

Court cases on the Irish language under the Constitution

In **1934 Chief Justice Kennedy** said:

"None of the organs of the State, legislative, executive or judicial may derogate from the pre-eminent status of the Irish language as the national language of the State without offending against the Constitutional position..."

Ó Foghludha v. McClean (1934) IR469

In **1983 Justice Ó hAnluain** spoke as follows:

"It will be noted that Irish is accorded a higher level of recognition in the Constitution of Ireland than it had in the first Constitution, since it is referred to for the first time as 'the first official language'. At the same time greater scope is given to the Oireachtas to give priority to one language over the other in accordance with the law insofar as relates to official matters in any part of the country.

Until the Oireachtas exercises the function conferred on it by the provisions of the Constitution, it must always be assumed that Irish is the first official language, and that the citizen is entitled to require that it be used when the State has official matters to administer."

[Translation] The State (Mac Fhearraigh) v. Mac Gamhna (1983) T.É.T.S 29

In **1988 Justice Ó hAnluain** said:

"It is clear that money was spent on providing the English version of the forms and it does not appear to me that fairness is being accorded to those members of the public wishing to conduct business through the medium of Irish unless similar facilities are made available to them".

Ó Murchú v. Registrar of Companies and the Minister for Industry and Trade [1988] I.R.S.R (1980-1998) 42

In **2001 Justice Hardiman** said the following:

"In my view this has led to a situation where only a person of unusual independence will attempt to conduct his or her legal business through the medium of Irish...

They [instances cited as exceptions to the norm] cannot at all contend with the stark reality that the individual who seeks basic legal materials in Irish will more than likely be conscious of causing embarrassment to the officials from whom he seeks them and will certainly become conscious that his business will be much more rapidly and efficaciously dealt with if he resorts to English. I can only say that this situation is an offence to the letter and spirit of the Constitution."

[Translation] Hardiman, J. – Judicial Review – Supreme Court. Ref : Ó Beoláin v. Fahy [2001] 2 I.R. 279

And also from the same judgement given by **Hardiman, J.:**

"It is my opinion that it is not possible (at least in the absence of law of the type envisaged in Article 8.3) to exclude Irish, which is the national language and at the same time the first official language of the State, from any part of the public discourse of the nation or from any official business of the State or from the official business of any of its members. Nor is it possible in these contexts to treat it in a manner which is less favourable than the way in which the second official language is treated. Neither is it possible to prevent those who are capable and desirous of using Irish in making their case or in communicating from so doing or to disadvantage them when so doing in any national or official context."

[Translation] Hardiman, J. – Judicial Review – Supreme Court. Ref : Ó Beoláin v. Fahy [2001] 2 I.R. 279

And again from the same judgement given by **Hardiman, J.:**

"The modern State necessarily imposes many onerous duties on citizens in relation to various aspects of life from tax compliance to planning law. Many of these duties are irksome, time consuming and expensive to comply with, but compliance is properly required.

Equally the State itself must comply with its obligations, particularly those enshrined in the Constitution and can no more be heard to complain that such compliance is irksome or onerous than can the individual citizen. In particular, the State cannot be heard to complain that its non-compliance over a period of decades have now

rendered present compliance even more difficult".

[Translation] Hardiman, J. – Judicial Review – The Supreme Court. Ref: Ó Beoláin v. Fahy [2001] 2 I.R. 279.

But in 2009 **Justice Charleton** said:

The State is not required to produce any particular class of documents that concern a criminal process in either Irish or English. The State can choose one language or the other. This is not an abuse of anyone's rights. An illiterate person can get a document read, an English-speaking person can get someone to explain an Irish document to him and so can an Irish-speaking person an English document; ...Those rights are in no way undermined by any particular document coming from the State being in either English or Irish...I can find no possibility that a real risk of an unfair trial has been established by the applicant merely because a machine has produced a statement which he fully understands in a language that he would, on occasion, prefer not to use.

Charleton J., The High Court, [2009] IEHC 188

And in 2010 **Justice Macken** said:

I have already held that there is no constitutional obligation on the appellants to provide simultaneous or other translations of all Statutory Instruments to the general public, including the respondent. Rules of Court, being Statutory Instruments, fall generally within the same rubric. I have held, however, that, as concerns Statutory Instruments, an individual may be entitled to claim that the absence of a particular Statutory Instrument or of even more than one, in Irish, may constitute, in a particular case, an inhibition or an impediment on such an individual seeking to vindicate his right to use the first official language in court proceedings, or at least in respect of his or her side of court proceedings....

Decision

Having regard to the foregoing findings, I would make an Order setting aside the judgment and Orders of the High Court. I would make a declaration that there is a constitutional obligation to provide to the respondent, in his capacity as a solicitor, all Rules of Court, including all amendments, forms and indices thereto, in an Irish language version of the same, so soon as may be practicable after they are published in English.

Macken J., The Supreme Court, [2010] IESC 26