



# An Chartlann Náisiúnta National Archives

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McGimpsey and Another -v- Ireland and Ors.Draft Defence

1. The Plaintiffs do not have the locus standi necessary to seek the reliefs sought in the Statement of Claim on the grounds that neither of them has any interest or right which has or will suffer any injury or prejudice by reason of any of the matters alleged in the Statement of Claim or by reason of the coming into force of the said Agreement or at all.
2. The Defendants are strangers to the matters pleaded in paragraphs 1 and 2 of the Statement of Claim and await proof thereof.
3. The Defendants do not admit the matters pleaded in paragraph 4 of the Statement of Claim and insofar as the same are relevant to the Plaintiffs' claim, await proof thereof.
4. The Government in the exercise of their executive powers are entitled, pursuant to the provisions of the Constitution, to enter into international agreements concerning the relations of the State with other States and the State, in entering into the Anglo-Irish Agreement, 1985, was acting within and in accordance with its constitutional functions.

5. The Defendants say that the provisions of the said Agreement are not completely or accurately quoted or pleaded in the Statement of Claim and deny that the meaning, effects or consequences of its provisions are correctly or alternatively completely stated; and the Defendants at the hearing will refer, for greater particularity, to the full text of the said Agreement for the true and complete meaning, effects and consequences thereof.
  
6. The said Agreement is not unconstitutional and its provisions are not incompatible with Articles 2, 3, 5 or 6 of the Constitution as alleged or at all.
  
7. The Defendants deny that the said Agreement establishes a framework through which "the foreign relations power" of the State must be exercised in respect of the United Kingdom, and say that the said Agreement establishes a conference within the framework of the Anglo-Irish Intergovernmental Council (referred to in Article 2 of the said Agreement) and within which there may be put forward views and proposals relevant to the field of activity of the conference or matters with which it is concerned in accordance with the terms of the said Agreement.

8. If, which is denied, the said Agreement establishes a framework through which "the foreign relations power" of the State must be exercised in respect of the United Kingdom the Defendants deny that the said Agreement is unconstitutional by reason thereof.
  
9. The Defendants deny that the Government have purported to abdicate freedom of action in respect of policy with the United Kingdom and further deny that the Government have purported to inhibit or qualify or restrict that freedom of action as alleged or at all.
  
10. If, which is denied, the manner in which the Government act in respect of policy with the United Kingdom is affected by the said Agreement as alleged, the said Agreement was entered into by or on behalf of the State in the exercise of its sovereign powers including the exercise of the executive power of the State in connection with its external relations, and the said Agreement is not inconsistent with the provisions of the Constitution, and in particular Article 29 thereof, as alleged or at all.
  
11. The Defendants deny that the said Agreement requires the executive power of the State to be exercised

in a particular manner or alternatively in a manner inconsistent with the provisions of the Constitution. If the Agreement requires the executive power of the State to be exercised in a particular manner the Defendants deny that the Agreement is inconsistent with the provisions of the Constitution, or any of them, as alleged or at all.

12. The Government have not, in Article 1 and 2(b) of the Agreement or in any Article thereof, purported to acknowledge ~~the~~ sovereignty of the Government of the United Kingdom over portion of the national territory, nor made any such "concession of right".

*raise the question*

*Article - says*

*Article 1  
Article 2  
Article 3*

The said Articles acknowledge the de facto jurisdiction which the Government of the United Kingdom exercise in relation to Northern Ireland.

13. Article 1 of the said Agreement does not have the effect attributed to it by the final sentence of paragraph 7 of the Statement of Claim. Rather, it embodies matters of policy as to the manner or circumstances in which changes in the status of Northern Ireland may occur. [Rather, it embodies matters of policy as to some of the circumstances necessary if changes in the status of Northern Ireland are to occur.]

14. Article 1 of the said Agreement is not repugnant to Articles 2 or 3 of the Constitution as alleged or at all.

15. Articles 4(b) and 5(c) of the said Agreement do not confirm the provisions of Schedule 1 of the Northern Ireland Act of 1974 as alleged or at all.
16. Articles 4(b) and 5(c) of the said Agreement are not repugnant to the provisions of Articles 3 and 5 of the Constitution on the grounds alleged in paragraph 8 of the Statement of Claim or at all.
17. Insofar as Articles 4(c) or 5(c) "confirm the status quo" they acknowledge its existence and are not, by reason thereof or at all, contrary to Articles 2 or 3 of the Constitution.
18. The resolution of Dail Eireann of 21st November, 1985 approving the terms of the said Agreement is not contrary to the provisions of the Constitution as alleged or at all.
19. It is denied that any actions of the Government relating to the said Agreement were unconstitutional as alleged or at all.
20. The Plaintiffs are not entitled to the reliefs claimed or to any relief.