70</sup>
- i) "A void order is incurably void and all proceedings based on the invalid claim or void act are also void. Even a decision of the higher Courts (High Court, Court of Appeal and Supreme Court) will be void if the decision is founded on an invalid claim or void act, because something cannot be founded on nothing."<sup>71</sup>
- j) "A person affected by both a void or voidable order has the right – *ex debito justitiae* – to have the order set aside, (which means that the Court does not have discretion to refuse to set aside the order or to go into the merits of the case)."<sup>72</sup>

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<sup>61</sup> SM v Ireland [2007] IESC 11; [2007 SC] 3 IR 283.

<sup>62</sup> Upjohn LJ in Re Pritchard (deceased) [1963] 1 Ch 502 and Lord Denning in Firman v Ellis [1978] 3 WLR 1

<sup>63</sup> Lord Denning in Pearlman v Governors of Harrow School [1978] 3 WLR 736

<sup>64</sup> Pritchard (deceased) [1963] Upjohn LJ

<sup>65</sup> Ibid.

<sup>66</sup> Smurthwaite v Hannay [1894] A.C. 494

<sup>67</sup> Lord Denning in Firman v Ellis [1978].

<sup>68</sup> Crane v Director of Public Prosecutions [1921]

<sup>69</sup> Lord Denning in MacFoy v United Africa Co. Ltd. [1961] 3 All ER

<sup>70</sup> Fry v. Moore (1889), 23 Q.B.D. 395 Lindley, L.J.

<sup>71</sup> Lord Denning in MacFoy v United Africa Co. Ltd. [1961]

<sup>72</sup> Lord Greene in Craig v Kanssen [1943].

- k) “The procedure for setting aside a void order is by application to the Court which made the void order, although it can also be set aside by appeal although an appeal is not necessary, or it can quashed or declared invalid by Judicial Review (where available) and where damages may also be claimed.”<sup>73</sup>
- l) “Although an appeal is not necessary to set aside a void order, if permission to appeal is requested and if out of time the Court should grant permission because time does not run because the order is void and the person affected by it has the right to have it set aside.”<sup>74</sup>
- m) “A void act is void from the outset and no Court – not even the House of Lords (now the Supreme Court) – has jurisdiction to give legal effect to a void act no matter how unreasonable that may seem, because doing so would mean reforming the law which no Court has power to do because such power rests only with Parliament. The duty of the Court is to interpret and apply the law not reform or create it.”<sup>75</sup>
- n) “It is never too late to raise the issue of nullity and a person can ignore the void order or claim and raise it as a defence when necessary.”<sup>76</sup>
- o) “An order which can properly be described as a nullity is something which the person affected by it is entitled *ex debito justitiae* to have set aside.”<sup>77</sup>

“Although a void order has no legal effect from the outset it may sometimes be necessary to have it set aside because as Lord Radcliffe once said: ‘It bears no brand of invalidity on its forehead’.”<sup>78</sup>

**32. NEWLY DISCOVERED FACTS:** (i) Means a fact discovered by or coming to the notice of the convicted person after the appeal proceedings have been fully determined or a fact the significance of which was not appreciated by the convicted person or his advisers during the trial or appeal process.<sup>79</sup> S.2(1) of the Criminal Procedure Act 1993 provides that a person who has been convicted on indictment and who alleges that a newly-discovered fact shows that there has been a miscarriage of justice, may apply to the court seeking to have that conviction quashed.

(ii) It has been held that the applicant in an application under s.2 of the 1993 Act need not establish that a miscarriage of justice had actually occurred before a conviction can be quashed; s.2 provides redress to an applicant who can point to material which, if it had been available at the trial might (not would) have raised a reasonable doubt in the minds of the jury.<sup>80</sup>

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<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> In *Bellinger v Bellinger* [2003] UKHL 21

<sup>76</sup> *Wandsworth London Borough Council v. Winder* [1985] A.C. 461; *Smurthwaite v Hannay* [1894] A.C. 494; *Upjohn LJ in Re Pritchard (deceased)* [1963]; *Lord Denning in MacFoy v United Africa Co. Ltd.* [1961]

<sup>77</sup> *Craig v Kanssen* [1943] Lord Greene.

<sup>78</sup> ‘The Discipline of Law’ by Lord Denning. Butterworths 1979 – p.77

<sup>79</sup> Criminal Procedure Act 1993 s.2(4).

<sup>80</sup> *Nevin v DPP* [2010] IECCA 106; [2011 CCA] 1 ILRM 479

(iii) The Applicant respectfully argues that any proven miscarriage of justice – whether the originating charge was indictable or summary – or with or without a jury – requires a remedy from the Courts, especially when the newly-discovered fact (or evidence) demonstrates the commission of deliberate acts of *criminal* prosecutorial misconduct.

(iv) The Applicant further notes that there is no automatic right of appeal to the Court of Criminal Appeal regarding *summary* offences, and therefore must rely on this judicial review process for redress.

**33. MISCARRIAGE OF JUSTICE:** Is defined as ‘a breach of natural justice’.<sup>81</sup> The primary meaning of “*miscarriage of justice*” is that the person is, on the balance of probability as established by relevant and admissible evidence, innocent of the offence of which he was convicted.<sup>82 83</sup> Compensation may be payable to the convicted person where a *newly-discovered* fact shows that there had been a miscarriage.<sup>84</sup> **The court is concerned with whether the newly discovered facts were tantamount to providing a miscarriage of justice; it was not confined to the question of actual innocence but extended to the administration of justice itself.**<sup>85</sup>

**34. ACTING UNDER DURESS:** “Actual or threatened physical violence or unlawful imprisonment or threat of criminal proceedings,” ..which refers to the initial hearings where the Applicant was, (i) unlawfully denied access to the Courtroom and, (ii) was then forced to engage with the said illegitimate District Court proceedings as well as sign papers for an Appeal to the Circuit Court under pain of immediate imprisonment. “An act done under duress is generally not valid. A contract entered into under duress is voidable at the option of the party coerced.”<sup>86</sup>

**35. PRESUMPTION OF INNOCENCE:** (i) The presumption in law, which is rebuttable, that an accused is innocent until proven guilty beyond reasonable doubt. “The presumption of innocence is personal to the dignity and status of every citizen”.<sup>87</sup> “The presumption of innocence is a very real thing and is not simply a procedural rule taking effect only at the trial”.<sup>88</sup> The presumption of innocence in a criminal trial is implicit in the 1937 Constitution (art.38.1) that “no person shall be tried on any criminal charge save in *due course of law*”.<sup>89</sup> A trial held otherwise than in accordance with the presumption of innocence is not one in *due course of law*; however a limitation on the presumption of innocence could be constitutionally permissible.<sup>90 91</sup>

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<sup>81</sup> Finlay J. in the State (Healy) v DJ Ballagh [HC - 22 April 1983]

<sup>82</sup> The People (DPP) v Pringle (No 2) [1997 SC] 2 IR 225.

<sup>83</sup> DPP v Hannon [2009] IECCA 43; [2009 CCA] 2 ILRM 235

<sup>84</sup> *ibid* s.9

<sup>85</sup> The People (DPP) v Shortt (No 2) [2002 CCA] 2 IR 696.

<sup>86</sup> Kaufman v Gerson [1904] 1 KB 591.

<sup>87</sup> Murray J in O’C v DPP [2000] 3 IR 87 at 103.

<sup>88</sup> Walsh J in People (AG) v O’Callaghan [1966] IR 501 at 513

<sup>89</sup> Rock v Ireland [1998 SC] 2 ILRM 35; [1997 SC] 3 IR 484.

<sup>90</sup> O’Leary v AG [1991 HC] ILRM 455

(ii) “The presumption of innocence, thus so securely entrenched nationally and internationally, is not only a right in itself: it is the basis of other aspects of a trial in due course of law at common law.”<sup>92</sup> The Supreme Court has held that an accused person was entitled to a presumption of innocence free from any inferences in media coverage that they were guilty of the crimes which they were charged which could potentially prejudice his trial.<sup>93</sup>

### **36. APPLYING FOR JUDICIAL REVIEW / TIME LIMITS / SERIOUSNESS OF ISSUE:**

Notwithstanding the fact that the Respondent’s representatives have made no objection to the granting of judicial review on the basis of the application being ‘out of time’, and notwithstanding their recent declaration that they have no intention of filing any submissions; the Supreme Court has stated that when considering any objection to any Order to extend time, that the court must take into account the entire circumstances of the delay and in outline, the merits of the applicant’s substantive case.<sup>94</sup> An applicant’s delay in seeking judicial review should be considered having regard to all the circumstances of the case and not merely the length of the delay.<sup>95</sup> An application for judicial review which is out of time, will still be permitted **where the issue is too important** to permit the application being considered on a point of time only.<sup>96</sup> It has been held that where an applicant had been convicted of an offence and an application for judicial review was brought within the statutory six month period, the court would be reluctant to shut the applicant out from relief solely by reason of delay; however, the fact that there was a delay was a relevant factor to take into account along with other considerations.<sup>97</sup>

**37. EUROPEAN COURT OF JUSTICE TEST FOR JUDICIAL REVIEW:** Notwithstanding the Applicant’s assertion that the grounds for judicial review are rooted in several ‘fundamental defects’ and/or *mala fides* acts on the part of the named Respondent and the DPP Prosecution Team, the European Court of Justice has decided that the test for judicial review is whether the decision maker has made a clear or manifest ‘error’ – which the Applicant asserts (with allowances for the variables of interpretation and language) is most certainly so in this case.<sup>98</sup>

### **38. RIGHT OF THE COURT TO OVERRULE OR OVERTURN DECISION OF DPP TO PROSECUTE:**

The Applicant has discovered a rule which applies in cases before the Special Criminal Court which, it is assumed, must equally apply in principle to a criminal case in the District Court whereby the Court may review a decision by the DPP to prosecute if the applicant can establish; (a) a *prima facie* case of **some irregularity of a serious nature** such as to amount

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<sup>91</sup> Harvey v Ocean Accident & Guarantee Corporation [1905] 2 IR 1; Ryan v DPP [1989] IR 399

<sup>92</sup> People (DPP) v DO’T [2003 CCA] 4 IR 286

<sup>93</sup> Rattigan v DPP [2008] IESC 34; [2008 SC] 4 IR 639

<sup>94</sup> CS v Minister for Justice [2005 SC] 1 ILRM 81

<sup>95</sup> Scully v DPP [2005 SC] 2 ILRM 203.

<sup>96</sup> Eastern Health Board v Farrell [2000 HC] 1 ILRM 446.

<sup>97</sup> Keegan v Kilrane [2011] IEHC 516; [2011 HC] 3 IR 813.

<sup>98</sup> SIAC v Mayo County Council [2002 SC] 2 ILRM 401 and 3 IR 148.



to some impropriety,<sup>99</sup> or (b) evidence of *mala fides* (qv) on the part of the DPP or evidence that the DPP was influenced by an improper motive or improper policy.<sup>100</sup>

**39. ENTITLEMENT TO DAMAGES IN JUDICIAL REVIEW:** Rule 24(1) of Order 84 states that damages may be awarded on an application for judicial review if, (a) the applicant has included a claim for such relief in his supporting statement and, (b) if the court is satisfied that the applicant would have been awarded damages if the claim had been made in a civil action.

**40. COMPENSATION:** (i) Under CoE law, compensatory remedies generally suffice for breaches of the ECHR, but they do not provide an effective remedy in every situation. For example, where a violation concerns the conditions of detention and the applicant is still in prison, damages may not be sufficient.<sup>101</sup>

**41. COMPENSATION FOR UNLAWFUL DETENTION:** (i) Article 5 (5) of the ECHR sets out an enforceable right to compensation for individuals arrested or detained in contravention of Article 5.<sup>102</sup> According to the Explanations to the EU Charter of Fundamental Rights, rights guaranteed by Article 5 of the ECHR are protected via Article 6 of the Charter. States have a wide margin of appreciation regarding the amount to be paid, and may require proof of damage.<sup>103</sup> However, an award cannot be considerably lower than those awarded by the ECtHR for similar Article 5 violations.<sup>104</sup>

(ii) State liability arises when there has been a breach of the EU treaties attributable to the state<sup>105</sup> or a failure to follow the CJEU's case law.<sup>106</sup> Member State liability may also arise in cases between individuals if rights derived from EU law are at issue.<sup>107</sup>

**42. CHRONOLOGY:** *It should be noted that throughout the whole of these proceedings that the Applicant has written scores of letters, advisories and emails to the respective statutory authorities detailing systemic 'stonewalling' and 'official obstructionism', and of formal and informal attempts by the authorities (including an abandoned application by a District Court Judge for an injunction to try to 'shut down' the Integrity Ireland project); that he has lodged several criminal complaints with An Garda Síochána without proper response or result; and has made a number of approaches to the Irish Courts both as a victim of these crimes as well as a 'common informer' complainant – largely to no avail, and that some of these travails have been covered in national and international media, and the Applicant is willing to produce those proofs and media reports should the Court require to view the same.*

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<sup>99</sup> *Foley v DPP* [1989 HC] ITLR (25 Sep)

<sup>100</sup> 'Kavanagh v Government of Ireland [1996 HC] 1 ILRM 132.'

<sup>101</sup> ECtHR, *Torreggiani and others v. Italy*, No. 43517/09, 8 January 2013, para. 96.

<sup>102</sup> See also Protocol 7 to the ECHR, Art. 3 (addressing compensation in the case of miscarriage of justice).

<sup>103</sup> ECtHR, *Wassink v. the Netherlands*, No. 12535/86, 27 September 1990, para. 38.

<sup>104</sup> ECtHR, *Cristina Boicenco v. Moldova*, No. 25688/09, 27 September 2011, para. 43.

<sup>105</sup> CJEU, *Joined cases C-46/93 and C-48/93, Brasserie du Pêcheur SA v. Bundesrepublik Deutschland and The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and others*, 5 March 1996, para. 34.

<sup>106</sup> See also CJEU, *C-224/01, Gerhard Köbler v. Republik Österreich*, 30 September 2003, para. 56.

<sup>107</sup> CJEU, *C-453/99, Courage Ltd v. Bernard Crehan and Bernard Crehan v. Courage Ltd and Others*, 20 September 2001.

**September 2<sup>nd</sup> 2015:** Date of the alleged 'Section 6' public order offence of which the Applicant was accused.

**May 2016:** Receipt of summons and 18 State witness statements by the Applicant.

**June 1<sup>st</sup>:** First hearing 'for mention' in Castlebar District Court. No plea entered, Judge refuses to respond to a formal application and walks out. Applicant is ordered out by Gardaí.

**June 15<sup>th</sup>:** Second hearing 'for mention'. Judge threatens the Applicant with '7 days in jail' for asking for the protection of the Court and he is ordered out again by Gardaí.

**July 4<sup>th</sup>:** Gary Doyle Order sought by 2<sup>nd</sup> co-defendant. CD of the DAR of Sept 2<sup>nd</sup> 2015 sent to the Applicant. Unknown to Applicant at the time; several audio files have been erased.

**July 20<sup>th</sup>:** Fourth hearing. Judge sets date of September 6<sup>th</sup> 2016 for start of trial, "in the Applicant's absence if needs be". (This was the same Judge who had initiated the abandoned civil proceedings against the Applicant in regards to the *Integrity Ireland* project)

**September 6<sup>th</sup> 2016:** First day of the trial before Judge Aeneas McCarthy. Applicant 'awarded' legal aid but given only 1 hour to secure it. Trial continues for four days in spite of the Applicant's repeated objections, during which time the Applicant discovers multiple proofs of a criminal conspiracy by the DPP Prosecution Team including criminal damage, perjury, contempt of Court etc. Multiple and repeated violations of the Applicant's fundamental rights in Court ensue. Case adjourned for continuance to November 21<sup>st</sup>.

**November 23<sup>rd</sup> 2017:** Prosecution phase ends and the Defence phase is scheduled to begin (still without any legal representation for the Applicant) on January 26<sup>th</sup> 2018.

**October 2016 – January 2017:** Applicant lodges 4 judicial review applications in succession documenting and detailing serial criminal acts on the part of the Prosecution Team and requesting that the High Court intervene. All applications dealt with by the same Judge. Evidence of criminal wrongdoing is effectively ignored or suppressed, and none succeed.

**January 2017:** Application is made directly to the Supreme Court for an intervention. Process dragged out over several months and eventually refused in June 2017.

**January 23<sup>rd</sup> 2017:** District Court hearing scheduled for January 26<sup>th</sup> moved forwards without notice to the Defendants. Applicant arrested off the train and jailed overnight for allegedly 'missing' the hearing. Sentenced 'in absentia' to two months imprisonment.

**January 24<sup>th</sup> 2017:** New Prosecution Team appears, including solicitor Raymond Briscoe, 'Deputy Director of Superior Court Operations at the Office of the DPP' plus a barrister. Applicant is coerced into signing Circuit Court Appeal papers on threat of immediate jail. Applications for 'case stated' appeals to the High Court and for copies of the DAR refused outright by Judge McCarthy.

**February 10<sup>th</sup> 2017:** 'For mention' hearing in Castlebar Circuit Court. Judge Rory McCabe refuses to direct Courts Service to cooperate with Applicant's applications for legal aid.

**February 17<sup>th</sup> 2017:** Courts Service Manager Peter Mooney and Circuit Court President Judge Raymond Groarke both refuse to accept Applicant's formal applications for legal aid.

**April 4<sup>th</sup> 2017:** Applicant is again denied access to his case file by Peter Mooney – the fifth time in succession since the District Court 'half-trial' had begun. (*This 'exchange' between the Applicant and Mr Mooney is now the subject of ongoing false criminal charges of*

*'threatening behaviour' and 'assault' as against the Applicant, in the same District Court).*

**May 2<sup>nd</sup> 2017:** Circuit Court Appeal begins before the Respondent Judge Sean O'Donnabhain. Prosecution presents its case. Multiple violations of the Applicant's fundamental rights to a fair trial, as documented herein.

**May 4<sup>th</sup> 2017:** Judge terminates proceedings after the first of eight defence witnesses has only given *partial* evidence. Judge directs that the Order of the District Court of January 24<sup>th</sup> be enforced. Judge then signs off on a fraudulent statement that he has 'heard' the Appeal, backed up by an equally fraudulent 'committal order' which was NOT signed by District Court Judge Aeneas McCarthy, and the Applicant is taken directly to prison.

**c. May 8<sup>th</sup>:** Local solicitor Alan Gannon (of the Law Society's Legal Aid Panel) leaves a notice at the Prison gates indicating he is 'representing' the Applicant. This has the effect of disallowing any legal papers or other legal assistance into the Applicant. Mr Gannon makes absolutely NO contact with the Applicant throughout the period of imprisonment.

**May and June 2017:** Four habeas corpus applications in succession denied at source by three different High Court judges – including two by the same Judge who dealt with the previous 4 judicial review applications. Some of the 'explanations' given for rejection are patently absurd, self-contradictory, incomprehensible and indeed nonsensical in places.

**July 2017:** 'New evidence' in the form of previously 'missing' audio recordings (which can be demonstrated to have been unlawfully deleted at the hands of Peter Mooney, Courts Service Manager *with the full knowledge* of the DPP Prosecution Team at the time) prompts the Applicant to attempt a judicial review application so as to 'exhaust all domestic remedies' before approaching the European Courts for a claim of unlawful imprisonment.

**September-October 2017:** Three attempts to lodge the J R application are improperly obstructed by the Courts Service. Application eventually accepted on October 3<sup>rd</sup> followed up with five appearances 'in person' in the High Court before Justice Seamus Noonan on October 9<sup>th</sup> and 23<sup>rd</sup> and December 12<sup>th</sup> 2017; and January 30<sup>th</sup> and February 13<sup>th</sup> 2018.

**October 2017 to April 2018:** Multiple acts of obstructionism, deception, refusals to communicate, defiance of Court Orders etc., by agents of the CSSO and the DPP's Office.

**February 13<sup>th</sup> 2018:** Order of Justice Noonan sets the date of June 5<sup>th</sup> 2018 for a one-day hearing of the matter and directs the parties to exchange affidavits and submissions.

**April 5<sup>th</sup> 2018:** Solicitor Raymond Briscoe of the DPP's Office comes on record for the Respondent (without any notification to the Applicant) and 'files' an affidavit in this J R case which is a month 'over time' and can only be described as an astonishing contrivance containing so many outright lies and misinformations as to beggar belief.

**April 17<sup>th</sup> 2018:** Upon seeking an appearance before Justice Noonan for 'directions' in relation to the said failures / refusals of the Respondent's representatives to obey his High Court Orders, Courts Service staff advise the Applicant to make an 'Order 44' application for attachment and committal of those persons.

I hereby respectfully submit these submissions.

Signed, Stephen Manning, Applicant.



Date: April 17<sup>th</sup> 2018

*(As amended and submitted by email to the High Court on April 27<sup>th</sup> 2018)*