THE SUPREME COURT

Supreme Court Record No: S:AP:IE:2019:000113

Between:-

MAM

Appellant

and

THE MINISTER FOR JUSTICE AND EQUALITY

Respondent

and

THE IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

Amicus Curiae

-AND-

Supreme Court Record No: S:AP:IE:2019:000111

Between:-

KN, EM,
FM (a minor suing by her grandmother and next friend KN) and
YM (a minor suing by her grandmother and next friend KN)

Appellants

and

THE MINISTER FOR JUSTICE AND EQUALITY

Respondent

and

THE IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

Amicus Curiae

OUTLINE SUBMISSIONS OF THE AMICUS CURIAE

A. INTRODUCTION

1. The statutory functions of Irish Human Rights and Equality Commission ('IHREC') include making applications for liberty to appear as *amicus curiae* in proceedings 'that involve or are concerned with the human rights or equality rights of any person.' The role of an *amicus curiae* is to assist the Court in determining the issue before it: see *HI v. Minister for Justice, Equality and Law Reform* [2003] 3 IR 197, 203.

2. The issue for determination in these appeals is whether a person who obtained a declaration of refugee status and who subsequently became a naturalised Irish citizen is entitled to the benefit of statutory family reunification rights contained in section 18 of the Refugee Act of 1996.

3. IHREC applied for and was granted liberty to appear in these appeals at the leave stage.

B. THE JUDGMENT UNDER APPEAL

4. The Appellants, MAM and KN, were given declarations of refugee status by the Respondent pursuant to section 17 of the Act of 1996 in 2008 and 2009 respectively. Their applications for refugee status had been considered by the Office of the Refugee Applications Commissioner against the refugee definition in section 2 of the Act and found to be well-founded.

5. They then made applications for family reunification in respect of close family members from whom they had been separated by reason of the persecution they feared. Those applications were made under section 18(1) of the Act, which provides:

> *Subject to section 17(2), a refugee in relation to whom a declaration is in force may apply to the Minister for permission to be granted to a member of his or her family to enter and to reside in the State and the Minister shall cause such an application to be referred to the Commissioner and a notification thereof to be given to the High Commissioner.*

6. While their applications for family reunification were still under consideration, both Appellants made applications for naturalisation. Their applications for naturalisation were accepted and they became Irish citizens; MAM in 2013 and KN in 2012.

7. Between the commencement of the Refugee Act in 2001 and 2010, the Respondent did not entertain applications from naturalised Irish citizens. This policy changed in 2010 and, between then and 2017, refugees who naturalised were deemed eligible for family reunification under section 18. The Respondent's interpretation of section 18 changed again in 2017, reverting to the narrower view that naturalisation rendered a person ineligible for family reunification under the 1996 Act. Even applications pending at the time of naturalisation were cancelled. The Appellants' applications were refused on the grounds that an Irish citizen cannot be 'a refugee in respect of whom a declaration is in force' for the purposes of the section. This interpretation was upheld by the High Court, which refused the Appellants' applications for judicial review. In the judgment now under appeal, the Court of Appeal agreed with the High Court and held, with regard to the interpretation of section 18, that:

> *The plain language of s. 18 of the 1996 Act suggests that there are two requirements to be met by an applicant under the section: that a declaration of refugee status be "in force" and that the applicant be, in fact, a refugee. The words in the section cannot readily be ignored as superfluous or redundant, as "refugee" is already defined in s. 2 of the 1996 Act without any mention of the declaration, and because the status of being a refugee may exist independently of a declaration.*

8. The Court of Appeal found that an Irish citizen cannot be a refugee for the purposes of section 2 of the Act, and naturalisation has the effect of revoking a declaration of refugee status 'by operation of law.' In support of this conclusion, the Court referred to section 21 of the Act of 1996, which sets out the circumstances in which declarations of refugee status may be revoked by the Respondent. One of these grounds, set out in section 21(1)(c), is that the person 'has acquired a new nationality (other than the nationality of the State) and enjoys the protection of the country of his or her new nationality.' For the High Court and the Court of Appeal, the exclusion in parentheses only made sense if acquisition of the nationality of the State resulted in automatic revocation of the declaration.

9. In these appeals, the Appellants offer a different interpretation of section 18. Essentially, they argue that 'a refugee in respect of whom a declaration is in force' means no more than a person who has been declared a refugee by the Respondent in accordance with section 17, and whose declaration has not been revoked in accordance with the procedure for revocation established by section 21 of the Act. They argue that revocation of declarations of refugee status upon acquisition of Irish nationality are not provided for in the Act of 1996 and that they cannot therefore occur 'by operation of law.' They observe that a 'double verification' eligibility test for family reunification under section 18 whereby the Respondent must be satisfied that not just that the applicant has a refugee declaration in force but that he or she still satisfies all of the elements of the refugee definition in section 2 would undermine the Act's complex refugee status determination machinery, and would have similar implications for the operation of the International Protection Act 2015. They further submit that the exclusion in section 21(1)(c) of refugees who acquire the nationality of the State from the revocation process represents a deliberate legislative choice to recognise that refugees who become Irish citizens must retain some of the rights they had as refugees, including the right to family reunification in Ireland.

10. As *amicus curiae*, IHREC seeks to offer an independent perspective on human rights issues arising for consideration by the Court. Our focus is on issues which merit additional argument above and beyond the submissions the Court has already received, and every effort is made to avoid duplicating the submissions of the parties.

11. IHREC observes that the Court is confronted with two interpretations of section 18 which, we believe, are both 'reasonably open' upon application of the ordinary canons of interpretation. In this regard. IHREC submits that the Court may benefit from additional submissions on the importance, in this context, of the constitutional double-construction rule and of the Court's interpretative obligation under section 2(1) of the European Convention on Human Rights Act 2003.

C. THE DOUBLE CONSTRUCTION RULES

The constitutional rule

12. The constitutional double construction rule follows from the presumption of constitutionality and was set out by Walsh J for the Supreme Court in *East Donegal Co-op v. Attorney General* [1970] IR 317 at 340. Although a celebrated passage, it is worth setting it out again:

> *An Act of the Oireachtas, or any provision thereof, will not be declared to be invalid where it is possible to construe it in accordance with the Constitution; and it is not only a question of preferring a constitutional construction to one which would be unconstitutional where they may both appear to be open but it also means that an interpretation favouring the validity of an Act should be given in cases of doubt.*

13. Thus, if in respect of section 18 two or more constructions are reasonably open — one of which is constitutional and the other or others are unconstitutional — it would be presumed that the Oireachtas intended only the constitutional construction: see, for example, *Damache v. Director of Public Prosecutions and Others* [2012] 2 IR 266, 277-278 and *Jordan v. Minister for Children and Youth Affairs* [2015] 4 IR 232, 298. While the rule is usually applied in circumstances of direct constitutional challenge to an enactment, it is capable of being applied on a provisional basis as a remedial principle even where there is no direct challenge to the constitutionality of a statutory provision: see Hogan, Whyte, Kenny and Walsh, *Kelly: The Irish Constitution* (5th edn) (Bloomsbury Dublin 2018) 1021-1022.

Section 2 of the Act of 2003

14. A subsidiary double construction rule is provided for in section 2(1) of the Act of 2003:

> *In interpreting and applying any statutory provision or rule of law, a court shall, in so far as is possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State's obligations under the Convention provisions.*

15. In *Donegan v. Dublin City Council and Others* [2012] 2 ILRM 233, the Supreme Court considered the application of section 2 and said (at 267):

> *It is quite clear that the Oireachtas has directed that every statutory provision or rule of law should be given a Convention construction if possible; that is a construction compatible with the State's obligations under the Convention. Therefore if such a construction is reasonably open it should prevail over any other construction, which although also reasonably open, is not Convention compliant. Even in cases of doubt, an interpretation in conformity with the Convention should be preferred over one incompatible with it. However, this task must be performed by reference to the rules of law regarding interpretation.*

16. Because this obligation is subject 'to the rules of law relating to such interpretation and application,' and those rules include the constitutional double construction rule, section 2 will only be of assistance where the constitutional rule ought not to apply or does not resolve the issue.

17. IHREC believes that an approach based on the application of these double construction rules may assist the Court in resolving the key issue in these appeals having regard, in particular, to the right to family unity in the Constitution and in Article 8 ECHR.

D. THE RIGHT TO REFUGEE FAMILY UNITY

Article 8 ECHR protects refugee family unity

18. Importantly for the purpose of these appeals, the European Court of Human Rights has, in three cases arising out of applications for family reunification by

refugees in France — *Tanda-Muzinga v. France*, App No 2260/10, *Mugenzi v. France*, App No 52701/09, and *Senigo Longue v. France*, App No 19113/09, all 10 July 2014 — identified within the scope of Article 8 ECHR a right on the part of refugees to family unity in the country of refuge.

19. The case of *Tanda-Muzinga v. France* is illustrative of the approach adopted in all three cases. It concerned an application for family reunification made by a Congolese refugee in respect of his wife and children. Mr. Tanda-Muzinga alleged that the consular authorities' prolonged refusal to issue the visas to his family – a delay of three and a half years – had infringed his right to respect for his family life as guaranteed by Article 8 ECHR. The Court observed that the applicant's family life had been discontinued purely as a result of his decision to flee his country of origin out of a genuine fear of persecution and that the applicant could not be held responsible for the separation from his family. The arrival of his wife and children in France was thus the only means by which family life could resume.

20. The Court then identified on the part of refugees a right to family unity:

> *The Court reiterates that the family unity is an essential right of refugees and that family reunion is an essential element in enabling persons who have fled persecution to resume a normal life.... It further reiterates that it has held that obtaining such international protection constitutes evidence of the vulnerability of the parties concerned.*

21. Considering the procedural delays encountered by Mr. Tanda-Muzinga, the Court noted that the accumulation and protracted nature of the numerous hurdles he encountered in the course of the proceedings had left him in a state of severe depression. Concluding that France had failed to strike a fair balance between the applicant's right on the one hand and its own interest in controlling immigration on the other, the Court found a violation of Article 8 ECHR. The same conclusion was reached in *Mugenzi* and *Senigo Longue*.

22. In IHREC's respectful submission, the judgments of the Strasbourg Court in *Tanda-Muzinga*, *Mugenzi* and *Senigo Longue* are authority for the following propositions:

(a) Article 8 ECHR protects the right to family unity of refugees in the country of refuge;

(b) Article 8 ECHR requires that decisions on refugee family reunification must take account of the special circumstances of refugees and their families if they are to strike a fair balance between the applicant's interests on the one hand and a Contracting State's own interest in controlling immigration on the other. This means taking account of three key factors:

i. that refugee family separation is usually involuntary;

ii. that reunification in the country of origin is impossible; and

iii. that arrival of the refugee's family members in the Contracting State is the only means by which family life can resume;

(c) Refusal of refugee family reunification may amount to an interference in the Article 8 ECHR rights of the refugee;

(d) Where family reunification is frustrated by procedural obstacles, there may be a violation of the positive and procedural obligations imposed.

Acquisition of new nationality and the right to family unity

23. By extension, IHREC further submits that there is no reason in principle why Article 8 ECHR would have ceased to protect Mr Tanda-Muzinga's right to family unity if he had taken up French nationality. IHREC notes that the delay in issuing Mr Tanda-Muzinga's family with visas — three and a half years — would have been sufficient reckonable residency to apply for naturalization

had he been granted international protection in Ireland. The knowledge that he would have lost his right to family reunification had he applied for citizenship might have dissuaded Mr Tanda Muzinga from applying for naturalization while he waited to be reunited with his family, preventing him from taking an important step in integration. After all, an application for family reunification made as a Frenchman would necessarily have raised the same problems as an application before his naturalisation. In particular, reunification in his country of origin would still be impossible. Equally, the same balance would have to be struck between his needs on the one hand and France's interest in controlling immigration on the other. A grant of family reunification post-naturalization would have recognized that his path to citizenship had been different to those of his fellow French citizens who had acquired theirs by birth, descent or adoption, a recognition that unlike his new compatriots, he could never return to his country of origin where his family still lived. A grant of family reunification post-naturalization would have made him equal to his new compatriots by allowing him to resume a family life that he would otherwise have lost.

24. It is therefore submitted that acquisition of the nationality of the country of refugee does not extinguish a refugee's right to family unity in that country under Article 8 ECHR. Indeed, treating this right as having been extinguished by naturalisation in circumstances where the applicant's need has not actually changed is to make a distinction on the grounds of nationality where in fact there is no difference in the nature of the application. Such discrimination in the enjoyment of a right guaranteed by Article 8 ECHR on the basis of nationality without objective justification would likely amount to a violation of Article 14 ECHR: see *Belgian Linguistic Case* (merits), Series A no 6, 23 July 1968, § 10.

25. In this regard, IHREC respectfully disagrees with the Court of Appeal's observation that 'the fact a refugee upon acquiring citizenship benefits from other rights must be the starting point for any argument of discrimination.' The IHREC submits that this is a question of equalizing up, and not down. To deny a refugee family reunification post-naturalization is to fail to acknowledge their

past and their route to citizenship; it is to fail to acknowledge that, unlike their new compatriots, they might continue to have a well-founded fear of being persecuted in a particular country to which they cannot return; and it is to fail to acknowledge the conundrum that, unlike their new compatriots, they continue to be separated from their family because they acquired the citizenship of the host country. The denial of the right to family reunification has the potential to interfere with the enjoyment of all of the other rights acquired by a refugee upon naturalization. While acquiring citizenship is 'a volitional act', it does not alter the fact or circumstances of their family's separation. Thus, the appropriate comparator for a refugee who has acquired Irish citizenship by naturalisation is not another Irish citizen but a refugee, because their experiences and needs as regards family separation and reunification are so much more closely aligned.

The right to family unity in the Constitution

26. As a general proposition, IHREC's considered view is that the personal rights provisions of the Constitution should be interpreted as providing a level of protection for human rights, equal to or greater than the level of protection provided by the ECHR.

27. The interpretation of the Constitution should be informed by, and have regard to, relevant international conventions, including, in particular, the ECHR: *MX v. Health Service Executive* [2012] 3 IR 254, 281-282. Just as the European Court of Human Rights takes a 'dynamic and evolutive' approach to the interpretation of the ECHR as a 'living instrument which must be interpreted in the light of present day conditions and situations', so the Irish Constitution has been held by our Courts to be 'a living document' which 'falls to be interpreted in accordance with contemporary circumstances including prevailing ideas and mores': *Goodwin v. United Kingdom*, [GC] App No 28957/95, ECHR 2002-VI, § 75; *Sinnott v. Minister for Education* [2001] 2 IR 454, 680; *MX v. Health Service Executive*, cited above, 279-282.

28. In the individual circumstances of the present appeals, the applications for family reunification made by MAM and KN both concerned marital families (or families originally based on marriage), and in KN, evidence of emotional and financial dependency was included. This is relevant only insofar as it may be still said that the protections of Article 41 are confined to families based on marriage.

29. Even where a family unit comprises non-nationals as well as Irish citizens, it will nevertheless attract the protection of Article 41: *Fajujonu and Others v Minister for Justice, Equality and Law Reform and Others* [1990] 2 IR 151, 162. The Courts have also found that constitutional protection can extend beyond the nuclear family to include within its rubric other dependent members, including grandparents and adult children: see *RX and Others v. Minister for Justice, Equality and Law Reform* [2010] IEHC 446, Hogan J, 10 December 2010, paras 39-41; *O'Leary and Others v. Minister for Justice, Equality and Law Reform* [2011] IEHC 256, Hogan J, 5 July 2011, paras 21-27 (granting leave) and [2013] 1 ILRM 509, 526 (Cooke J granting substantive relief). The personal rights guarantee in Article 40.3 confers on the family's individual members rights to respect for their respective personal rights to each others' care and society: see *Oguekwe v. Minister for Justice, Equality and Law Reform* [2008] 3 IR 795, 815 and *Chigaru and Others v. Minister for Justice and Equality and Other*s [2015] IECA 167, Hogan J., 27 July 2015, paras 29 and 39. It is possible, then, to identify on the part of the Appellants and their families rights to mutual care, society and protection which are guaranteed by Article 40.3 and Article 41 of the Constitution.

30. IHREC notes, in this regard, that Article 41 provides a level of protection to marital families greater than that afforded by Article 8 ECHR: see *Gorry v. Minister for Justice and Equality* [2017] IECA 282, Hogan J, 27 October 2017, paras 11-30.

31. IHREC further observes that in *Gorry v. Minister for Justice and Equality* [2017] IECA 282, Finlay Geoghegan J, 27 October 2017, the Court of Appeal stopped short of identifying on the part of Irish citizens a right to cohabit in

Ireland with their non-national spouses. However, the Court went so far as to indicate that the State was obliged, when considering the applications for residence permissions of non-national spouses of Irish citizens, to have due regard to their rights to cohabit — a right to family unity — as well as their decision to do so in Ireland, and the almost absolute right of the Irish citizen to live in Ireland as part of the Irish Nation. IHREC notes that the Supreme Court has reserved judgment in the Respondent's appeal in the *Gorry* case.

32. There is at least as strong a case for the identification in Article 41 of a right on the part of refugee families to family unity in Ireland as there is on the part of Irish citizens. As a host State, Ireland must protect all of its refugees' rights – including the right to family unity. To treat this right as having been diminished by naturalisation in circumstances where the applicant's need has not actually changed is, again, to make a distinction on the grounds of nationality where in fact there is no difference in the nature of the application. In the absence of any objective justification, such discrimination would offend against the constitutional guarantee of equality before the law in Article 40.1. As O'Donnell J noted in *Murphy v. Ireland* [2014] 1 IR 198, 227-229.

> *The principle of equality in general terms requires that like persons should be treated alike, and different persons treated differently, by reference to the manner in which they are distinct.*

33. Fundamentally, IHREC believes that refugees have a constitutional right to family unity under the Constitution at least as extensive as their right to family unity under Article 8 ECHR identified by the Strasbourg Court in *Tanda-Muzinga*. The question then is whether that constitutional right is diminished when they naturalise. On the basis that their need for family reunification is precisely the same as it was before they acquired Irish citizenship and that their family circumstances are closer to those of refugees than other Irish citizens, we conclude that the answer must be that a refugee's right to family unity under the Constitution is not and cannot be diluted or extinguished by naturalisation.

E. SECTION 18 AND REFUGEE FAMILY UNITY

The constitutional double-construction rule applied.

34. Analysis of the interpretation of section 18 adopted by the Respondent and endorsed by the Courts below raises concerns in relation to the compatibility of the provision with Articles 40.1, 40.3 and 41 of the Constitution, interpreted in light of Article 8 ECHR as applied in *Tanda-Muzinga* and Article 14 ECHR.

35. If the Court of Appeal's interpretation is correct, section 18 required the Respondent, upon the receipt of an application for family reunification, to satisfy himself not only that the applicant has a declaration of refugee status but that the applicant still meets all elements of the refugee definition in section 2 — not just the requirement of alienage — in order that the application should be admissible.

36. This would require the Respondent to examine afresh whether all the elements of the refugee definition are still satisfied. This could require the entire claim to be reassessed, with all of the needless duplication and delay that would entail.

37. The Court of Appeal's interpretation of section 18(1) would have similar implications for the application of section 3 (on the rights of refugees to reside in the state, take up employment and receive social welfare) and section 4 (on the issue of refugee travel documents) of the Act of 1996, because the phrase 'a refugee in relation to whom a declaration is in force' is also used in those provisions. In IHREC's submission, it cannot reasonably be said, to adopt the reasoning of the Court below, that before a travel document is issued, a refugee must satisfy the Respondent again 'that a declaration of refugee status be "in force" and that the applicant be, in fact, a refugee.'

38. In IHREC's submission, such an onerous two-stage procedure urged on the Court by the Respondent would be contrary to the scheme of the section itself,

which envisages only an investigation by the Refugee Applications Commissioner into the familial relationships.

39. But more importantly, the interpretation involves the creation of such a substantial procedural obstacle to family unity for refugees as to render their right to family unity theoretical and illusory. An interpretation of section 18 that incorporates such a requirement could not possibly be consistent with Articles 40.3 and 41 of the Constitution.

40. In truth, of course, no two-part test was ever actually adopted or applied by the Respondent under section 18 (or under sections 3 or 4, for that matter) because it would have been completely unworkable and self-defeating. That being the case, it is not clear why such an extreme interpretation of the provision, which bears no relation to how it has actually been applied in practice, is now being urged on the Supreme Court for the purpose of defeating these appeals.

41. Further or in the alternative, if interpreted in the manner adopted in the Courts below, section 18 would establish a mechanism for family reunification for refugees which excludes those who have acquired Irish citizenship without any objective justification. In failing to treat like cases alike without any legitimate legislative purpose, the provision would impermissibly discriminate on the grounds of nationality in a manner incompatible with the equality guarantee in Article 40.1.

42. The Respondent's interpretation of section 18(1) also conflates cessation of refugee status as a matter of international law with revocation of refugee status as a matter of domestic law. These concepts are related but distinct, and the elision of the distinction between them ignores the important distinction between national and international law in Article 29.6 of the Constitution and consistently applied by the Irish courts since *Re Ó Laighleis* [1960] IR 93. Moreover, an interpretation of section 18 which requires section 21(1)(c) to be read as contemplating automatic revocation upon naturalisation in the absence any express provision to this effect creates, in effect, an administrative pitfall for refugees which has, on the Respondent's analysis, profound consequences

for them in terms of reunification with their families. Such an imprecise and unforeseeable system would, in IHREC's analysis, be inconsistent with the constitutional right to fair procedures as well as the substantive family rights guaranteed by Articles 40.3 and 41.

43. By contrast, the Appellants' interpretation of section 18(1) envisages a straightforward mechanism for refugee family reunification absent any requirement of double verification. For this reason alone, it is preferable to the interpretation adopted by the Courts below. But more than that, it also admits of applications under this section being made even by persons who were declared refugees and who subsequently acquired Irish citizenship, acknowledging the legitimate purpose of the Oireachtas in recognising the special circumstances of such citizens who, though they have naturalised, remain in need of refugee family reunification. IHREC submits that the Oireachtas may be presumed to have recognised that the situation of such citizens is much closer to that of refugees than it is to that of citizens who were born here or who naturalised in happier circumstances, and that, in enacting the provision, and in declining to provide for revocation of refugee status declarations upon naturalisation in section 21, the legislature acted deliberately to vindicate the important right to family reunification. For these reasons, IHREC believes that, interpreted in this way, the provision is compatible with Articles 40.1, 40.3 and 41 of the Constitution.

44. IHREC is acutely aware that its submissions have implications for the compatibility of current rules for family reunification under the Act of 2015 with the Constitution. While IHREC has addressed these in a report published in June 2018 entitled *The Right to Family Reunification for Beneficiaries of International Protection*, they are not directly relevant to the determination of these appeals.

Section 2 of the Act of 2003 applied

45. In the event that the Court is not satisfied that application of the constitutional double-construction rule resolve the issue for determination in these appeals,

IHREC submits that application of the interpretative obligation in section 2 of the Act of 2003 will be instructive. The application of this rule does not depend on an Applicant seeking a declaration of incompatibility under section 5.

46. As noted above, the judgments of the European Court of Human Rights in *Tanda-Muzinga*, *Mugenzi*, and *Senigo Longue* are authority for the proposition that Article 8 ECHR protects the right of refugees to family reunification in their country of refuge. That right has substantive and procedural aspects. While it is not absolute and must be balanced against the State's interest in controlling immigration, that balance must take account of the unique features of refugee family separation, and in particular the fact that reunification in the country of origin is impossible. Crucially, where family reunification is frustrated by procedural obstacles, there may be a violation of the positive and procedural obligations imposed by Article 8 ECHR.

47. Bearing this in mind, it is difficult to see how an interpretation of section 18 that would have created an onerous and duplicative procedure for refugee family reunification applications could possibly be compatible with the positive and procedural aspects of the right to family unity in Article 8 ECHR. Similarly, an interpretation of sections 18(1) and 21(1)(c) which would admit of diminution of a refugee's right to family unity simply based on the fact of his or her acquisition of Irish nationality is hard to reconcile with the guarantee of non-discrimination in Article 14 ECHR.

48. IHREC respectfully submits that in its analysis of this issue, the Court of Appeal conflated the interpretative obligation imposed on the courts by section 2 of the Act of 2003 with the obligation in section 3 on organs of the State other than the courts to perform their functions in a manner compatible with the Convention. The obligation on the part of the Respondent to perform his statutory functions in a Convention compatible manner is of little value if he has adopted an interpretation of his powers which is itself incompatible with the Convention.

49. Further, IHREC observes that an interpretation of the Act of 1996 which admits of automatic summary revocation of refugee status declarations without any clear notice of this fact and having negative implications for family unity would be incompatible with the procedural aspect of Article 8 ECHR, which requires that procedures governing interferences in the right to private and family life be precise and foreseeable: see *HL v. United Kingdom*, App No 45508/99, ECHR 2004-IX, §§ 112-113. .

50. Accordingly, IHREC agrees with the interpretation of section 18 urged on the Court by the Appellants, and believes that because it is compatible with the State's obligations under the ECHR, it should be preferred over the incompatible interpretation adopted by the Respondent and approved by the Courts below.

F. CONCLUSION

51. For the reasons set out above, IHREC submits that the interpretation adopted of section 18(1) of the Act of 1996 by the Courts below and urged now on this Court by the Respondent is repugnant to the State's obligation to protect the rights of the family and its members under Article 40 and 41 of the Constitution. Further or in the alternative, this interpretation is incompatible with the State's obligations under Article 8 ECHR alone and in conjunction with Article 14.

52. Accordingly, IHREC respectfully submits that the interpretation urged on the Court by the Appellants should be preferred, and that on this basis, the appeals should be allowed.

Colin Smith BL
Michael Lynn SC
5,368 words