



An Chartlann Náisiúnta National Archives

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BETWEEN

CHRISTOPHER MCGIMPSEY and
MICHAEL MCGIMPSEY

Plaintiffs

and

IRELAND, THE TAOISEACH, THE TANAISTE,
THE MINISTER FOR THE GAELTACHT, THE
MINISTER FOR FOREIGN AFFAIRS, THE
MINISTER FOR FINANCE, THE MINISTER FOR
JUSTICE, THE MINISTER FOR AGRICULTURE
AND FOOD, THE MINISTER FOR SOCIAL
WELFARE, THE MINISTER FOR INDUSTRY &
COMMERCE, THE MINISTER FOR TOURISM &
TRANSPORT, THE MINISTER FOR ENGERGY,
COMMUNICATIONS AND FORESTRY, THE
MINISTER FOR THE MARINE, THE MINISTER
FOR THE ENVIRONMENT, THE MINISTER FOR
LABOUR, THE MINISTER FOR HEALTH, THE
MINISTER FOR DEFENCE, THE MINISTER FOR
EDUCATION AND THE ATTORNEY GENERAL

Defendants

STATEMENT OF CLAIM

1. The first named plaintiff Christopher McGimpsey was born on 3rd September 1952 at Donaghadee County Down and now lives at 40 Kings Road Belfast Northern Ireland. He was educated at Campbell College, Belfast, Syracuse University, and at the University of Edinburgh. He is an historian by training and is a company director. He is the holder of an Irish passport.

The second named plaintiff Michael McGimpsey was born on 1st July 1948 in Northern Ireland and resides at Ardeevin 97 Belfast Road, Newtownards County Down /County Down/ He was educated at Regent House, Newtownards, / and at Trinity College, Dublin. He is a company director.

3. The first named defendant is the State, the second to sixteenth named defendants collectively constitute the Government entrusted with the executive power of the State pursuant to Article 28 of the Constitution, and the last named defendant is the Law Officer of the State designated by the Constitution.
4. The first and second named plaintiffs are members of the Official Unionist Party of Northern Ireland. In 1983 the first named plaintiff made a written submission to the New Ireland Forum and on the 19th day of January 1984 the first and second named defendants made an oral presentation to the New Ireland Forum. The New Ireland Forum was established for consultations on the manner in which lasting peace and stability could be achieved in a New Ireland through the democratic process and to report on possible new structures and processes through which this objective might be achieved. None of the political parties representing the Unionist point of view were officially represented at the New Ireland Forum.
5. On the 15th day of November, 1985 at Hillsborough in the County Down the Government of Ireland and the Government of the United Kingdom concluded an agreement entitled "Anglo-Irish Agreement". In Article 1 of the said Agreement the two Governments

"(a) affirm(ed) that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland;

(b) recognise(d) that the present wish of a majority of the people of Northern Ireland is for no change in the status of Northern Ireland;

(c) declare(d) that, in the future a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a united Ireland, they will introduce and support in the respective parliaments legislation to give effect to that wish."

In Article 2(b) of the said agreement the two Governments stated that "There is no derogation from the sovereignty of either the Irish Government or the United Kingdom Government, and each retain responsibility for the decisions and administration of government within its own jurisdiction."

In the said Article 2 the two Governments agree that an Inter-governmental Conference be established and that ".....determined efforts shall be made through the Conference to resolve any differences...." on

- (i) political matters;
- (ii) security and related matters;
- (iii) legal matters, including the administration of justice; and
- (iv) the promotion of cross border co-operation.

In Article 3 of the said agreement the two governments agreed to establish a Secretariat to service the Intergovernmental Conference on a continuing basis.

In Article 4 (a) the two Governments agreed that the Conference within which they would work together

- "(i) for the accommodation of the rights and identities of the two traditions which exist in Northern Ireland; and
- (ii) for peace, stability and prosperity throughout the island of Ireland by promoting reconciliation, respect for human rights, co-operation against terrorism and the development of economic, social and cultural co-operation."

In Article 4(c) the two Governments agreed that the Conference should be "...a framework within which the Irish Government may put forward views and proposals on the modalities of bringing about devolution in Northern Ireland, insofar as they relate to the interests of the minority community."

In Article 4(b) of the said agreement the two Governments express support for the policy of devolution in Northern Ireland, and in Article 5(c) the two Governments agree that in the absence of devolution on an agreed basis the Conference would constitute a framework within which the Irish Government could put forward views on proposals for major legislation affecting the interests of the minority community.

6. The said agreement is unconstitutional because it establishes a framework through which the foreign relations power of the State must be exercised in respect of the United Kingdom. In doing so the Government has purported to abdicate full freedom of action in respect of policy with that State, or to inhibit or qualify or restrict that freedom of action, by entering into a solemnly covenanted commitment to exercise the executive power of the State, within the meaning of Article 29 of the Constitution, in a particular manner; the said restriction was not submitted to the people for their approval in accordance with the requirements of Articles 6 and 47 of the Constitution.

Not relevant
M'Annam

7. Further, or in the alternative, the Government has purported, in Articles 1 and 2(b) of the Agreement, to acknowledge the sovereignty of the Government by the United Kingdom over a portion of the national territory. This concession of right, contained in a solemnly covenanted commitment binding on the State in international law, is contrary to the provisions of Articles 2 and 3 of the Constitution. Article 1 of the said agreement is also repugnant to Articles 2 and 3 because it purports to leave the determination of the issue of the reintegration of the sectorial territory to the majority of the people in Northern Ireland rather than to the people of the national territory as a whole.

Not so: cf wording

Not so: cf wording

8. Further, or in the alternative, pursuant to Schedule 1 of the Northern Ireland Act of 1974 the people of Northern Ireland have no say in the preparation and enactment of legislation applicable to that part of the national territory, and insofar as Article 4(b) and 5(c) of the said agreement confirm the present legislative and executive structures in Northern Ireland, the said agreement is repugnant to the provisions of Articles 3 and 5 of the Constitution which impose a duty on the organs of the State established by the Constitution to ensure, to the best of their ability, that the system of government in Northern Ireland is democratic.

9. Further, or in the alternative, Articles 4(c) and 5(c) of the Agreement, which purport to establish a framework in which the Irish Government can participate in initiatives to secure devolution in Northern Ireland and to prepare legislation on major policy issues affecting the interests of the minority community, insofar as they confirm the status quo, are contrary to Articles 2 and 3 of the Constitution which aspire to a state of affairs other than the present dispensation in Northern Ireland.

10. Further, or in the alternative, the resolution of Dail Eireann of 21st November 1985 approving the terms of the said Anglo-Irish Agreement is contrary to the provisions of the Constitution in that it purports to confirm the unconstitutional actions of the Government and insofar as it forms the basis for annual appropriations from the Central Fund of the State designed or intended to finance the activities of the Conference established by Article 2 of the said agreement and the secretariat established by Article 3 of the said agreement.

THE PLAINTIFFS CLAIM:

- (i) a declaration that the Anglo-Irish Agreement, concluded between the Governments of Ireland and the United Kingdom at Hillsborough in the County Down on the 15th day of November 1985, is contrary to the provisions of the constitution;
- (ii) an injunction to prevent the State from appropriating monies from the Central Fund to the service of the Intergovernmental Conference or Secretariat established by the said agreement;
- (iii) further and other relief;
- (iv) costs.

Finbarr Murphy,
Frank Clarke
Hugh J. O'Flaherty,