

The Supreme Court

SC Reference: 322/13
HC Ref: 2012/402MCA

BETWEEN FINGAL COUNTY COUNCIL

Respondent

and

Shane Kennedy

Appellant

SUPPLEMENTAL SUBMISSION (response) of Shane Kennedy

The judgment of July 2015 is null and void, as it violates my Constitutional, Human and Statutory rights, European Law, as well as several court rules, precedent, and judges oaths of office to defend the Constitution. It also ignores several statutes in relation to harbours, planning, and foreshore.

Nobody has the authority to dismiss Human, Constitutional or Statutory Rights.

No officer has the authority to overrule Human, Constitutional, or Statutory Rights without written justification.

Nobody has the authority to dismiss European Law.

No officer of the state has the authority to limit a person's freedom except in the public interest.

Nobody has the authority to overrule a person's ownership Rights, or the Right to respect for their home, other than in the public interest, AND under the listed, limited circumstances.

Every person has the Right to have all their arguments answered by a court.

The judges for my hearing in July 2015 violated all the above laws, consequently, there can be no faith in their impartiality and I expect them to recuse themselves from further involvement.

qui tacit consenti : I have put the above points to the Supreme Court on several occasions, by email, but no attempt has been made to respond. Therefore, it is taken that you consent to my assertions,

NOTICE & CONSTITUTIONAL DECLARATION

This formal NOTICE is hereby presented and served in support of my fundamental human rights (and of those of affiliated others) in support of the constitutional position; that we are indeed guaranteed by inalienable right the confirmed protections of the Irish Constitution and those of the European Union and cannot lawfully be instructed, coerced or directed by any agents of the Irish State to act in contravention of these fundamental doctrines, nor to knowingly engage in unlawful, unconstitutional or criminal activity, and the State is hereby held strictly liable for any such breaches thereof, including for any physical or psychological injuries or distress caused, and for all related costs and expenses.

1. Irish judges ARE subject to the law and the Constitution.
2. Members of the public ARE entitled to a fair hearing in the Irish Courts.
3. Judges of the District Court, Circuit Court & High Court ARE obliged to adhere to Supreme Court rulings, decisions and directions.
4. When any person in the pay of the State commits a criminal offence, they ARE subject to justice in our Courts in the same way as the tax-paying public are.
5. If any given judge deliberately breaks the law, the Constitution, their solemn Oath of Office or any other Act or Statute in the Courtroom; then any such hearing, or any decisions or pronouncements so rendered are, self-evidently, invalid.
6. Members of the public are NOT obliged to comply with unlawful, unconstitutional or criminal directions from any statutory authority figure such as a member of An Garda Síochána, by Courts Service staff or by members of the Judiciary.
7. Law-abiding members of the public ARE guaranteed their constitutional safety and will NOT be unlawfully assaulted, injured or incarcerated whilst in the Courtroom.
8. All citizens and residents of this State have the right to issue private criminal proceedings, without cost or hindrance, against ANY other person, citizen or employee of the State under the terms of *The Petty Sessions (Ireland) Act 1851*.
9. Any such application, provided there is *prima facie* evidence of the crime alleged (and failing any extraordinary circumstances) MUST be dealt with on the day.
10. Notwithstanding the above, statutory provisions DO exist for the investigation of – and the removal of – judges of the various Courts for stated, *'incapacity, infirmity, misbehaviour and/or misconduct'* (in general or on specific occasion) as follows:
 - S. 73 of The Courts of Justice Act 1924
 - S. 21 of The Courts of Justice (District Court) Act 1946
 - S. 10.1 (iv) of The Courts (Supplemental Provisions) Act, 1961
 - S. 9 of The Houses of the Oireachtas (Privileges and Procedures) Act 2013
 - Article 35.4 (i) of the Irish Constitution

ENDORSED '*QUI TACET CONSENTIT*' AUGUST 2016

By: The President of Ireland, Michael D. Higgins; An Taoiseach Enda Kenny TD; Minister for Justice & Tánaiste Frances Fitzgerald TD; Garda Commissioner Nóirín O'Sullivan; Attorney General Marie Whelan; Director of Public Prosecutions Claire Loftus; Chief Justice Susan Denham (and any and all State-sponsored affiliates or subordinates thereof).

European Law:

1) The legal concept of proportionality is recognised one of the general principles of European Union law by the European Court of Justice since the 1950s. It was first recognised by the European Court of Justice in *Federation Charbonniere de Belgique v High Authority* [1954] ECR 245 Case C8/55[11] and in *Internationale Handelsgesellschaft v Einfuhr- und Vorratsstelle Getreide* [1970] ECR 1125 Case 11/70 the European Advocate General provided an early formulation of the general principle of proportionality in stating that "the individual should not have his freedom of action limited beyond the degree necessary in the public interest".

“necessary in the public interest” was later modified to say “in pursuit of a pressing social need”

What “pressing social need” is being pursued by the County Council in this case ? If my place here has *any*, negative impact, it is massively outweighed by my contribution to interest, safety, security, and tidiness. I have talked to people who saw my boat on the internet and visited Balbriggan specifically to see the boat. Also, many people have broken their commute to see it. I was instrumental in what almost certainly avoided brain damage, possibly death for one teenager (national bravery certificate awarded), quite likely saved two other people, risked my life by going swimming, at night, in November, to try to save a man who I later found out intended to take his own life. In that case, sadly, I didn't succeed. I still struggle to believe that I couldn't have saved him rather than I failed to do so. I frequently provide antiseptic and plasters to kids who cut themselves while swimming, I chase trespassers off boats, sometimes calling the Gardaí, and I routinely clean up rubbish on and in this part of the harbour. I chastise kids for playing with the lifesaving equipment, and properly coil the ropes when they have done. They are mostly leaving that stuff alone these days, probably due to my attention and presence.

Unless this question is satisfactorily answered, the state is acting beyond its authority and everything else is moot.

Human Rights:

2) Article 1 of European Commission for Human Rights: The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention;

Article 18: The restrictions permitted under this Convention to said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Constitutional Rights:

Bunreacht na hEireann:
ARTICLE 43

1 1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.

2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and

inherit property.

2 1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.

2° The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.

Note: “social justice” and “the common good”, being the only exceptions.

The most important source of Irish law is the Constitution or Bunreacht na hEireann 1937 sometimes known as deValera's Constitution. It is the most important source in that it is superior to all other types of law and no law may be passed in the state that infringe any of its provisions. Human Rights as recognised by the EUCHR is appended to, and part of, Bunreacht na hEireann.

Human Rights:

3) EUHR: Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law **and** is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

My place here does not fall under any of those exceptions

Statute:

4) The keeping of my boat in Balbriggan Harbour, or any harbour that existed before the Planning Act, 1963, is a continuation of the use before, and since, that Planning Act. The same would apply for a newer harbour, as that is what harbours are for. How can the keeping of a boat in a harbour, be a development, authorised or not ?

Harbours, quays, jetties and pontoons are constructed for that very purpose. The harbour is the fixed structure. There is no change of use of the harbour.

Planning Act, 1963:

40.—Notwithstanding anything in this Part of this Act, permission shall not be required under this Part of this Act—

(a) in the case of land which, on the appointed day, is being used temporarily for a purpose other than the purpose for which it is normally used, in respect of the resumption of the

use of the land for the last-mentioned purpose;

(b) in the case of land which, on the appointed day, is normally used for one purpose and is also used on occasions, whether at regular intervals or not, for any other purpose, in respect of the use of the land for that other purpose on similar occasions after the appointed day;

(c) in respect of development required by a notice under section 31 , 32 , 33 , 35 or 36 of this Act (disregarding development for which there is in fact permission under this Part of this Act).

Note (b) above. The main purpose of the harbour, and every harbour, is to accommodate boats. It was, and still is to a lesser extent, common for crew of boats to live on their boats, sometimes being their only home. My use of the harbour is continuing the use that was established well before 1963.

Therefore, even if, and I don't accept that it does, the intention of the PDA 2000 Act is to apply to a boat, in a harbour, bay, estuary, against a pier or pontoon, such a boat is exempt from needing planning permission. There is no ammendment to section 40 of the 1963 Act in the PDA Amendment Act of 2000.

5) Such a requirement would not only impact almost every boat in Irish waters, but would also impact international maritime law. If someone was to drive a boat hard aground in a creek, maybe, as that would suggest that it was going to remain there indefinitely. Similarly, if it's propellers or rudders were removed other than due to defects or for modification, and for replacement. I have upgraded my propulsion and steering machinery. Those upgrades continue.

6) PDA (2000) The definition of "land", is unreasonable, in that it redefines it from the English language.

7) Forshore Act (1933):

12.—(1) Where any building, pier, wall or other structure has been erected (whether before or after the passing of this Act) without lawful authority on foreshore belonging to Saorstát Eireann, the Justice of the District Court having jurisdiction in the district in which such foreshore is situate may, on the application of the Minister, either (as the case may require)—

(a) make an order requiring the person by whom such structure was erected or, where such person is dead or (if a corporate body) is dissolved or such person is not known or cannot be found, any person in possession of such structure, to pull down and remove such structure within a

specified time, or

(b) where such Justice is satisfied that the person by whom such structure was erected is dead or (if a corporate body) is dissolved or is not known or cannot be found and that no person is in possession of such structure, make an order authorising the Minister to pull down and remove such structure.

(2) The following provisions shall have effect in relation to the making and operation of an order under this section requiring a person (in this subsection referred to as the defendant) to pull down and remove a structure, that is to say:—

(a) such order shall not be made without notice to the defendant of the application for such order;

(b) such order shall not be made unless either the Minister has offered to make under this Act to the defendant a lease of the foreshore on which such structure is erected and such offer has not been accepted or the Minister has issued a certificate sealed with his official seal certifying that such structure is or causes directly or indirectly an obstruction to navigation;

(c) where such order has been made and the defendant does not pull down and remove such structure within the time specified in such order, the Minister may pull down and remove such structure or cause such structure to be pulled down and removed and shall be entitled to be paid by and to recover from the defendant as a civil debt the costs and expenses of such pulling down and removal.

a) I don't believe that driving a boat into a harbour can be considered "erected"

b) There is obviously a distinction between State Foreshore (owned by Saorstát Eireann) and Local Authority foreshore. State foreshore requires the Minister to sanction action. I suggest that State Foreshore is from the line of High Water outwards, while the land between there and (joined to) the County's functional area, is the County's foreshore. Otherwise, there would be no foreshore owned by Saorstát Eireann.

c) **12.1.2.a&b Then, the Minister is required to make an offer of a lease, before an order for removal is made.**

Planning and Development ammendment Act (2000) Section 160 refers to unauthorised developments. A development cannot be unauthorised if it is exempt. Keeping a boat in a harbour, the sea, estuary, river, lake, or even pulled up on the shore is exempt from needing planning permission, as people have been doing that for millennia.

In Fingal's recent submission:

- a) Page 2, 6: No notice was served relating to this act.
- b) Page 3, 9: Keeping a boat in a harbour is not a change of use of the Harbour or “land”.
- c) Page 4, 13: There has been no ammendment to the Planning and Development Act (1963) on the definition of “exempted development”, nor can there ever be. “Established use” will remain indefinitely. Furthermore, such order (for removal) shall not be made unless either the Minister has offered to make under this Act to the defendant a lease of the foreshore on which such structure is erected and such offer has not been accepted or causes directly or indirectly an obstruction to navigation;
Section 225, 4: This section is in addition to and not in substitution for the Foreshore Acts, 1933 to 1998.

Page 5: an unauthorised development on the foreshore requires an offer of a lease (by the minister) before an order for removal can be made.

Page 6, 20: I suggest that the balance of probability applies between two sovereign people, not where the state is trying to intrude on a sovereign person. Liberty is a human Right that should be recognised, not a privelege awarded by the state.

- b) Page 7, 21: This pier doesn't extend into the harbour, it is the boundary of it.
- c) Page 7, 23/25: The Pier and Harbours Act was superceded by the Harbours Act 1946 which treats Balbriggan and Skerries harbours as special cases.
I note also: Clause 48 of said Harbours Act: A harbour authority shall take all proper measures for cleaning, scouring, deepening, improving and dredging their harbour and the approaches thereto and, subject to any directions which the Minister may give, shall dispose of dredged material either by depositing it at sea or in such other way as they think proper.

This, Fingal has failed to do. It is severely silted up, and parts of the wall continue to subside

d) Page 8, Para'27: The harbour was and is, a working harbour, but when I first arrived, there was a single trawler using this pier, and that was about 100m away. Due to decades of neglect, the sandbank where I am, prevented any commercial boats from using this berth. That is still the case. That, along with the fact that Northerly through Easterly winds can make it quite uncomfortable for smaller vessels. There are about the same number of leisure boats as commercial fishing boats here.

e) Page 8, Para'28: The pier is reclaimed land, so it is only attached to the functional area of the Local Authority, not actually part of it. My boat is not ON the pier.

f) Page 9, Para'30.2(a) limit is the High Water Mark. The harbour is reclaimed land, so only attached rather than being the functional area. I suggest that harbours are special cases anyway, not to be considered foreshore in the normal sense.

g) Page 11, Para'37: The maritime boundary of the county is the High Water mark

h) Page 13, Para'42: LGA 2001. The power of the Local Authority to make byelaws in respect of its functional area includes the power to make bye-laws in respect of the foreshore and coastal waters adjoining that functional area

I don't believe that any such bye-laws exist which could be applicable to this case.

A recent comment from the author of the Israeli military code of practice. This, in relation to the summary execution of an Arab attacker and states the “compelling justification” sentiment for interference in a person's life. It is one of the core principles of every democracy.

“At the core of military ethics in a democracy — whether it’s the United States, United Kingdom, Canada or Israel — you find two principles manifest in all doctrines, procedures, ROEs and commands. First, the right and duty of self-defense. A person and a state have the right to defend themselves when they are in jeopardy caused by unlawful activities of criminals or enemies. Plus, a democratic state has a duty to effectively defend its citizens when they are in such jeopardy. Second, every act of the state, including acts taken on its behalf by police or military, ought to show respect for human dignity. This means that compelling justification is needed for any significant interference in a person’s situation.”

Asa Kasher is Laura Schwarz-Kipp Professor Emeritus of Professional Ethics and Philosophy of Practice at Tel Aviv University, and Professor of Philosophy at Shalem Academic Center in Jerusalem. He led the writing of the IDF's code of ethics, and won the Israel Prize in General Philosophy in 2000.

