THE HIGH COURT

JUDICIAL REVIEW

[2019 No. 17 J.R.]

BETWEEN

ALI CHARAF DAMACHE

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

AND

THE IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

NOTICE PARTY

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 31st day of May, 2019

1. On 18th August, 2007, a Swedish regional newspaper published a cartoon depicting the Islamic prophet Muhammad. That editorial decision was to trigger events that had a far-reaching effect on Irish constitutional jurisprudence, an effect that continues to be felt in the present case nearly 12 years later.

2. The applicant, who gives his address as Federal Detention Centre, Philadelphia, has already left something of a trace on jurisprudence in that he has been involved in eleven sets of proceedings in this jurisdiction alone, leaving aside proceedings in Spain and the U.S. He has instituted nine of those sets of proceedings (mainly judicial reviews but also including Article 40 applications and plenary proceedings), and has been the respondent or defendant in the other two proceedings (one criminal and one extradition application). Three of his judicial reviews, including the present one, involved constitutional challenges to legislation. He has been before every ordinary court in the land at all five levels and has been responsible for seven written judgments already, this being the eighth. The number of different judges of the Superior Courts he has been before is well into double figures and it will, thus, be necessary to explain the procedural history in some detail. A certain amount of background information in relation to the applicant's history appears in the other judgments in these proceedings. His personal and family situation is also somewhat complicated, involving at least three wives of one sort or another, and I will come to those in due course.

3. Before getting into the history, it may be helpful as a thumbnail guide to start by listing the nine cases instituted by the applicant.

(i). *Damache v. D.P.P.* [2010 No. 1501 J.R.]: a challenge to the constitutionality of s. 29 of the Offences Against the State Act 1939 which arose out of criminal proceedings against the applicant.

(ii). *Damache v. Governor of Cork Prison* [2010 No. 2404 S.S.]: an *ex parte* application by way of *habeas corpus* which was refused by Butler J.

(iii). *Damache v. Governor of Cork Prison* [2011 No. 308 J.R.]: that began as a judicial review in which leave was granted on 11th April, 2011, but the proceedings were then converted to plenary proceedings on 31st January, 2012 and are referred to further below.

(iv). *Damache v. D.P.P.* [2012 No. 998 J.R.]: a proposed judicial review against the D.P.P. which does not ever appear to have been moved, and certainly leave is not recorded as having been granted.

(v). *Damache v. Governor of Cork Prison* [2012 No. 1490 P.]: this appears to be the plenary version of the earlier judicial review, and culminated in an order striking out the proceedings with no order as to costs on consent, made by Dunne J., on 23rd July, 2013.

(vi). *Damache v. Governor of Cloverhill Prison* [2012 No. 1633 S.S.]: another *ex parte habeas corpus* application which was refused.

(vii). *Damache v. D.P.P.* [2013 No. 670 J.R.]: the applicant's first judicial review regarding the failure of the D.P.P. to prosecute in this jurisdiction in respect of matters for which his extradition was sought.

(viii). *Damache v. D.P.P.* [2014 No. 112 J.R.]: the applicant's second judicial review in relation to his non-prosecution in the State.

(ix). *Damache v. Minister for Justice and Equality* [2019 No. 17 J.R.]: being the present proceedings.

Applicant's early immigration history

4. The applicant appears to have been born on 21st August, 1965 in Algeria and to be an Algerian citizen by birth. He claims to have moved to France aged about six and to have grown up there. He claims to have been married in France but does not say when or to whom, or what his wife's name was or what citizenship she held. He claims to have children living in France, although he does not say how many children, who their mother is, their names, ages, dates of birth or who they are living with at the moment. Nor does he give any information about the ongoing relationship, if any, that has with the children. He claims the children are French citizens, although does not explain how that is so, whether by birth, descent or otherwise. He says that he left France when his wife died. He does not say when she died or indeed how. Overall, his affidavit as to his family circumstances is pitifully inadequate.

5. He moved to the State when he was 35 years old in 2000 and applied for asylum at Dublin Airport on 28th July of that year. That

fleeting application would normally be an appropriate basis to anonymise the proceedings; but given that he has been named in all of the proceedings to date, the applicant's side in this case agrees that he can be named in the present judgment. He completed his asylum questionnaire in French. As is apparent from that questionnaire, he asserted that he was unmarried and had no children, that his only relative was his mother in Algeria and that he had lived in Algeria until 1998, travelling to Ireland *via* Turkey, Greece and Italy.

6. The asylum claim was rejected and the applicant duly appealed to the Refugee Appeals Tribunal. That appeal was also rejected and the applicant was so notified on 30th October, 2002. The asylum application was then formally refused by the Minister on 3rd December, 2002. On 12th December, 2002, not long after the asylum claim had been refused and at a time, therefore, when the applicant had no legal basis whatsoever for his presence in the State, he married Ms. Mary Cronin, an Irish citizen by birth, who was then a 25-year-old young woman. No ongoing relationship appears to exist with her but I am informed that there has been no formal divorce.

7. On 26th July, 2006, the applicant applied for Irish citizenship using the appropriate form for naturalisation known as Form 8, prescribed by s. 17 of the Irish Nationality and Citizenship Act 1956 and the Irish Nationality and Citizenship Regulations 2002 (S.I. No. 567 of 2002). The application was made on the basis of the applicant being married to an Irish citizen. The process of naturalisation requires an applicant to make a declaration of fidelity to the nation and loyalty to the State as provided for by s. 15(1)(e) of the 1956 Act, and the applicant made such a declaration before a judge of the District Court on 3rd November, 2008. This was made in the prescribed form (Form 7), which states: "*I Charaf Damache (sic)… hereby solemnly declare my fidelity to the Irish nation and my loyalty to the State*". As stated on the form, this was done in open court. On 10th November, 2008, the applicant wrote to the Minister asking for information on how to give up his previous Algerian citizenship. The applicant was formally naturalised by Certificate of Naturalisation dated 27th November, 2008 which was transmitted to the applicant by letter dated 1st December, 2008, a letter which drew the applicant's attention to the revocation provisions of s. 19 of the 1956 Act.

Irish criminal investigation in respect of conspiracy to murder

8. The publication of the cartoon referred to earlier in this judgment provoked unrest in several Muslim countries in 2007. In September, 2009, the Garda Síochána commenced an investigation into an alleged conspiracy to murder the cartoonist concerned. It was suspected that the applicant was involved in that conspiracy, along with other persons resident in Ireland, and in particular that on 9th January, 2010, the applicant made a threatening phone call to an individual in the United States as part of that series of events.

9. It appears that in 2009, the applicant entered into an Islamic marriage ceremony with an American citizen, Ms. Jamie Paulin Ramirez, who seems to have been one of the other individuals that was said to have been involved in the alleged conspiracy and indeed was also at one stage in federal custody in the U.S. On 28th January, 2010, Ms. Paulin Ramirez sought permission to remain in the State on the basis of her relationship with the applicant, albeit that the Islamic marriage ceremony could not have been legally effective during the subsisting currency of the applicant's legal marriage to Ms. Cronin. On 24th March, 2010, that applicant was refused.

10. In the meantime, on 8th March, 2010, D/Superintendent Dominic Hayes granted a search warrant under s. 29 of the Offences against the State Act 1939, as amended by s. 5 of the Criminal Law Act 1976, in relation to the applicant's dwelling. That search warrant was executed on the following day. The applicant was arrested for the offence of conspiracy to murder and various items were removed from his home including a mobile phone. The applicant was then charged, not with the more serious offence for which he was arrested, but with an offence contrary to s. 13 of the Post Office (Amendment) Act 1951 to the effect that on 9th January, 2010, he sent a message by telephone of a menacing character. It was alleged that the phone call was made on the mobile phone seized during the search.

11. A book of evidence was served on 24th May, 2010. On 2nd December, 2010, the applicant sought judicial review seeking to prohibit his trial on the basis of a contention that any evidence obtained on foot of the search warrant was unconstitutionally obtained and on the grounds that s. 29 of the 1939 Act was invalid. That challenge was dismissed by Kearns P. in *Damache v. D.P.P.* [2011] IEHC 197 (Unreported, High Court, 13th May, 2011). The applicant then appealed that decision to the Supreme Court where he was successful (*Damache v. D.P.P.* [2012] IESC 11 [2012] 2 I.R. 266 [2012] 13 I.L.R.M. 153 (Denham C.J., Murray, Hardiman, Fennelly and Finnegan JJ. concurring)).

U.S. criminal investigation in relation to terrorist conspiracy and consequent extradition application

12. In the meantime, a U.S. warrant for the arrest of the applicant was issued on 16th November, 2010 by a United States Magistrate Judge for the Eastern District of Pennsylvania. That related to an allegation that the applicant had conspired to create a terrorist cell in Europe, and participated in the attempted theft of U.S. identity documents that were used by a co-conspirator in Pakistan. On 18th January, 2013, the State received a request made by the U.S. seeking the applicant's extradition. The High Court issued a warrant for the applicant's arrest under s. 26 of the Extradition Act 1965 on 15th February, 2013.

13. In February, 2013, the applicant pleaded guilty before Waterford Circuit Court to the charge of sending a message of a menacing character by telephone. His success in the constitutional proceedings in relation to s. 29 appears to have resulted in the prospect of more serious charges being prepared against him being abandoned. He received a four-year prison sentence backdated to when he was arrested.

14. On 27th February, 2013, the applicant was arrested pursuant to the extradition warrant and brought before the High Court. He then brought a Notice of Motion dated 22nd July, 2013 seeking various reliefs including discovery. After a two-day hearing of that Motion, the relief sought was refused by Edwards J. (*A.G. v. Damache* (High Court, not circulated, *ex tempore*, 31st July, 2013)). That decision appears to have been appealed to the Supreme Court (Supreme Court Rec. No. 375/13, lodged on 20th August, 2013) but the appeal was eventually struck out on 11th March, 2014 for failure to lodge books of appeal.

15. The applicant then commenced judicial review proceedings [2013 No. 670 J.R.] challenging the decision not to prosecute him on the matters for which his extradition was sought, and also seeking a declaration that s. 15 of the Extradition Act 1965, as substituted by s. 27 of the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012, was unconstitutional. Those proceedings were commenced on 6th September, 2013 and were mentioned *ex parte* before Michael White J. during a vacation sitting. He directed that that application should be made on notice to the respondents, which was done, and ultimately leave was refused by Edwards J. in *Damache v D.P.P.* [2014] IEHC 114 (Unreported, High Court, 31st January, 2014). The applicant then brought a second leave application making a further challenge to the decision not to prosecute him in Ireland, and leave was also refused by Edwards J. in *Damache v. D.P.P.* [2014] IEHC 139 (Unreported, High Court, 28th February, 2014). Those leave refusals were reversed by the Supreme Court in an *ex tempore* decision on 11th March, 2014.

16. The substantive extradition proceedings plus the two judicial reviews came before Donnelly J., who ultimately granted the

applicant relief (*Attorney General v. Damache* [2015] IEHC 339 (Unreported, High Court, 21st May, 2015)). That was appealed by the State to the Court of Appeal, and in *Damache v. D.P.P.* [2018] IECA 130 (Unreported, Court of Appeal, 12th April, 2018) that court, *per* Hedigan J., Birmingham P. and Mahon J. concurring, allowed the appeal and reversed the High Court decision in part. However, prior to the Court of Appeal judgment, the applicant, who does not appear to have been on bail at the time, left the State (as it would seem he was entitled in principle to do) and travelled to Barcelona. He was promptly arrested by the Spanish authorities on foot of an extradition warrant issued by the United States and ultimately he was extradited there in July, 2017. He pleaded guilty in federal court in Philadelphia in July, 2018 to a charge that, while resident in Ireland in or about 2010, he materially assisted an Islamist terrorist conspiracy. In October, 2018, following a plea bargain with federal prosecutors, he was sentenced to 15 years' imprisonment with credit for time served in Ireland and Spain together with furnishing a consent to be deported to either Ireland or Algeria on his release.

The proposal to revoke the applicant's citizenship
17. On 18th October, 2018, the Department of Justice and Equality sent a statutory notice pursuant to s. 19(2) of the 1956 Act, advising the applicant of an intention to revoke his citizenship on the grounds that he had failed in his duty of loyalty to the nation and fidelity to the State, having pleaded guilty to a terrorist offence. The letter invited the applicant to indicate whether he wished to apply for a committee of inquiry into the proposal. The specific grounds as stated in the letter were: *"You were extradited to the USA from Spain in 2017 and in July 2018 you pleaded guilty to conspiracy to provide material support and resources to terrorists. You are currently awaiting sentencing for those offences in the USA".*

18. The applicant's solicitors replied on 15th November, 2018, objecting to the proposed revocation and asking for clarification in respect of the procedures involved and the reasons for the intended revocation. The Department replied on 28th November, 2018 stating that the procedures before the committee of inquiry were a matter for the committee but the Minister anticipated certain procedures would obtain, which it can generally be said would be fairly familiar types of processes in any fair-procedures-based hearing.

Procedural history and relief sought
19. The applicant filed the present proceedings on 11th January, 2019. The first two reliefs sought are *certiorari* of the notice of intention to revoke the applicant's citizenship dated 18th October, 2018 and an order of prohibition restraining the Minister from revoking the applicant's citizenship. However, there are no truly independent grounds for those reliefs and they would only arise as a consequence of the substance of the applicant's challenge, which is one to the legislation itself.

20. The statement of grounds goes on to claim a number of declarations, specifically that s. 19 of the 1956 is contrary to the Constitution, the ECHR (as applied by the European Convention of Human Rights Act 2003) and EU law, including the EU Charter on Fundamental Rights. Damages for breach of ECHR rights are also sought, although the 2003 Act was not specifically cited in that context. I granted leave on 14th January, 2019 together with an *ex parte* stay on the revocation of citizenship. When the matter next came before the court on 21st January, 2019, the stay was extended. The order on that date has been perfected, although it was not included in the book of pleadings furnished to the court. It provides that the pre-existing stay on revocation of citizenship was extended until the determination of the proceedings. A statement of opposition was filed on 22nd March, 2019 and I have now received helpful written and oral submissions from Ms. Sunniva McDonagh S.C. (with Mr. Mark Lynam B.L.) for the applicant and from Ms. Siobhán Stack S.C. (with Mr. Alexander Caffrey B.L.) for the respondents. The notice party did receive the papers but did not take part in the proceedings.

The stay
21. The stay on actual revocation granted in January, 2019 is mischaracterised in the applicant's submissions, which incorrectly contend that: *"A stay was granted on any further step in the revocation process, pending the outcome of these proceedings. If the Applicant is unsuccessful in these proceedings, time would begin to run again and the Applicant would have the option of applying for a Committee of Inquiry. Indeed had the Applicant engaged in the process, the Respondent would doubtless argue that he had acquiesced in the procedure such that relief should be refused on a discretionary basis*".

22. As regards the suggestion of acquiescence, while I sympathise to some extent with the dilemma that applicants face where they can be sought to be put in a catch-22 situation by respondents, in my view that objection is unfounded. It would be, or certainly would have been, open to the applicant to apply for a committee of inquiry without prejudice; and it would be unreal, unfair and inappropriate to hold the making of such an application against an applicant to defeat a judicial review that would otherwise succeed. Having said that, if an alternative remedy is an answer to a judicial review, it would continue to be an answer whether the applicant avails of it or not. As was put by counsel (Mr. Daniel Donnelly B.L.) in *Crowley v. Allied Irish Banks Plc*. [2016] IEHC 154 [2016] 3 JIC 1812 (Unreported, High Court, 18th March, 2016) in a pithy and helpful phrase that I adopted at para. 18 of that judgment: *"the applicant's failure to seek [to appeal] cannot have the effect of making judicial review appropriate where it would not otherwise be so" (para. 25)*". The same applies here. Thus, it is not a question of time running again for an application for a committee of inquiry. The time simply has expired without the applicant availing of that option. However, the Minister has, generously and probably sensibly, consented to that time being extended, although it would be possibly unrealistic to read that as a guarantee that time must be extended indefinitely.

The lack of information in the applicant's papers
23. As noted above, the applicant has been fairly coy in relation to much detail of his family and personal circumstances. That highlights the unreality of the complaint being made that the legislation is a disproportionate interference with his rights in advance of any hearing let alone any determination of fact and any adverse decision. Any relevant facts that are alleged to go to the question of proportionality can be canvassed in due course before the committee of inquiry.

Preliminary objection regarding statement of opposition
24. Ms. McDonagh began by making some sort of pleading point regarding the statement of opposition, although I have to confess that it was not entirely clear what that point was. Insofar as I could make sense of it, it appeared to be that the Minster cannot make alternative arguments and that if alternative arguments are made in the statement of opposition, that creates a difficulty for the verifying affidavit which would be required to verify the alternative facts on which such alternative pleas are made. The further complaint (in that instance, intelligible although not necessarily meritorious) was made that "*there are a number of pleas in the statement of opposition which are not verified by affidavit*" and it was also suggested that the respondent's deponent, Mr. Ray Murray, had stated that he was satisfied that the circumstances in s. 19(1)(b) of the 1956 Act applied and that that had the consequence that the plea that "*there is currently only* "a proposal to revoke*" (akin to a 'proposal to deport') is not borne out by the available evidence of the said correspondence".*

25. Unfortunately, those complaints do not stand up. First of all, as regards alternative pleas, any party whether they are applicant or respondent is entitled to make alternative arguments. There is not any lack of clarity as to what facts the Minister is urging on the

court.

26. Secondly, the statement of opposition is verified by affidavit as required by O. 84, r. 22(4) of the Rules of the Superior Courts, Mr. Murray does include a general paragraph contending or asserting that the statement of opposition is correct.

27. Thirdly, on the specific question of whether Mr. Murray has muddied the waters regarding whether the Minister proposes to revoke or intends to revoke and whether there is any difference and if so, whether the latter is a more firm commitment, the distinction sought to be drawn is an illusion. There is no difference. Intending to revoke is not a more firm commitment than proposing to revoke. All that has happened is that the necessary step to trigger the procedure has been satisfied. That involves the Minister being of the view that the conditions for the exercise of that power exist; but that is of course only a provisional view, a proposal and an intention. It is very much subject to, first of all, what emerges from the committee of enquiry, secondly, what is put forward by the applicant, and thirdly, the deliberation and consideration to be applied to all of those matters by the Minister before any final decision is made. As put succinctly and correctly by Ms. Stack in her submissions: "*This objection appears to be based on the misconception that to propose to do something is different from intending to do something. There is no material distinction and this objection is misconceived"*. There is here an analogy with the deportation process and as held in *F.P. v. Minister for Justice, Equality and Law Reform* [2002] 1 I.R. 164, a proposal to deport is the same thing as an intention to deport unless the representations subsequently made are such as to persuade the Minister otherwise.

General impermissibility of reviewing a mere proposal
28. As far as the claim in the statement of grounds for *certiorari* of the notice of intention to revoke is concerned, the circumstances in which a mere proposal can properly be judicially reviewed are very limited indeed. I discussed this matter in the context of a proposal to revoke citizenship in *Habte v. Minister for Justice and Equality* [2019] IEHC 47 [2019] 2 JIC 0405 (Unreported, High Court, 4th February, 2019) which, while under appeal, referred to the early authorities of *Ryanair Ltd. v. Flynn* [2000] 3 I.R. 240 per Kearns P. and *A.B. v. Minister for Justice and Equality* [2016] IECA 48 (Unreported, Court of Appeal, 26th February, 2016) *per* Ryan P. to draw the conclusion that judicial review of a mere proposal would only be appropriate in exceptional circumstances such as if it was *ultra vires* or for an improper purpose. Neither of those exceptions apply here. There is in any event, as I noted above, no independent basis for *certiorari* of the mere proposal concerned. The challenge is wholly dependent on the challenge to the statute, to which I now turn.

Presumption of constitutionality and of a conforming interpretation regarding ECHR and EU law
29. As a post-1937 statute, the 1956 Act enjoys a presumption of constitutionality. One of the consequences of that presumption is the so-called double construction rule that a statute should be given a constitutional interpretation if possible (see *McDonald v. Bord na gCon (No. 2)* [1965] I.R. 217, *The State (Quinn) v. Ryan* [1965] I.R. 70, *East Donegal Co-operative Livestock Mart Ltd. v. Attorney General* [1970] I.R. 317, *Jordan v. Minister for Children and Youth Affairs* [2015] IESC 33 [2015] 4 I.R. 232 at para. 48 *per* O'Donnell J. That includes a presumption that procedures provided for under statute will be operated fairly (see *East Donegal, McDonald, Croke v. Smith (No. 2)* [1998] 1 I.R. 101).

30. A corresponding presumption of a conforming interpretation to the ECHR applies under s. 2(1) of the 2003 Act: *"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*."

31. This is similar to the doctrine of conforming interpretation regarding EU law which emerged in Case C-106/89 *Marleasing S.A. v. La Comercial Internacional de Alimentacion* where the court said at para. 8: *"It follows that, in applying national law, whether the provisions in question were adopted before or after the directive, the national court called upon to interpret it is required to do so, as far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter and thereby comply with the third paragraph of Article 189 of the Treaty.".*

32. As again very pithily contended by Ms. Stack in her written submissions, many of the arguments of the applicant turn these presumptions on their head. In effect the applicant is adopting the approach of contending that the legislation is unconstitutional or contrary to European law because it will be interpreted in that fashion. In doing so as putting the respondents as fairly put in the respondent's submissions "*the applicant has simply sought to contrive an illegality by presuming future unlawful decision making*".

Alleged breach of Articles 34 and 37 of the Constitution
33. Ms. McDonagh argued that s. 19 of the 1956 Act contravened Articles 34 and 37 of the Constitution and relied in submissions on *McDonald v. Bord Na gCon, Keady v. Garda Commissioner* [1992] 2 I.R. 197 [1992] I.L.R.M. 312, *Re Solicitors Act 1954* [1960] I.R. 239, *Central Dublin Development Association v. Attorney General* (1975) 109 I.L.T.R. 69, *M. v. Medical Council* [1984] I.R. 485, *K. v. An Bord Altranais* [1990] 2 I.R. 396 and *Geoghegan v. Institute of Chartered Accountants* [1995] 3 I.R. 86. Three questions appear to arise in relation to the Article 34/37 argument:

(i). Is this a judicial function;

(ii). If so, is it a limited function saved by Article 37 and;

(iii). Even if not, is the availability of judicial review under O. 84 sufficient to save the statute.

Legal history
34. The question of what is judicial and what is executive or administrative is not one that can be answered on the basis of first principles. One has to situate that question firmly in the context of legal history. A basic context here is that the control of the entry and presence, and therefore of removal, of non-Irish nationals is an aspect of the executive power of the State (see *Laurentiu v. Minister for Justice, Equality and Law Reform* [1999] IESC 47 [1999] 4 I.R. 26, *Sivsivadze v. Minister for Justice and Equality* [2015] IESC 53 [2016] 2 I.R. 403 at para. 37). A similar view is taken in the neighbouring jurisdiction (see for example *R. v. Secretary of State for Foreign and Commonwealth Affairs* ex parte *Everitt* [1989] 1 Q.B. 811 at 817 regarding the power to cancel a passport being an aspect of the crown prerogative).

35. Until the mid-nineteenth century, naturalisation of aliens was carried out by the legislature through the mechanism of Private Acts of Parliament, many of which remained part of Irish law until the Statute Law Revision Acts 2009 and 2012. That function was transferred legislatively to the executive, which is certainly a more convenient process than requiring the enactment of legislation to naturalise an individual. What one can say though about the location of the power to naturalise in the legislature and executive is that there was never any suggestion that this was a function in which the courts had a role in making the decision. That is to some

extent borne out by a historical review by Patrick Weil and Nicholas Handler "Revocation of Citizenship and Rule of Law: How Judicial Review Defeated Britain's First Denaturalization Regime", *Law and History Review*, Volume 36, Issue 2 May 2018, pp. 295-354, which indicates that the height of judicial involvement in the process of denaturalisation has been review of decisions made elsewhere. The learned authors conclude the history of denaturalisation in Britain "*serves as a useful reminder of the important role that judicial review can play in preserving individual rights*", seeing the function of the courts as reviewing decisions made elsewhere rather than historically as making such decisions. The authors contend that: "*Over the past decade, the United Kingdom has deprived an increasing number of British subjects of their citizenship. This policy, known as* "denaturalization," *has been applied with particular harshness in cases where foreign-born subjects have been accused of terrorist activity. The increase is part of a global trend. In recent years, Canada, Australia, France, and the Netherlands have either debated or enacted denaturalization statutes. But Britain remains an outlier among Western democracies. Since 2006, the United Kingdom home secretary has revoked the citizenship of at least 373 Britons, of whom at least 53 have had alleged links to terrorism.*" However other authors appear to take the view that the UK is perhaps not quite as out of line as might be suggested by that particular passage.

Is revocation of citizenship a judicial function?

36. The short answer to this question is clearly not. It is well within the core of the executive function to decide on the grant or revocation of citizenship and, subject to legislative regulation, that is a core executive function in more or less any nation state. There was never any judicial involvement in the making of such decisions (as opposed to their review) as a matter of Irish or UK legal history. There is certainly no evidence of a widespread practice of judicial involvement in the making of such decisions at international level. Furthermore, the issue arises out of an administrative process not a contest *inter partes*. It is true that loss of citizenship does deprive an applicant of a number of rights but that in itself does not make it a judicial process. It would be a power grab without precedent for the judicial branch of government to arrogate to itself the power to *make the decision on* as opposed to *supervising the legality of* such a process.

37. The strange argument was made by the applicant that because there have been few revocations to date, such revocation cannot be an executive function. While I noted in *Habte* the comment made in John Stanley's *Immigration and Citizenship Law* (Dublin, 2017) that revocation of citizenship had yet to be gazetted in *Iris Oifigiúil*, the applicant helpfully draws my attention to an article by Conor Gallagher in the *Irish Times* of 28th January, 2019 entitled "*Immigrants facing revocation of citizenship not entitled to legal aid"*, which suggested that five such revocation decisions have been made since 2015 in circumstances where they were uncontested. But even taking it that such revocations are rare, the fact that a function is not exercised very often or even at all does not make it a judicial function.

38. O'Donnell J. noted in *O'Connell v. Turf Club* [2015] IESC 57 [2017] 2 I.R. 43 that: "*the case law on this area is difficult and some of the decisions are not easily reconciled. The line between bodies required to act judicially or fairly, and those exercising judicial functions, is not one easily drawn in any jurisdiction, but is here more complicated by the existence of Article 37. It is now however, much too late to seek any comprehensive theory, even if such was desirable. Instead the resolution of these cases must be found within the existing case law and the guidance which they offer*." (para. 54). That passage appears to suggest a certain discomfort with the previous caselaw although not enough discomfort to overthrow the caselaw altogether, which one might be tempted to tentatively suggest might ultimately be the best option although obviously not one I am going to be adopting here. The modest amount of discomfort that it does express includes a certain reluctance to extend the doctrine beyond what can be "*found within the existing case law".* Such discomfort has been evident in the jurisprudence for some time. O'Flaherty J. in *Keady* described in *In Re Solicitors Act* as "*anomalous*" and that decision was also distinguished by Keane C.J. in *Melton Enterprises Limited v. Censorship of Publications Board* [2003] IESC 55 [2003] 3 I.R. 623, partly on the basis of the historical relationship between the courts and solicitors (which, if that is an operative factor, would certainly militate against the extension of the *Re Solicitors Act* doctrine to other professions). Even if one was otherwise wholly convinced by the existing caselaw (which I amn't particularly, not that it matters), to strike down the legislation here on an analogous basis would be a sweeping and unwarranted extension of an already shaky doctrine.

39. The applicant then switches engines to make a different point by submitting that *"determinations in relation to the loss of constitutional rights should not be reserved to the Executive in the absence of the full power of review by the courts. The loss of constitutional rights should not be excluded from the ambit of the courts. A test of reasonableness on judicial review does not sufficiently vindicate fundamental rights. See for example* Carmody v. Minister for Justice *[2010] 1 I.R. 635 at 668* (per *Murray C.J.*), Albion Properties Ltd v. Moonblast Ltd. *[2011] IEHC 107 (pages 9/10),* Holland v. Governor of Portlaoise Prison *[2004] 2 I.R. 573 (at p. 587),* Clinton v. An Bord Pleanála (No. 2) *[2007] 4 I.R. (at p. 723) and* Efe v. Minister for Justice and Equality *[2011] 2 I.R. 798 (at 818/820)".* But unpacking that submission brings out two points. Firstly, where rights are at stake the court most definitely has a role in vindicating such rights by reviewing administrative action. There is no read-across to saying that the court must have a role in the *making of the decision itself* at first instance. Secondly, it is fair to say that "*a test of reasonableness*" on judicial review does not sufficiently vindicate such rights; but reasonableness is not the only test on judicial review. Order 84 offers a procedure for a searching examination of a decision on a wide range of public law grounds.

40. A further, somewhat strange, argument is made that, because the committee of inquiry is adopting judicial-type processes in order to ensure fair procedures to the applicant, therefore the process is judicial. As put in submissions "this *process involves the hearing of oral evidence and submissions"* and it follows that this is a judicial process. That to some extent illustrates the Catch-22, heads-I-win-tails-you-lose, nature of the applicant's case. If fair procedures weren't provided for, the process would be unconstitutional; and if they are provided for, it is also unconstitutional because it's judicial. For the avoidance of doubt, the fact that fair procedures are afforded in the inquiry (which in any event only reports rather than decides) does not make deprivation of citizenship a judicial function. This brings us to the distinction between that perhaps not altogether helpful phrase "*acting judicially*" (which really means acting in accordance with fair procedures) and carrying out a judicial function. As put by Kennedy C.J. in *Lynham v. Butler (No. 2)* [1933] I.R. 74 in relation to the functions of the Land Commission: *"The nature of some of their ministerial duties requires that they be performed judicially, in the sense that they must be performed with fairness and impartiality and in such a way as not to offend against the canons of natural justice, which requirements however will not convert a ministerial act into a judicial act in the sense of an act which must be performed by a judge in the Court of Justice".*

41. There is also a distinction pertinent here between an inquiry on the one hand and a *lis inter partes* on the other hand. An analogy can be drawn with the *Keady* case, where a procedure for an inquiry to be followed by a decision by the ultimate decision-maker as to what disciplinary action could be taken was upheld as not being an administration of justice on the basis that it constituted an inquiry rather than a *lis inter partes*. The Supreme Court said at p. 213 of the report that "*This was not a contest between the parties; it was, as its name says, an inquiry".*

If s. 19 of the 1956 Act involves a judicial function, is it a limited one?

42. This question does not arise, but if it did I would have upheld the plea by the respondents that "*while the primary submission of the respondents, therefore, is that s. 19 does not breach Article 34 at all, insofar as it does, it is submitted that the limited nature of s. 19, confining the power of the Minister to a single act, exercisable on very limited grounds, falls within Article 37".*

Even if it is an unlimited judicial function, is it saved by the availability of judicial review?
43. This question also does not arise but the submission that appeared to be at least hinted at by the respondents in this regard does not appear to stack up in the sense that if a decision has to made by a judge, it has to be made a judge, and the availability of judicial review would not be an adequate substitute.

Alleged breach of fair procedures
44. The argument is launched that the statute is in breach of fair procedures because the Minister makes the proposal to revoke, is in effect a party to the inquiry and then makes the final decision having of course for good measure also appointed the members of the committee of inquiry. Reliance was placed on *O'Brien v. Bord na Mona* [1983] I.R. 255, *Heneghan v. Western Regional Fisheries Board* [1986] I.L.R.M. 225, *O'Donoghue v. Veterinary Council* [1975] I.R. 398, *Prendiville v. Medical Council* [2008] 3 I.R. 122, *Tomlinson v. Criminal Injuries Compensation Tribunal* [2006] 4 I.R. 321 and *Bula Ltd v. Tara Mines (No. 6)* [2000] 4 I.R. 412.

45. Of course the fundamental misconception in this submission is the false premise that this is a judicial or quasi-judicial function. The submission misunderstands the nature of the process. Revocation is an executive decision made after an advisory inquiry before independent persons using fair procedures. The fact that members of the committee are appointed by the Minister does not mean that they are not independent. The core misunderstanding of the submission is that the Department "*advocates before its own advisory body for that body to approve of its decision".* But in the context of the inquiry the Minister has not made a decision, he has only made a proposal; and it is perfectly legitimate to outline the reasons for that proposal to an advisory committee. Of course even a proposal can be mischaracterised as a decision, that is, a "decision" to make a proposal. But that is a semantic dead-end, a mischaracterisation and an unhelpful misunderstanding of what is in fact at issue. There is no decision, only a proposal which triggers a process in which fair procedures can be presumed to apply.

46. The argument about a lack of a right of appeal or final approval reserved to the courts is simply a rerun of the judicial function misconception. If something is not a judicial function, then there does not have to be a right of appeal to or a right of final approval reserved to the courts. It would be a breach of the separation of powers to so demand. The concept of justice being seen to be done does not arise because an executive process is not the doing of justice in the sense of the caselaw.

47. The submission that "*the function of such a committee ought more properly to be the consideration of the merits and the proportionality of the proposed revocation*" prematurely anticipates the issue of what the jurisdiction and approach of the committee is going to be. As in *Habte*, it is not appropriate to determine this in advance. Judicial review is not intended generally to prescribe procedures in advance and that is a matter best left to the committee to be teased out there in the first instance. Any outcome can of course be subject to judicial review in due course.

48. The submission is also made that "*in the context of revocation of citizenship there is the risk of political motivation impacting on the decision making process. The risk of political motivation applies a fortiori in the circumstances that present in the applicant's case*". That is a highly dubious suggestion and indeed one that is very much open to *reductio ad absurdum* given the jurisprudence that "political questions" are generally outside the remit of scrutiny by the judicial power. On Ms. McDonagh's logic, the more political a decision is, the more essential that it be taken out of the realm of political decision-making. Sure, it would be unconstitutionally discriminatory to, for example, use the power to revoke citizenship in order to deprive a hypothetical government's political opponents of legal rights. But the presumption of constitutionality disposes of that theoretical concern. It is a quite different situation to say that it is open to the Minister to take the view that particular forms of activity that reject the basic norms of democratic society, such as assisting or engaging in terrorism, are violative of the declaration as to the duties of a citizen. As with the jurisprudence on terrorist offences not being political offences, that is not a "political" view. Rather it reflects a broadly shared view of the requirements of organised democratic society.

49. Insofar as the applicant's written submissions make a complaint of bias, this is not founded on any evidence, and in any event falls outside the grounds as pleaded in the statement of grounds. The applicant of course has the protection that any administrative decision-maker had to act in accordance with fair procedures or as noted above "act judicially", although that is not necessarily an altogether helpful phrase and certainly does not have the effect of conflating administrative functions with judicial or quasi-judicial functions. Thus, I would reject as legally unsound the sweeping suggestion made in *J.M. Kelly: The Irish Constitution*, 4th ed. (Dublin, 2003) at p. 207 in relation to s. 19 that "*the constitutionality of this provision seems highly questionable, partly because of the drastic nature of revocation of citizenship and the consequent question whether anyone other than a judge could order it, and partly because the criterion here set up is so vague that it invites an unpredictable, subjective application of a kind hostile to the concept of due process or* 'due course of law'". There is a lot of error encapsulated in this brief sentence and thus a little unpacking is required.

50. The question of vagueness is not pleaded in these proceedings so the applicant could not have made any argument under that heading, and indeed did not attempt to do so, but it is certainly not the case that the statute is unconstitutionally vague, nor is there any jurisprudential basis for such an argument. That would be to unharness a whirlwind from the locked box in which vagueness currently resides, namely the definition of criminal offences. But even in that context a number of key concepts in criminal law are undefined, or are of a general character, but that does not mean they are unacceptably unpredictable. More generally, many legal concepts are vague; necessarily so. Indeed, it would be anarchic in the extreme to generalise in order to impugn the legality and constitutionality of legislation generally on the grounds of vagueness.

51. As regards the fear of use of the power in a manner contrary to the due course of law is concerned, the presumption of constitutionality is not mentioned by the learned authors of *Kelly's Constitution* in this context, and disposes of the somewhat inflated fear of actions that would be contrary to due process.

52. The notion of the drastic nature of the deprivation of citizenship requiring it to be made by judges is for starters an undue generalisation. Deprivation of Irish citizenship may be drastic in some cases, especially if it renders a particular applicant stateless, but that is not necessarily so. On the evidence here, a hypothetical future deprivation of Irish citizenship would not render this particular applicant stateless. But more fundamentally, even if such deprivation was drastic in a given case, it would take judicial egotism and self-regard to delusional new heights to assert that only judges could make important decisions. The question of whether a power is judicial does not depend on whether its exercise has drastic effects, and certainly not on that alone. The fact that in a particular case an executive decision has drastic consequences does not mean that it is no longer an executive decision. The questions of whether the function is judicial, and if so whether it is limited, are the logically prior ones.

53. Furthermore, the learned authors do not mention in this context the ongoing widening of the jaws of judicial review as a searching examination of the legality of any administrative decision (see *e.g.*, *Efe v. Minister for Justice and Equality*). In a sense the learned authors are trying to have it every way. In a more logical analysis, the wider the role of the courts in judicial review, the less necessity there is for a *Re Solicitors Act*-type doctrine that the function has to be itself performed by judges in the first place. An

aggressive, almost imperialistic, approach to the other branches of government whereby the courts are to say that only they can make decisions having a drastic consequence on rights, and, to boot, any less-drastic decisions are going to be subject to extremely intensive judicial review, would be an unacceptable exercise in judicial narcissism.

The ECHR

54. The applicant pleads that s. 19 of the 1956 Act is incompatible with arts. 6 and 13 of the ECHR, as applied by the 2003 Act. Firstly, the ECHR does not recognise any right to citizenship (see *Petropavlovskis v. Latvia* (Application No. 44230/06, European Court of Human Rights, 9th December, 2014)). Insofar as complaint is made under art. 6, that provision does not apply to public law. It only applies to criminal proceedings and "*civil rights*" in the European sense, that is private law rights. As correctly stated in the respondent's submissions "*like Article 34 of the Constitution, it is clear from the text of Article 6(1) that it was not intended to govern administrative decision making*". Even if that provision did apply, which it does not, it would be satisfied in any event by searching judicial review which is available to the applicant if an adverse decision is made at some future point (see *Albert and Le Compte v. Belgium* (1983) 5 E.H.R.R. 533, *Kaplan v. United Kingdom* (1980) 4 E.H.R.R. 64). Article 13 only applies in a derivative sense where some plausible claim of an ECHR right is otherwise made, so therefore it does not apply here, but again anyway if it did apply judicial review would be a satisfactory effective remedy for the purposes of art. 13 (see *e.g. Lofinmakin v. Minister for Justice, Equality and Law Reform* [2011] IEHC 38 (Unreported, Cooke J., 1st February, 2011), *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3 [2010] 2 I.R. 701, *N.M. v. Minister for Justice and Equality* [2016] IECA 217 (Unreported, Court of Appeal, 14th July, 2016) *per* Hogan J.

55. Insofar as the applicant's written submissions improperly rely on art. 8 of the ECHR which is not pleaded, obviously as with any unpleaded matter that claim cannot succeed; but nonetheless it is true that a "*disproportionate*" deprivation of citizenship could breach art. 8 (see *Ramadan v. Malta* (Application no. 76136/12, European Court of Human Rights, 21st June, 2016), *K2 v. the United Kingdom* (Application no. 42387/13, European Court of Human Rights, 7th February, 2017)). But that is not a ground to declare the statute incompatible with the ECHR. The statue, like any statute, must be interpreted as required by the 2003 Act with a conforming interpretation if possible. If an adverse decision is ultimately made that the applicant claims is disproportionate, judicial review will be open to him at that point, albeit that the court is not in that context making its own completely *de novo* assessment of whether the decision is proportional but rather whether the Minister has conducted a proper proportionality assessment or whether there was a manifest unlawfulness in the outcome of that assessment such that it could not be sustained on judicial review principles.

56. As far as certain procedural safeguards are concerned, those only arise if we are concerned with a breach of art. 8, which is not the case here. As put by the respondents in submissions, "*None of the grounds on which leave has been granted refer to Article 8 of the ECHR. The applicant has only invoked Article 6 and 13 thereof in these circumstances the applicant's arguments in this regard should be discounted without prejudice to this the first point of notice that there has been no final decision whatsoever on the applicant's citizenship in this case and no issue can arise at this time*".

57. More fundamentally, the deprivation of citizenship on grounds of involvement in terrorism is not in itself arbitrary or necessarily disproportionate. Article 15 of the Universal Declaration on Human Rights 1948 provides not that there shall be no deprivation of citizenship but that "*no one shall be arbitrarily deprived of his nationality*".

58. Alice Edwards and Laura van Waas (eds.) in *Nationality and Statelessness Under International Law* (Cambridge, 2014) suggests that arbitrariness requires an examination of whether the measure depriving a person of citizenship is in accordance with law and compatible with human rights (particularly the prohibition of discrimination) and whether procedural safeguards have been followed. The 1961 United Nations Convention on the Reduction of Statelessness, to which Ireland as it happens is a party, provides at art. 1 (2) that the grant of naturalisation can be subject to a number of conditions including: "(c*) That the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge*". Article 8(1) provides that a contracting state may deprive a person of his or her nationality in certain circumstances and that a naturalised person can be deprived of nationality even if it renders them stateless in certain circumstances. The circumstances include at Article 8.3 that: "*(a) that, inconsistently with his duty of loyalty to the Contracting State, the person (i) has, in disregard of an express prohibition by the Contracting State, rendered or continued to render services to, or received or continued to receive emoluments from, another State, or (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State*." Provision is also made for deprivation of nationality on the basis of misrepresentation or fraud or other conditions.

59. The wording of art. 8 of the UN Convention underlines the important point that the duty of loyalty to a state encompasses the obligation not to conduct oneself in a manner seriously prejudicial to the vital interests of that state. Thus, for example terrorist activity, conspiracy or assistance could in principle be taken to be a breach of the duty of loyalty to the state.

60. The European Convention on Nationality of 1997, to which Ireland is not a party, adopts a slightly more restrictive view of the circumstances in which loss of nationality may be provided for. Article 4 (c) provides that: *"no one shall be arbitrarily deprived of his or her nationality*." Article 7 provides that a naturalised person may be denaturalised even if it renders them stateless if the naturalisation occurred "*by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant*". The Article goes on to provide that a person may be denaturalised, although not if it renders them stateless, on the grounds of "(d*) conduct seriously prejudicial to the vital interests of the State Party."*

61. The explanatory report to the European Convention on Nationality, Strasbourg, 6.XI.1997, explains that "*the wording* 'conduct seriously prejudicial to the vital interests of the State *Party' is drawn from Article 8 para. 3.a.ii of the 1961 Convention on the Reduction of Statelessness. Such conduct notably includes treason and other activities directed against the vital interest of the State concerned (for example work for a foreign secret service) but will not include criminal offences of a general nature, however serious they might be"* (para. 67).

62. The reference to criminal activities not warranting denaturalisation being "*of a general nature*" is a notable qualification and even under the European Convention does not exclude terrorist actions as being a basis for denaturalisation as these cannot be regarded as offences of a general nature. Jorunn Brandvoll at p. 202 of Edwards and Van Waas comments that "*another category of acts which is neither referred to in the report, nor listed as a ground in the 1961 Convention, but has been increasingly considered as a basis for deprivation of nationality in the past decade, is terrorism. To the extent that terrorist acts are found to be seriously prejudicial to vital state interests it would seem that they could fall within the application of Article 8 (3)(a)(ii) of the 1961 Convention as well as Article 7 of the ECHR while criminal offences of a general nature would not*".

63. Nonetheless insofar as the position of international practice is concerned the UN Convention is much more widely accepted. Although the European Convention is more restrictive, only 20 countries have ratified it.

64. State practice in western Europe shows 23 out of 26 countries allow for deprivation of nationality for misrepresentation, even if this may render an individual stateless (pp. 206 to 207) and Brandvoll notes "*a trend towards making it easier for nationals to be deprived of their nationality rather than the country*" (p. 207). He concludes at p. 215 that "*deprivation of nationality rendering persons stateless is considered arbitrary, and thus prohibited, except where it serves a legitimate purpose and follows the principle of proportionality*". Broadly speaking his analysis in this regard appears to be compelling certainly as regards the potential relevance of terrorist activity as a basis for a proposal to deprive a naturalised individual of citizenship.

65. The domestic decision in the K2 case (which for some reason was called G1) upheld the legality of a deprivation of citizenship based on foreign terrorist activity (see *G1 v. Secretary of State for the Home Department* [2012] EWCA Civ 867). Even more emphatically, the Court of Appeal returned to this issue in *Pham v. Secretary of State for the Home Department* [2018] EWCA Civ 2064 where Arden L.J., as she then was, said at para. 51: "*In the present case, the appellant has over a significant period of time fundamentally and seriously broken the obligations which apply to him as a citizen and put at risk the lives of others whom the Crown is bound to protect. I do not consider that it would be sensibly argued that this is not a situation in which the state is justified in seeking to be relieved of any further obligation to protect the appellant.*" The court thus found her activity was a basis for revocation of citizenship, and indeed Arden L.J. went on to say at para. 52 that "*There is nothing to make it a pre-condition that there should be a risk of current harm.*" She indicated that that would result in an illogical interpretation of the legislation (see para. 53). On the question of proportionality she said at para. 60 that "*It may be that proportionality in this context goes no further than protecting a citizen from arbitrary removal of citizenship but, even if it does, I do not see any basis on which it could be said that it was disproportionate in this case*", making a particular reference to the applicant's admissions of guilt to terrorist actions. Ms. Stack informed me that the only reason that this emphatically favourable decision was not included in the respondent's book of authorities was that the applicant had not made an issue of the question of principle as to whether involvement in terrorism is a basis for withdrawing citizenship.

EU Charter

66. It has not been altogether demonstrated that revoking Irish nationality is covered by the EU Charter merely because it has the consequence that EU citizenship is thereby revoked, but I will assume in favour of the applicant that that is so. On that premise, while the applicant's pleadings on the EU law issue are somewhat convoluted, they essentially appear to make three points:

> (a) Breach of requirements of good administration in art. 41 of the Charter. That has not been demonstrated. Article 41 is not equivalent to requiring judicial decision-making in all administrative processes and certainly not here (see also *Balc v. Minister for Justice and Equality* [2018] IECA 76 (Unreported, Court of Appeal, 7th March, 2018) by analogy).
>
> (b) Lack of an effective remedy under art. 47. That fails for similar reasons. An effective remedy will be available here in the form of judicial review (see by analogy *Balc* and Case C-89/17 *Secretary of State for the Home Department v. Banger*).
>
> (c) Breach of the principle of proportionality, see Case C-135/08 *Rottmann v. Freistaat Bayern* (para. 58) and Case C-221/17 *Tjebbes v. Minister van Buitenlandse Zaken*. The applicant makes the argument that the terse reasons provided in the letter of 18th October, 2018 are such that it cannot be properly assessed whether revocation is a proportionate measure. That fundamentally misunderstands the process. What is before the Minister is only a proposal, not a decision. Insofar as reliance is placed on the, if I may respectfully say so, characteristically informative, well-written and enjoyable opinion of Advocate General Bobek in Case C-556/17 *Alekszij Torubarov v. Bevándorlási és Menekültügyi Hivatal*, that deals with a very different situation where a decision made in the course of judicial review was not properly implemented. That does not arise here. A point was made under this heading in the applicant's submissions that where refugee status is proposed to be revoked there was a full right of appeal to that High Court under s. 21(5) of the Refugee Act 1996 (see *Nz.N. v. Minister for Justice and Equality* [2014] IEHC 31 (Unreported, High Court, 27th January, 2014) at para. 32 *per* Clark J.). That may well be so but that does not establish that a procedure of an appeal to the High Court is necessary as a matter either of national or European law. It is not.

Order

67. Insofar as the case involves a challenge to the legislation in principle, it is fundamentally misconceived and fails. Insofar as it involves a challenge to the legislation as applied to this applicant, that has not been made out. It ignores the presumption of constitutionality and the requirement of a conforming interpretation. It asserts disproportionality in the context where the facts have yet to be found, a decision has yet to be made and indeed the applicant has yet to come clean on a range of factual matters. Much as in *Habte*, this applicant seeks a pre-emptive order to cut off at the knees an inquiry that has yet to even begin. That is not an appropriate procedure.

68. The legislature has provided for the procedure of an independent committee of inquiry chaired by a judicial figure to report prior to any decision on the revocation of the applicant's nationality. That process should be allowed to continue and indeed to conclude. Accordingly, the proceedings are dismissed and the respondents are released from any requirement to continue to extend time for the making of an application for an inquiry with effect from 28 days from today. If such application is made it can of course be without prejudice to any steps that may be taken in these proceedings in any other forum if that arises. Subject to hearing counsel, I am minded to extend the stay on the actual revocation of citizenship.

Postscript - costs

69. Having heard counsel on the question of costs, on the one hand the proceedings did raise a general issue, but on the other hand it was not one of any great legal merit. There is a distinct element of prematurity to the proceedings which furthermore are primarily taken to advance the applicant's personal interest rather than out of civic concern for the general welfare of society. There was also an element of lack of disclosure of the applicant's full circumstances. Overall the circumstances are not really sufficient to displace the default rule that costs follow the event, so that will be the order.