Courts of Shenanigans or Courts of Law?

In a recent High Court decision[1], in proceedings which I was not a party to, Twomey J. associated me with what he called "*serial litigants, who are relentlessly pursuing hopeless and vexatious[2] claims, [inflicting] injustice on innocent parties [and] making a mockery of the courts system*". Furthermore, he described me as "*an individual litigant, with nothing to lose, abusing court process and using the courts system to inflict injustice on other litigants*" by reference to a decision in Gaultier v Reilly[3] of Meenan J. (Binchy J. and O'Moore J. concurring). Here is my reply…! 8.10.2025, *by Arnaud GAULTIER*

First and foremost, I am neither a serial nor a lay litigant but an <u>unrepresented litigant</u> who believes in availing of an effective remedy when wronged. I strongly believe in Justice and its proper administration. As highlighted by O'Donnell J. (as he was then) in Nash v DPP[4], the "administration of justice" is in undefined terms in the Constitution [except for the fact that it is to be administered in public to ensure the scrutiny of the Judicial Process[5] and accountability of judges].

However, my experience with the Irish Judiciary shows that Judges of the Superior Courts have a tendency to first choose the conclusion which they desire[6] and then hand-pick the elements of the parties' submissions which fit their chosen conclusion. But this practice can not be called Justice: it is pure <u>arbitrariness</u>! I opine that any such arbitrary decision is void *ab initio* and that the judges authoring same should be held liable[7] for same.

The above seems to be confirmed by the <u>doctrine</u> enounced by O'Dalaigh C.J. in the State (Quinn) v Ryan[8] which said: "*What has not been argued has not been decided*". It seems to require that a judicial decision has to address the argument of a party, despite Allen J.'s recent attempt to misinterpret / downgrade this <u>doctrine</u> to the bare rank of "*an observation*"[9].

Irish Superior Courts

Shenanigans of the Court

Before his Court of Appeal appointment, I happened to engage in a conversation over lunch with one of Meenan J.'s own Court's registrars. Happy with their job, I shared my concern about the complexity of the Rules of the Courts. Their answer will be forever etched in my memory: "*I love the Shenanigans of the Court*" as my reply: "*They aren't meant to be Courts of Shenanigans but Courts of Law!*" The main Shenanigans of the Court is Legal Costs: your Legal Costs[10] of running the proceedings plus the risk of having to pay the Costs of the Defending party.

People can't vindicate their Constitutional Rights

In that regard, in a radio interview with Ivan Yates on 23.07.2017[11], Kearns P., retired High Court President, stated: "*unless you have deep pockets, you can't afford to get caught up in a Court case. […] You might have to settle, and it might even be a case, you think you might win.*"

This acknowledgement of the failure of the Irish State to give access to an effective remedy was further highlighted two months later by the then Chief Justice, Frank Clarke C.J[12]., "*I am concerned that people who have rights aren't able to vindicate those rights because of the costs of going to Court.*"

Understanding this situation, I concluded oral submissions to Irvine J. in July 2017[13], with: "*If to get Justice in this country, I have to reform its entire judiciary, so […] be it!*"

only Paupers & multi-millionaires can litigate

In 2018, 2020 & 2025[14], Twomey J. "*under-lines the "disproportionate" level of legal costs in the High Court.*[15]". Identifying that such finding was first made by the Supreme Court in 1965[16], he then referred to the 2020 Civil Justice Review group's report who <u>urged</u> for reform. Its chairman, retired High Court president Kelly P. stated that: "*the only people who can litigate in the High Court are <u>paupers and millionaires</u>*". In 2024[17], retired High Court judge Deirdre Murphy amended the quote with "*multi-millionaires*".

Increasing State Liability

It is common knowledge that costs of proceedings is an issue in Ireland. Clarke C.J. (quoted above) highlighted that people can't vindicate their

Constitutional Rights. And the State does nothing, while its liability increases for such ongoing infringement of the Constitutional Right of citizens & companies[18] to vindicate their Constitutional Rights[19].

Directors of Corporate entities can now pursue such liabilities against the State following last year Supreme Court decision in McCool v Honeywell[20].

The UK tackled the issue over 25 years ago, setting the Civil Procedure Rules in 1998.

Constitutional or Medieval Courts?

One may wonder if the Irish Judiciary is designed for anyone of means to get off "*scot free*" from any law infringement or violation of another's rights as long as they pay due fees to the Courts' standing members, aka solicitors and barristers.

The Irish Courts still refer to those members' right of Audience, reminiscent of medieval times. Such reference should have no place under the Constitution. Courts ought to vindicate citizens' and companies' rights, and set aside any "rule" preventing same[21].

MY EARLIER PROCEEDINGS

Litigations against the State

In September 2006, Customs & Excise illegally seized in excess of €50k of wine from my company, Loire Valley Ltd. In 2008, the Company was offered a €105k compensation relying on my incapacity to represent my Company in a Court of Law (The infamous Rule in Battle being the second most used Shenanigans in the Courts).

Having been legally advised to refuse the said offer, but not able to secure representation for my Company, I refused to give up. I learnt my way in the Courts, developing counter-shenanigans strategy. In 2012, I finally initiated legal proceedings, unrepresented!

Fighting Revenue comes at some costs.

My error was to do so at a time, when "*the State did not behave as a model litigant*" (as high-lighted in 2023 by retired High Court judge Deirdre Murphy[22]) and over 10 years before the adoption of the *State Litigation Principles*[23].

After issuing a letter of intention to proceed in my Revenue case in June 2006, the Revenue Sheriff came to our home to collect circa €80 from my wife's company, knowing that she was due to give birth, and did so only few days after we brought our new born son back from ICU.

In 2019, the Revenue blocked my wife's company bank accounts (blocking its €6,000 credit facility) to recoup a sum of circa €200.

Outcome in the Irish Courts

In July 2017, after Noonan J. struck-out my case *Gaultier v Revenue,* I advised the then Attorney General Séamus Woulfe[24] to issue Guidelines on the structure of Judgments to comply with the Rules of Essay Writing. To address the core elements of a party's submissions is indeed part of the principles for a Fair Hearing (by opposition to an arbitrary decision).

In 2019, in an unrelated appeal, O'Donnell J.[25] (as he was then) concluded that my Revenue matter (not before him) had no chance of success (§75), alleging that I had been ill-advised (§72) by my late solicitor[26] after suggesting (§73) that the Revenue (not a party to the Appeal) "*[should make] some payment, on an ex gratia basis*" if I was "*[taking] the step of seeking to restore the company to the register and comply with all necessary formalities*", ignoring the costs of any such formalities.

Surprisingly, O'Donnell J. was proven right. My appeals of Noonan J.'s strike-out orders to the Court of Appeal[27] and Supreme Court[28] were both unsuccessful.

No issuance of Condemnation proceedings within 18 years

More surprising, the European Court of Human Rights (hereinafter ECtHR) declares my application against Ireland inadmissible without any reasoning, despite the absence of Condemnation proceedings to date for the wine now seized over 19 years ago and same relating to a 18 years delay between the seizure of the wine and the court of final appeal's decision.

Does Ireland receive a special treatment from the European Court of Human Rights?

At the time of my EctHR Application[29], the President of the EctHR was Irish Judge Síofra O'Leary. At the ICEL Conference "Human Rights in Practice: The Role of Human Rights on the 20th Anniversary of the ECHR Act 2003", organised in Dublin on the 1st December 2023, President O'Leary proudly disclosed that Ireland pays for the live streaming of the ECtHR's hearings while the Irish Courts refuse the livestreaming of its own proceedings, despite the

technology being in place to do so.

At the Q&A session following her keynote address, President O'Leary also explained that the reason why only 1% of the applications to the ECtHR are deemed admissible, is necessity. In the absence of sufficient resources, the Court has to reject many cases to have the resources to hear the most important cases. The criteria of admissibility is a *Numerus clausus* in disguise.

Finally, and not the least, the admissibility of an Application to the ECtHR is made by a single-judge, not sitting in an open Court, and is not based on the full 11 page Application form. It is solely based on a report, not disclosed to the Applicant, which is prepared by a non-judicial rapporteur[30].

All of the above is an insult to the Principle of Open Justice, which the ECtHR is deemed to protect and embody.

REFERRED PROCEEDINGS

Error in a Judgment

In the *Gaultier v Reilly* proceedings, I showed some empathy for Mr. Reilly (everyone can make a mistake). In early November 2023, I emailed him to settle before using my Constitutional Rights of appeal, sharing with him my counter-Shenanigans strategy: "*[I] put all my wealth into my wife's name*". Nonetheless, Meenan J. interpreted same as "*[I] put [my] own assets into [my] wife's name*"[31], by which I am being accused of a criminal offence. The first Defendant solicitor[32] had made the same interpretation. I had emailed him back to clarify my point: "*I have to inform you that there are some/many non-monetary & financial form[s] of wealth. […] I did bring my wife's business from a Xk business to a 10Xk company. And more than double the value of her house in Belfast (through a partnership) [...], leaving nothing in my name but equity […] by way of Director's loan.*"

1st Application to vindicate my Good Name

As the above email was part of the pleadings before the Court of Appeal, I applied for a review of Meenan J.'s decision before the order was perfected. Unlike Cregran J. in Gaultier v Reilly (1)[33], he deliberately chose to ignore my application. And rather than correcting his error, Meenan J. repeated it in the ensuing ruling on costs[34] (Binchy J. & O'Moore J. concurring), quoting his earlier decision: "*put his assets into his wife's name*". In short, the panel infringed my right to my good name, then, it infringed my right to vindicate same, both rights being constitutional ones[35]. More fatally, Meenan, Binchy, O'Moore JJ. infringed their oath of office[36]. It is most. appalling from Meenan J., himself being a member of the Judicial Conduct Committee.

Before her bench appointment, Humphreys J. commented on Ms Stack SC[37] "*unarticulated desire to have a free[38] run at the Court of Appeal*"[39]. On appeal, Baker J. criticised his comments for being *insulting, offensive, humiliating, capable of being damaging to [Ms Stacks SC]'s career*, especially when *[Ms Stack] did not have the opportunity to respond[40]*. Baker J. concluded that those comments were "*regrettable and have no place in a judgment of a court of law[41]*". Should the same standard not apply to an unrepresented litigant as to a barrister?

2nd Application to vindicate my Good Name

Last January, O'Moore J. was assigned to hear another appeal in the *Gaultier v Reilly* proceedings. As a preliminary issue to the said hearing, I requested him to apologise and vindicate my good name. I highlighted that should he refuse, I would be compelled to apply for a *Quo Warranto* order. Believing that Judges are immune from "*defamation proceedings*", as he stated in his earlier decision in Moyne v Todd[42], he refused once more to vindicate my good name.

1st Defendant's solicitor's abuse of the Court Process

Ross Aylward BL, counsel for Mr. Reilly, submitted that his client would withdraw his strike-out application against the company[43]'s claim if it secures legal representation. Mr. Aylward also submitted that his client had no ground to issue a strike-out motion against myself. Nonetheless, upon Cregan J.'s directions, such motion was issued. Cregan J. heard it, Cregan J. granted it.

So to summarise, Mr. Reilly's legal team had acknowledged that there is a *prima facie* case for both plaintiffs in the issued proceedings. Yet, they chose to charge €250k (up to Nov. 24) to Mr. Reilly for defending same. And I am the one who allegedly abuses the Courts' process!

CONCLUSION

Legal achievements of a "non-vexatious" litigant

By the end of 2022, only one[44], out of eight decisions[45] of the Superior Courts I received, addressed the core elements of my submissions. I contend that those seven are void *ab initio* as failing the requirements of Impartiality as upheld by Section 2 of the Bangalore Principles of Judicial Conduct[46]. As such, I also contend that those are/were not appealable but ought to be set aside.

As a result of the above, I am one of the many co-founders of Open Justice Ireland (OJI)[47] .

In 2023, I got the recusal of 2 judges of the Supreme Court by reason of subjective bias[48].

Up to Dec. 2024, I submitted the only admissible complaint alleging misconduct by a judge (out of 232 in 2023 and 296 in 2024) to the Judicial Conduct Committee.

In 2024[49], CJEU President Koen Lenaerts complimented me on my question while his answer confirmed my proposition that Article 19.1 TEU ought to apply to the Areas of Competence of the European Union as defined by Articles 4-6 TFEU. Such answer seems to render the indiscriminate application of the Rule in Battle unconstitutional, as going against EU laws.

"*State Caretaker*" judges on the bench?!

In 2022, OJI reported evidence of State Caretaker judges on the bench to the Chief Justice for investigation. In proceedings against the CRO, I pleaded both in the High Court and Court of Appeal for their removal. In their decision, both Courts concluded that I had asked for "*the removal of ALL judges from the Superior Courts"*[50]". Assuming they made an error, I made applications to review their respective decisions. By refusing my applications to review same[51], one can only assume that Barr J., Faherty J., Allen J. and O'Moore J. consider that all judges of the Superior Courts are State Caretakers.

Thanks

As Chairman of OJI, the attack by Meenan J. on my good name spreads over onto our organisation. I thank the Editor for accepting this article which aims at vindicating the good names of both.

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4 [2017] IESC 51

5 Principle of Open Justice, Irish Times v Ireland [1998] 1 I.R. 359

6 Judges might be following the recommendation of Kearns P. in his final address where he said: "*Judges should never put themselves in the position of realising, too late, that a particular decision has opened a Pandora's Box of unintended consequences which if proper consideration had been applied, might have led to a different approach being taken. He said this was particularly the case where the boundaries of judicial and executive function intersected." http://www.rte.ie/news/2015/1218/754931-high-court-president/*

7 It is opined that a Judge's Article 34 Declaration/Oath of Office is what gives them licence to adjudicate. When a judge fails to adhere to their Oath of Office they are deemed to have vacated their office (see Article 58 of the Constitution). When they act as a judge having vacated their office they are unlawfully exercising a function of government contrary to Section 6 of the Offences Against the State Act.

8 [1965] 1 IR 70 p.120

9 [2025] IECA 93 §12

10 Time of unrepresented litigants is not considered under the term Legal Costs.

11 Newstalk's Ivan Yates interview with Kearns P. https://www.youtube.com/watch?v=9AB0Np01U9E at 6'06"

12 RTE Radio 1 interview between current Chief Justice, Frank Clarke and Marian Finucane, September 30th, 2017. www.rte.ie/radio/radio1/clips/21242244/ - 8'40"

13 On on the 27.7.17, in the matter Gaultier v Revenue Commissioners, in the Court of Appeal

14 Nestor v RTB [2018] IEHC 321, McEvaddy Property Ltd v NAMA [2020] IEHC 593 & Beakonford v Stokes [2025] IEHC 22

15 https://www.irishexaminer.com/news/courtandcrime/arid-40235843.html

16 McCarthy v Walsh [1965] IR 246

17 https://www.irishtimes.com/crime-law/courts/2024/04/20/only-paupers-and-multimillionaires-can-sue-in-irish-courts-says-retired-judge/

18 The Law of Companies, Dr. Thomas B Courtney pp. 196 – 198 quoting Justice Keane J (as he was then) in Iarnrod Eireann v Ireland [1996] 3 IR 321

19 Pursuant to Article 40.3.2 of the Constitution and encompassed in the large right to an effective remedy efe v Ireland

20 [2024] IESC 5

21 Re Haughey [1971] 1 IR 264

22 Irish Times 19.6.2023 – article relating interview

23 https://assets.gov.ie/289006/1afd8f32-89f8-484a-9194-3dbd33af21c8.pdf

24 As Supreme Court Judge, he recently followed the said rules in McCool v Honeywell [2024] IESC 5

25 Gaultier v AIB [2019] IESC 89

26 Maurice Leahy from (Leahy, Wade & Co)

27 Gaultier v The Revenue Commissioners & Ors [2022] IECA 120

[28] [2023] IESCDET 107: Despite the recusal of Dunne J. and Charleton J.

[29] Application No. 42794/23 refused on 21/03/2024.

[30] usually a lawyer from the Court's Registry

[31] [2024] IECA 103 §25.

[32] Michael Murphy of Holmes, O’Malley, Sexton LLP T/A Holmes Law

[33] [2023] IEHC 558

[34] [2024] IECA 254 §1

[35] Article 40.3.2 of the Constitution

[36] Article 34.6.2 of the Constitution for which the literal English translation of the Irish version states as follow: “*must make the declaration and put his hand to it*.’

[37] www.irishexaminer.com/news/arid-20192248.html

[38] Not free for all, as Ms Stack BL was one of the highest earnest from the CSSO.

[39] Seredych v MJE [2019] IEHC 730 §30

[40] Seredych v Minister for Justice [2020] IESC 62 §§94-96

[41] Ibid §.101

[42] [2024] IECA 81 §40

[43] The 2nd Plaintiff

[44] By Faherty J., in [2017] IEHC 378

[45] [2013] IEHC 111, [2017] IEHC 439, [2019] IECA 210, [2019] IESC 89, [2020] IECA 88, [2021] IECA 105, [2022] IECA 120,

[46] UN 2002 – Principles being themselves emanation of Common Laws.

[47] www.OJI.ie

[48] *aka* actual or conscious bias

[49] President Lenaerts 2024, ICEL Conference on Review of CJEU in 2023

[50] Gaultier v CRO [2023] IEHC 461 §70 [2025] IECA 58 §77

[51] [2023] IEHC 613 §12a

[1] Ulster Bank v McDonagh (3) 2024 IEHC 609

[2] Vexatious in the legal sense of the term: "*proceeding initiated maliciously and without Probable Cause by an individual who is not acting in Good Faith for the purpose of annoying or embarrassing an opponent*"

[3] Gaultier v Reilly [2024] IECA 103 & [2024] IECA 254