**THE SUPREME COURT**

**Murray, C.J.**
**Kearns, P.**
**Hardiman, J.**
**Fennelly, J.**
**Macken, J.**

**[S.C. No. 91 of 2005]**

**BETWEEN/**

**PÓL Ó MURCHÚ**

**RESPONDENT/APPLICANT**

**-AND-**

**THE TAOISEACH, THE TÁNAISTE AND MINISTER FOR ENTERPRISE, TRADE AND EMPLOYMENT, THE MINISTER FOR THE MARINE AND NATURAL RESOURCES, THE MINISTER FOR PUBLIC ENTERPRISE, THE MINISTER FOR DEFENCE, THE MINISTER FOR FOREIGN AFFAIRS, THE MINISTER FOR AGRICULTURE, FOOD AND RURAL DEVELOPMENT, THE MINISTER FOR FINANCE, THE MINISTER FOR HEALTH AND CHILDREN, THE MINISTER FOR THE ENVIRONMENT AND LOCAL GOVERNMENT, THE MINISTER FOR SOCIAL, COMMUNITY AND FAMILY AFFAIRS, THE MINISTER FOR ARTS, HERITAGE, GAELTACHT AND THE ISLANDS, THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, THE MINISTER FOR TOURISM, SPORT AND RECREATION, THE MINISTER FOR EDUCATION AND SCIENCE, IRELAND AND THE ATTORNEY GENERAL**

**APPELLANTS/RESPONDENTS**

**Judgment delivered on the 6th day of May, 2010 by Macken J.**

By Order made as long ago as October 2000, the High Court (O'Neill, J.) granted liberty to the respondent, as applicant, to commence judicial review proceedings in respect of several reliefs, which can be summarised as follows:

1. A declaration that the appellants have, together, a constitutional duty to issue and provide to the general public, including the applicant, an official version or an official translation in the first official language of all Acts of the Oireachtas, of all Statutory Instruments and of all Rules of Court, including (in the case of Rules of Court) all amendments, appendices and indices;

2. A declaration that the appellants have a constitutional obligation to issue and make available to the general public, including the applicant, an official version or an official translation in the first official language of all the foregoing Acts of the Oireachtas, Statutory Instruments and Rules of Court on terms no less advantageous than the terms under which the second official English language version or translations are issued and made available, including that both versions or translations be issued and made available simultaneously.

3. An Order of Mandamus directing the appellants to issue and provide the aforesaid Acts for the period between 1981 and 2000 where none is yet available, without further delay.

4. An Order of Mandamus directing that Rules of Court not yet issued in the first official language or in a translation thereof, be made available by the appellants without further delay.

5. An Order of Mandamus directing the appellants, for the future, to issue and provide an official version in the first official language or an official translation thereof of all Acts of the Oireachtas and Statutory Instruments, including Rules of Court, as described above, on terms which are no less advantageous than the terms under which the official English version or the official English translation is issued and provided, or that the same be made available simultaneously therewith.

The above Order was made pursuant to application based on a Statement to ground the Notice of Application in turn grounded on an affidavit sworn by the applicant on the 31st July, 2000.

By a Statement of Opposition, dated the 22nd January, 2001, the appellants pleaded that any obligation placed on the then first respondent, the Clerk of the Dail, in relation to the provision in Irish of the legislation in question was part of the internal responsibility of the Oireachtas, in respect of which that party was not responsible to the applicant in any way. He was removed as a party to the proceedings on the first day of the oral hearing of the matter before the High Court in 2001, and is not a party to this appeal.

Further the appellants, as respondents to the applicant, pleaded the following in opposition to the application:

1. The obligation arising under Article 25.4 of the Constitution is a State obligation, which falls on the Government to fulfil under the State's executive power;

2. None of the respondents failed to issue or provide an official version or an official translation of the Acts in question;

3. Appropriate arrangements have been put in place by the Government to provide an official translation of all Acts of the Oireachtas from the English language version into Irish, such arrangements being comprehensive and ordered prior to the issuing of the application for judicial review;

4. There is no constitutional obligation to provide official translations of Acts of the Oireachtas simultaneously;

5. There is no constitutional obligation to translate each Statutory Instrument issued in one official language into the other official language. If such an obligation exists, a reasonable period would have to be given to fulfil this obligation. Only the

Government has the discretion to measure the rationality of that period, but any such obligation will be fulfilled;

6. The Government accepts the need to provide an Irish version of all Court Rules in addition to an English version, and since both versions are not currently available every effort shall be made, from then on, to resolve the deficiency as soon as possible.

Apart from further denials of the pleas, the appellants did not accept the correctness or accuracy of the facts averred to in the respondent's affidavit and put him on proof of the same.

**Background to the Claim**

To put the appeal in context it is necessary to say something about the basis for the claim. The respondent is a practising solicitor, having a practice in Arran Quay, Dublin. He has, among his clients, many people who either wish to conduct transactions of a legal nature in Irish, or have a better ability for doing so in Irish. The respondent himself speaks Irish fluently and this may be one of the reasons why many such people are his clients. Essentially he says that, as a matter of fact, he and his clients are extremely disadvantaged by the absence of legislation in the Irish language. That, in a nutshell, is his claimed difficulty. The legislation in question includes Acts of the Oireachtas and Statutory Instruments, including Rules of Court. He averred in his above affidavit that it had become more difficult for him with the passage of time to serve the above clients in the same way as he serves clients willing to use English in respect of legal matters. In particular he claimed that it is a great obstacle for him that there is frequently no Irish language version/translation available of what he terms the *"substantive law and/or of the law concerning the administration of proceedings"*. He also averred that in the case of Rules of Court, because of the absence of their availability in Irish, including the accompanying Forms to the Rules, it was often necessary for him, acting on behalf of those clients who wish to conduct their legal affairs through Irish, to go to the trouble and expense of providing an Irish language translation of the Forms, or of paying some other person to do this work. This caused delay and he could not be certain that the version he produced would be accepted in court matters. In relation, moreover, to Acts of the Oireachtas, he pointed in his affidavit to the need for him regularly to use these in relation to his clients and cites, for example, two statutes, the Criminal Justice (Miscellaneous Provisions) Act, 1997 of which he averred no translation into Irish was then available, as was also the case in relation to the Bail Act, 1997.

He attached to his affidavit, in considerable detail, the voluminous exchange of correspondence with the several appellants in the proceedings, as well as with others.

**The Legal Bases Contended For**

The respondent, as applicant in the High Court, argued that the constitutional obligation to provide a simultaneous translation of Statutes in the official language other than that in which it is passed by the Oireachtas or a version on terms no less favourable than that

passed and signed into law by the President in English, in the present case, into Irish, is based on the following:

(1) Article 25.4.4 of the Constitution, read alone, on a correct interpretation of its wording, so obliges the appellants;

(2) Article 25 when read together with Article 8 of the Constitution reinforces the obligation, because Article 25 must be read as being subject to the provisions of Article 8 concerning the designation of Irish as the first official language; and

(3) Article 40 imposes an implied duty to translate, simultaneously with the signing of an Act into law, a version in the first official language so as to ensure that the citizen's personal rights to equality are guaranteed, and without which such personal rights are neither respected, defended nor vindicated.

The above claimed bases are invoked *mutatis mutandis* in respect of all Statutory Instruments (including Rules of Court, their Forms and Appendices).

The appellants did not accept the above contentions. They contended that:

(a) The government had not failed to translate all Acts of the Oireachtas into Irish, but that, on the contrary, had set about doing so prior to the issue of these proceedings;

(b) While accepting the necessity to translate the Rules of Court from the current English versions into Irish, insofar as such translations were at that time not available, the government intended to resolve that deficiency as soon as possible;

(c) There is no constitutional obligation to translate Statutory Instruments into Irish; and no duty imposed by the Constitution, whether under Article 25.4.4 read alone, or when read with any other Article, including Article 8, to translate simultaneously with the English version, either Acts of the Oireachtas or Statutory Instruments (including Rules of Court).

Each party invoked both Irish and foreign case law as supporting their respective arguments.

**High Court Judgment: Grounds of Appeal**

The case came on for hearing over a three day period in October, 2001 and judgment was reserved. In July, 2004 the learned High Court judge (Smyth, J.) notified the parties that, other than on the question of costs, it appeared to him that the issues in the case were moot in light of two Acts of the Oireachtas which had come into force since the date of the hearing, namely the Statute Law (Restatement) Act, 2002 and the Official Languages Act, 2003 ("the Act of 2003"). On the 30th July, 2004 the parties addressed the Court further. Both parties indicated that they considered the matter was not moot, in particular because the Act of 2003 did not impose any obligation in relation to Statutory Instruments (including Rules of Court) and did not, other than in respect of Acts of the

Oireachtas, impose any obligations as to the time or manner of publication or the issuing of any translation of the same into Irish. It appears to be the position that the Act of 2002 was not considered by the parties to be relevant to the issues to be determined, and it does not feature in this appeal.

At that time, the appellants took the view that the Court, prior to delivering judgment or making any orders, should also be aware of certain developments which had taken place subsequent to the hearing in 2001, including the following:

(1) The enactment of the Official Languages Act, 2003, certain of whose provisions had come into force,

(2) The allocation of additional resources by the government towards furthering the translations of Acts of the Oireachtas where these did not already exist,

(3) The Houses of the Oireachtas Commission Act 2003,

(4) The Supreme Court judgment in *TD v. The Minister for Education* [2001] 4 I.R. 259, which dealt specifically with circumstances in which courts might grant mandatory orders directed to the executive arm of government.

The appellants considered that these matters should be drawn to the attention of the learned High Court judge having regard, inter alia, to the nature of the reliefs being sought by the respondent, in particular the Orders of Mandamus. A Notice of Motion and grounding affidavit for liberty to make further submissions prior to the court delivering judgment issued. The Motion was returnable for the 7th December, 2004 the day on which the matter was again before the High Court for mention. According to the appellants, the learned High Court judge declined to hear the motion, and delivered judgment forthwith. The respondent says the motion was heard and was dismissed. I will return to this later in the judgment.

The learned High Court judge did, however, indicate in his ex tempore judgment delivered in English on that day, that since the hearing of the case, the Oireachtas had enacted the Statute Law (Restatement) Act, 2002 and the Act of 2003, which he considered had *"addressed a great deal of the plaintiff's concerns".* He referred in particular to s.7 of the Act of 2003 which provides as follows:

> *"As soon as may be after the enactment of any Act of the Oireachtas, the text thereof shall be printed and published in each of the official languages simultaneously."*

Invoking the decision in ***O'Beolain v. Fahy*** [2001] 2 I.R. 279 he stated that in that case the Court had granted certain declaratory reliefs (but had refused prohibition), and cited the following extracts:

> *"1. That the applicant had a constitutional right to conduct his side of the proceedings entirely in Irish without obstacle nor disadvantage in comparison*

*with the person who was content to use English, regardless of whatever his facility in English, and that he could not be compelled to do so in English.*

2. *That the third and fourth respondents had a constitutional obligation to provide an official translation of the Rules of the District Court 1997 in the first official language to the public so that the applicant could conduct his side of the proceedings entirely in Irish without obstacle or disadvantage.*

3. *That the State had a constitutional obligation to make available an official translation of Acts of the Oireachtas in the first official language to the public in general when the President signed the text of a Bill in the second official language.*

4. *That there was not, taking into account the right of the people to prosecute crimes, a real danger that the applicant would not receive a fair trial given the wide powers of the District Court to secure the rights of the applicant as an Irish speaker, including the power to strike out the prosecution if that could not be done."*

Drawing attention again to the fact that the Act of 2003 was in place, the learned High Court judge then found as follows:

*"I ought not give Orders of Certiorari, Mandamus or Declarations when the granting of them by the Court would supplant the Oireachtas's discretion in that regard.*

*Essentially the plaintiff has won his action. The Act itself is a sufficient embodiment, on an undertaking that the work will be done in terms that the Acts are to be available within three years as provided for, and priority given to Statutory Instruments referred to (the Rules of Court). I accept that a concession is not a basis for an order in a constitutional action. I am not prepared to make draconian orders.*

*...*

*While the Statutory Instruments are not spelt out in the Act of 2003, and as O'Beolain held in favour of an obligation to translate Acts (and Rules of Court) it would seem to me to be an impediment (inhibition?) on the Plaintiff if the Statutory Instruments were not translated".*

By Order dated the 7th December, 2004, following on from the judgment, the High Court, while making no order of mandamus, nevertheless declared that the appellants (a) have a constitutional obligation to issue and make available to the entire public, which includes the applicant (respondent), an official version/translation in Irish of all Acts of the Oireachtas and all Statutory Instruments on terms no less advantageous than the terms under which the official English versions are issued, including issuing the same simultaneously; and (b) have a constitutional duty to issue and make available to the entire community, which includes the applicant (respondent), an official

version/translation in the first official language of all Court Rules, including Superior Court Rules, Circuit Court Rules and District Court Rules, as well as amendments, appendices and indices thereto, on terms no less advantageous than the terms under which the official English versions/translations are issued, and that both versions be made available simultaneously. These declarations were to be enforced effectively on the appropriate date when the provisions of the Official Languages Act 2003 would come into force, that is to say, no later than three years from the 14th July 2003.

By a Notice of Appeal dated the 4th March, 2005 the appellants appealed from the judgment in substance as follows:

1. The [learned High Court] judge was wrong to refuse the appellants' request to make further submissions pursuant to the Notice of Motion issued in that regard, and such refusal was contrary to reason and disregarded the obligation of the court in constitutional matters, in particular where there had been a long period between the hearing of the case and the mention of the delivery of a judgment.

2. The learned High Court judge was wrong in law when he held that there is a constitutional duty to make available to the public an official version or translation in the Irish language of all Statutory Instruments and further was wrong in law in finding that there is a constitutional duty to provide an official translation or version of Acts of the Oireachtas, Statutory Instruments (including Court Rules) either on terms not less advantageous to terms under which the English version is issued and/or to make both versions available simultaneously.

3. The learned High Court judge failed to recognise the rights of the appellant (or the Government more correctly) to choose their preferred method of fulfilling any such constitutional obligation, to have regard for major public expenditure, to deal with functional difficulties, to make a distinction between Acts, Statutory Instruments and/or Court Rules on a reasonable basis, to estimate the demand for the translations, to estimate the level of importance of any one legal text in particular, to estimate the requirements for the translation, and to exercise a proper discussion in relation to choosing the appropriate policies and actions for promotion of the Irish language.

4. The learned High Court judge failed to give recognition to the actions of the State in support of the Irish language and of the status of Irish under Article 8 of the Constitution, in particular by choosing the order or importance of language actions, when the same is a matter for language policy, apart from the recognition of the obligation found in Article 25.4.

5. The judge exercised his discretion wrongly when he made declarations in relation to the constitutional duty to provide an official translation of Acts of the Oireachtas and/or Court Rules when the appellants were not contesting any obligation to do so.

6. The learned High Court judge was wrong in law when he amalgamated the effect of enforcement of the constitutional declaration with the provisions of the Official Languages Act, 2003.

7. That the learned High Court judge had failed to give any reasoned grounds in relation to the decisions, declarations and orders made in the matter.

8. That the learned High Court judge failed to have appropriate regard for the insurmountable difficulties resulting from the declarations made, in particular given the lack of professional translators to undertake work on the backlog involved within any reasonable period of time.

It will be seen that in the Grounds of Appeal the appellants include leave to have submissions and the affidavits grounding the motion dated 30th November, 2004 admitted in the appeal, pursuant to the provisions of Rule 58, Order 8 of the Rules of the Superior Courts.

No cross appeal was filed to any part of the judgment or to the form of Order made. In his written submissions to this Court, the respondent confirms, however, that he does not seek any order of mandamus (none was made), but only that this Court should uphold the several declarations made by the learned High Court judge in his Order. The respondent contends that the learned High Court judge did not fail to deal with the appellants' motion to adduce further evidence. Rather, he says, the learned High Court judge did do so but dismissed the motion. It is sufficient to say in that regard that the Order of the 7th December, 2004, from which Order this appeal is made, recites, inter alia, as follows:

> *"And having cited today the Notice of Motion on behalf of the respondents 2-17 dated the 30th November, 2004 seeking permission to make further submissions*
>
> *And having heard aforementioned counsel,*
>
> *Such permission is refused"*

The phrase *"and having heard aforementioned counsel"* is used only once in relation to matters occurring on the 7th December 2004 in the Order, and there is no mention whatsoever of any affidavit grounding the motion to adduce further evidence. It is not at all clear to me that the motion was fully opened, considered by the learned High Court judge and dismissed, as contended for by the respondent. Rather what appears from the Order to have occurred is that counsel for the appellants indicated the nature of the motion, the court heard comment from counsel for the respondent, and the motion was dismissed in limine. It seems to me, however, that any review by this Court of the additional information which the appellants wish to have admitted, pursuant to Order 58, Rule 8, is something that may be of relevance only after I reach my conclusions on the findings of the learned High Court judge and in relation to the making of any consequential order on those findings.

Both parties furnished detailed written submissions to this Court outlining the bases and the legal reasoning supporting their respective positions on appeal.

**Appellants' General Argument on the Judgment**

According to the argument of the appellants, the Order made by the learned High Court judge is in such extremely broad terms that it places an unduly heavy burden on the State, both in terms of resources and also in terms of a reasonable capacity to discharge the obligations imposed by the Order, especially having regard to the extremely wide terms of the declarations made. The appellants contend moreover, that the learned High Court judge, having regard to the type of order which he proposed to make, ought to have considered the additional evidence which the appellants sought to bring to his attention before making any such Order. Further they argue that in the absence of detailed reasoning in the judgment, it is difficult to ascertain the precise basis upon which the learned High Court judge reached his decision to include the simultaneous translation of all Acts, Statutory Instruments, and Rules of Court within the ambit of the constitutional obligations he found to exist. They point out also that the learned High Court judge made no reference in his judgment to any finding based on Article 40 of the Constitution.

In substance, however, the appellants - as is clear from their written submissions - limit their appeal to two quite narrow grounds. They do not deny that there is a duty imposed on them by the terms of Article 25.4.4 of the Constitution to provide translations of an Act of the Oireachtas, in the official language other than that in which it is signed into law by the President. Nor, the appellants say, did they contest the Order of Laffoy, J. in ***O'Beolain v. Fahy***, supra., as to the Rules of the District Court, but submit, on the contrary, that, on the basis of their acceptance to translate them within a reasonable period of time, they did not challenge the High Court Order made in that case, and as affirmed by this Court,. What the appellants do challenge in this appeal is firstly, that part of the judgment and Order of the High Court which declared them to be under a constitutional obligation to translate into Irish, or to make available in an Irish version, Acts of the Oireachtas and Statutory Instruments (including Rules of Court) simultaneously with the published version of the texts of these in English. Secondly, they challenge that part of the judgment and Order of the High Court as declared them to be under a constitutional obligation to translate into Irish any or all Statutory Instruments (including Rules of Court): they argue that there is no such obligation found in the Constitution. They further submit that, having stated that he should not make draconian orders, including declarations, in light of the provisions of the Act of 2003, and the discretion vesting in the Oireachtas, and of the inappropriateness of supplanting that discretion, the learned High Court judge should not have made orders going against those findings.

**Respondent's General Argument on the Judgment**

According to the respondent, the findings of the learned High Court judge were correct in law, following, he contends, the findings of this Court in the case of ***O'Beolain v. Fahy***, supra., which the respondent says are findings on the same subject matter. The

respondent argues that this appeal should be dismissed, which would have as its result that the appellants would be obliged to take action along the following lines:

(a) Both versions of all Acts of the Oireachtas will have to be made available as soon as the President signs and promulgates a Bill as Law, pursuant to Article 25.4.1;

(b) The custom which did exist in the past will resume so that, in consequence, versions of all Statutory Instruments in Irish and in English will be made available at the same time as, or simultaneously with, the original version for signing by the Minister, regardless of the language in which the original text was prepared;

(c) All Court Rules will be available in both official languages simultaneously, together with all amendments, forms and indices thereto.

In consequence, it is submitted by the respondent, the *"Irish Body of Law"* would be thereby fully observed, as it should be, in both official languages, in accordance with the provisions of Articles 8, 25, 40 and other Articles of the Constitution. This, it is submitted, would have as its legal result the grant of joint observance and status to both official languages and to their speakers, in line with European and International Conventions, so as to avoid giving either party (that is to say a party who wishes to conduct his legal affairs in one language as opposed to the other) any cause for grievance.

**Conclusion on the issue of an obligation of simultaneous translation of Acts of the Oireachtas:**

Article 25.4.4 of the Constitution reads, in the Irish version, as follows:

> *"I gcás an tUachtarán do chur a láimhe le téacs Bille í dteanga de na teangacha oifigiúla agus sa teanga sin amháin, ní fólair tiontú oifigiúil a chur amach sa teanga oifigiúil eile."*

In the English version this appears as follows:

> *"Where the President signs the text of a Bill in one only of the official languages, an official translation shall be issued in the other official language."*

I am satisfied that neither on its face, nor on a correct interpretation of this Article, is there a constitutional obligation to enact legislation in both official languages. It is clear that, either the first official language, Irish, or the second official language, English, may be used for the purposes of enacting legislation. Bills, when signed by the President, do not have to be signed in both languages. This is also clear from the wording of the Article itself which envisages the presentation of a Bill for signature and promulgation in one official language only, since otherwise there would be no necessity to refer to a version in the *"other official language".* As soon as a Bill is signed, in one language, by the President, it becomes, by virtue of the provisions of Article 25.4.1 of the Constitution, an Act. That Article reads as follows:

> *"Every Bill shall become and be law as on and from the day on which it is signed by the President under this Constitution, and shall, unless the contrary intention appears, come into operation on that day."*

While therefore Article 25.4.4 speaks of a version being available in the other official language where "a Bill" is signed in one version only, it seems to me that the correct interpretation of this Article is that what is to be made available is an official translation of a Bill once signed, that is, an Act of the Oireachtas. This is accepted by the respondent, because no argument is made to the effect that Article 25.4.4 is to be read as meaning that a version of a Bill is to be made available simultaneously, the respondent referring always to an obligation in respect of Acts of the Oireachtas. Although the respondent also makes some considerable play of the distinction between "signing" and "promulgation", I do not think that this can alter the true meaning of Article 25.4.4.

Article 25.4.4 is silent on the issue of timing, as was recognised by this Court in ***O'Beolain v. Fahy***, supra., that is to say, on the issue of when a version of a Bill in the language other than that in which it is signed, is to be made available. Nowhere in either language version of this Article is there any temporal word or phrase used by the drafters of the Constitution which might support the respondent's contention that there is an obligation arising from the wording used, to provide or make available, with the signing by the President of a Bill in one official language, its simultaneous translation in the other official language. In the Irish version of the Article, it speaks only of *"I gcás an tUachtarán do chur a láimhe … ní fólair tiontú oifigiúil a chur amach …",* whereas in the English version it speaks of *"Where the President signs the text of a Bill … an official translation shall be issued …".* Neither the word *"I gcás"* in Irish, meaning "*Where*" or "*In the case of*", nor the phrase "*Where the President signs*", in English, gives any sense of timing, let alone imposes a requirement that there must be the simultaneous availability to the public of a Bill as signed in one language, in the second language. The obligation, represented by *"ní fólair tiontu a chuir amach"* in Irish and by *"an official translation shall be issued",* in English, does not affect the question of the timing of the same.

On the other hand, if the framers of the Constitution had intended that when a Bill is signed by the President in one official language only, a translation of that version into the other official language should be available simultaneously, as the respondent contends, this would have been a particularly simple obligation to impose, and by the use of equally simple and straightforward language. It could have been provided, for example, that where the President signs the text of a Bill presented in one language, the President should sign at the same time, or immediately thereafter, a version of the Bill in the other official language. Or it could have been provided simply that where a Bill is signed by the President in one official language an official translation thereof must be published simultaneously in the other official language.

None of these very simple solutions was, however, adopted. Moreover, I am satisfied that, within Article 25.4 itself, there is support for the view that what has to be translated

is a version of a Bill as signed by the President without any time limit for its translation. Article 25.4.5 reads:

> *"As soon as may be after the signature and promulgation of a Bill as a law, the text of such law which was signed by the President, or where the President has signed the text of such law in each of the official languages, both the signed texts, shall be enrolled for record in the office of the Registrar of the Supreme Court, and the text, or both the texts, so enrolled shall be conclusive evidence of the provisions of such law."* (emphasis added)

If the respondent's argument were correct, the provisions of Article 25 .4.5 would have little merit, for once both versions were to be available simultaneously, upon signing by the President, it would surely have been the case that the framers of the Constitution would not have provided for the two different situations in Article 25.4.5 where the President is presented with, alternatively, one language version of a Bill, or a Bill to be signed in both official languages.

Before finally disposing of this aspect of the appeal, I should make reference to the detailed and learned judgments of McGuinness and Hardiman, J.J. in the case of ***O'Beolain v. Fahy***, supra. I propose to deal with that case also under the next heading, but there is one particular aspect of the judgments which I wish to remark upon at this time, as the respondent invokes this decision in support of his argument on Article 25.4.4. Both judges granted declarations in accordance with the terms of the Notice of Motion as originally presented by the applicant in the judicial review proceedings in the High Court. The declaration, as therein sought, was in terms of a claimed constitutional obligation or duty to make available to the public, including the applicant in that case, Acts of the Oireachtas *"when the President signs the text of a Bill in the second official language".* In the Irish version of the declaration sought, the "*when*" in that context is found, perfectly properly, as "*nuair a gcuireann an tUachtarán a lámh …".* Mr. O'Tuathail, senior counsel for the respondent in this appeal, contends in oral argument that the description of the obligation found in Article 25.4.4. is reflected by the use of this "*when/nuair*" term in the English and Irish versions. Article 25.4.4 does not, however, use either of the words "*when*" or "*nuair*", and their use runs, I believe, the risk of giving a different connotation to the Article, since these words may well, in certain contexts, have a temporal meaning. I do not agree therefore, with the respondent's argument that the obligation is correctly so styled. Neither the judgment of McGuinness, J., nor of Hardiman, J., found that there is a constitutional requirement for simultaneous translation under Article 25.4.4. I have found that the Article does not contain any such temporal words of limitation which the respondent invokes in this case to support a constitutional obligation of simultaneous translation.

I am satisfied that on a proper reading of Article 25.4.4., the contended for constitutional obligation to provide a simultaneous translation into the first official language, of a Bill signed into law in the other language, that is to say, an Act of the Oireachtas, does not exist.

**The Article 8 Argument:**

The respondent relies, however, on Article 25.4.4., when read in conjunction with Article 8 of the Constitution, in support of his argument that the Constitution nevertheless obliges such simultaneous provision of a translation or version of an Act of the Oireachtas once signed by the President. Article 8 of the Constitution reads as follows:

> *"1. The Irish language as the National language is the first official language.*
>
> *2. The English language is recognised as the second official language.*
>
> *3. Provision may however be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the State or in any part thereof".*

The respondent's argument is made on the grounds that, in order to give the appropriate and proper recognition to the constitutional status of Irish as the first official language, the Irish versions of Acts of the Oireachtas must be available simultaneously with the English version to those who might wish to use Irish in respect of, for example, their legal affairs. This argument depends to some extent on the contention that a constitutional obligation exists pursuant to which such Acts be available on *"terms no less favourable than the Act in English",* a phrase taken apparently from certain Canadian case law invoked in ***O'Beolain v. Fahy***, supra. In his judgment in the present case, however, the learned High Court judge did not make any reference at all to Article 8 of the Constitution.

The appellants contend that it is not appropriate to look to the constitutions of countries, such as Canada, or to case law on such constitutions, when considering Article 8, because, contrary to the position in Ireland at the time of the passing of the Constitution, the State was not segregated or divided into two separate and distinct language communities, as was the position in Canada, giving rise to different considerations. While there existed within the State areas of Gaeltacht, these were not areas where English was not generally taught, understood, heard or spoken. And further there existed throughout the State, many persons who professed a proficiency in both Irish and English. It is not therefore the position that Article 8 was adopted, as the respondent suggests, with a view to facilitating two mono-lingual communities within a single State, as was the position in Canada. Quite the contrary, they say. In adopting the Constitution, only one mandatory requirement as to the official translation of legal texts, and only then of Acts of the Oireachtas, was provided for, and that is the obligation found in Article 25.4.4. They argue that Article 8 cannot avail the respondent in his argument on the obligations arising under Article 25.

Further the appellants contend that the respondent cannot seek to suggest, as he does, that the *"Irish body of law"* must be translated into Irish, pursuant to the provisions of Article 25.4.4. when read with Article 8. They point to the fact that the Constitution contains no provision whatsoever requiring the translation of pre-1922 Statutes, nor indeed of pre-1922 Statutory Instruments or Orders. Nor is there any obligation found in

the Constitution to translate texts of the common law or of judgments of the courts of Ireland. The Constitution, as adopted in 1937, contains no transitional provision requiring that existing laws be translated within any period of time. There is, therefore, according to the argument, no reason to construe Article 25.4.4., in a manner which is contrary to the words chosen to express the obligation contained in it, when read naturally. No alteration to that position can be legally or constitutionally justified by the attempt on the part of the respondent to invoke the provisions of Article 8 of the Constitution. The respondent counters this latter argument by saying that they seek only to stand over the declarations granted in the High Court as to Acts of the Oireachtas, Statutory Instruments and Rules of Court. They rely on the judgments of McGuinness, J. and of Hardiman, J. in O'Beolain, supra. In the first of these, it was said:

> *"This issue relates to the right of people who speak either of the two official languages named in Article 8 of the Constitution to go to court."*

In the second, it was said:

> *"With the status of the Irish language in mind it seems to me that those who wish to use the language are completely entitled to do so and are entitled to use every facility necessary to do so as far as such facilities are available to those who use the second official language."*

**Conclusion on Article 8**

I do not find that either of these last two statements, taken alone, and in particular having regard to the context in which they were used in the above case, in fact support the contended for obligation, namely, that when read with Article 8 of the Constitution, Article 25.4.4 must be interpreted as meaning that there is an obligation on the appellants to make available, upon the signing by the President of a Bill presented to her for signature in English, a simultaneous version or translation of the Act in Irish. The above judgment, and several others, also referred to in that judgment, undoubtedly support the contention that such translations must be made available within a reasonable period of time, or even within a very short period of time, a matter I will deal with later in this judgment.

Further, although Article 8.3 is invoked, on the face of it this does not really aid the respondent. The status of both languages is clearly set out at Articles 8.1 and 8.2. Article 8.3 is rather an enabling provision permitting, but not obliging, the adoption of legal provisions, by Act or otherwise, for the use of either of the languages for one or more official purposes and in a particular part, or the entire, of the State. Being an enabling provision, according to the argument of the appellants, the intention or aspiration of the framers of the Constitution, reflected in Article 8.3 is, and was, to facilitate the preservation and extension of the use of the Irish language, and I agree. The meaning of Article 8.3 was raised and determined by this Court (O'Dalaigh, C.J., Kingsmill Moore J and Walsh, J.), in ***Attorney-General v. Coyne and Wallace*** [1967] 101 ILTR 17, and in which Kingsmill Moore stated:

> *"I was at first inclined to the view that 8(3) meant that an official document to be operative must be both in Irish and English, unless provision had been made by law sanctioning the use of only one of the languages. It was argued for the Attorney General that the true meaning of the Article was that either languages (sic) might be used unless provision had been made by law that one language only was to be used for some one or more official purposes. On consideration I consider this construction to be correct. Accordingly, I am of opinion that the decision of the District Justice was not correct and the case should be sent back to him to enter continuances."*

Walsh J. expressly agreed with the construction placed upon Article 8(3) of the Constitution by Kingsmill Moore J. Moreover, in ***Delap v. Minister for Justice***, [1980-1998] IR (Special Reports) 46, O'Hanlon accepted that he was bound by the above interpretation of Article 8.3 of the Constitution.

As to Articles 8.1 and 8.2, the judgments in ***O'Beolain v. Fahy***, supra., were delivered in a particular context. This requires to be set out. The applicant had been charged with offences contrary to certain provisions of the Road Traffic Act, 1961, as amended. He was an Irish speaker who had been served with the summons in Irish and had dealt with the gardai, throughout the entire investigation, through Irish. He had informed the court that he wished to conduct his defence in Irish and that he wished to have the relevant documents served on him in Irish and, in particular, he wished to have Irish versions of the Road Traffic Act, 1994 (which amended the Act of 1961), the Road Traffic Act, 1995 and the Rules of the District Court 1997, so that he could conduct his defence in court in Irish. These were not available. As a result, the proceedings in the District Court were adjourned from time to time to allow the State authorities to produce the documents sought, and to ensure that an Irish speaking judge was available to hear the case. Draft or unofficial translations of the Road Traffic Acts 1994 and 1995 were made available but no translation of the Rules of the District Court had been furnished, and the applicant, through his counsel, sought an order directing the Director of Public Prosecutions to produce them. That application was refused by the District judge and the applicant sought judicial review, including an Order of Prohibition, as well as declarations. The declarations sought against the Minister for Justice, Equality & Law Reform, and Ireland were, firstly, that these parties had a constitutional duty to make available to the applicant translations into Irish of the Road Traffic Acts 1994 and 1995; secondly, that those defendants had a constitutional duty to make available to the public, including the applicant, Acts of the Oireachtas *"when the President signs the text of a Bill in the second official language";* and a final declaration that the same defendants had a constitutional duty to provide an official translation of Statutory Instrument No. 93/1997 (the District Court Rules 1997) to the public, including the applicant.

The reliefs sought were refused in the High Court. The applicant appealed to this Court. Judgments were delivered by all three judges in this Court. The appellants in this appeal say it is important to appreciate the different bases on which the three judges cast their judgments. Two judges found in favour of the appellant, and one found against him.

Insofar as the judgment of McGuinness, J., who found in his favour, is concerned, she stated, in the material portion of her judgment, as follows:

> *"Article 25.4.4, as was pointed out by counsel on both sides, does not provide any time frame within which an official translation of each Bill/Act is to be provided. However, the article as a whole seems to envisage a fairly rapid procedure - where time limits are provided, they are short, and the former pre-1980 system of providing a translation virtually simultaneously with the enactment of the Statute seems considerably more in accordance with the general tenor of the article than the present system which, as far as the Court can ascertain, provides a translation only when a special or urgent demand is made for it. The Respondents argument for a reasonable time to be allowed for translation would ring more sincerely were it not for the fact that virtually no official translations of Statutes have been provided for the past twenty years. This could not be described as a "reasonable time". Indeed it seems probable that the Statutes in question in this case - Statutes which are used daily in the District Court - would never have been translated were it not for the efforts of the Applicant and his legal advisers."*

McGuinness, J., further found as follows:

> *"It seems to me that the State has been flagrantly and over a long period of time in breach of this constitutional duty and it would be desirable for this Court publicly to stress the mandatory nature of the duty set out in Article 25.4.4. I would grant the relief sought by the Applicant at paragraph (e) of the Notice of Motion. In providing for this declaratory relief I would assume that the State will take steps to remedy the present situation of neglect within a short time frame."*

Hardiman, J., in his judgment took a different approach, in also finding for the appellant. Having traced the development of the provisions concerning Irish in the Constitution of Saorstat Eireann, and having adopted the findings of Kennedy, C.J., in ***O'Foghludha v. McClean*** [1934] I.R. 469, he then referred to the judgment of O'Hanlon, J., in ***O'Murchu v. Registrar of Companies & the Minister for Industry & Commerce*** [1988] I.R.S.R. 42 which stressed the importance of the provisions of Article 8 of the Constitution in giving recognition to the Irish language of greater strength than that given in Article 4 of the earlier Constitution. Hardiman, J. found as follows:

> *"In my view the Irish language, which is the national language and, at the same time the first official language of the State, cannot (at least in the absence of a law of the sort envisaged by Article 8.3) be excluded from any part of the public discourse of the nation or the official business of the State or any of its emanations. Nor can it be treated less favourably in these contexts than the second official language. Nor can those who are competent and desirous of using it as a means of expression or communication be precluded from or disadvantaged in so doing in any national or official context."*

Applying that finding, he concluded that the appellant in that case could not be disadvantaged in the context of defending a criminal charge in District Court proceedings, and that there was an obligation to make available to that party the two Acts sought and the applicable Rules of the District Court, in Irish.

He found that on the specific issue of the constitutional requirement to provide an Irish version of a Bill presented to and signed by the President, the twofold argument presented on behalf of the State was not meritorious. The first argument concerned the absence of any specific temporal obligation in the Constitution and the second concerned the obligation resting, not with the respondents but with the Houses of the Oireachtas. It is not necessary for me to consider the latter matter in the context of this appeal. However, in relation to the issue as to when the obligation to provide a translation arises, Hardiman, J. stated:

> *"According to this line of argument, years may elapse, during which the Statute in question is in daily use without any translation being provided, without the State being in breach of its obligation, just so long as the authorities sincerely intend to provide the translation at some future date. It must be obvious that this line of argument is utterly inconsistent with the constitutional status of the national language and with the long standing policy of bilingualism in relation to the business of the Courts, repeated in statutory form as recently as 1998. In my view, there must be implied into the terms of Article 25.4.4. at the very least a requirement that the official translation shall be provided as soon as practicable and there is clearly scope for the contention (not made in this case) that it must be available before the Act is sought to be enforced on a person competent and wishing to conduct his official affairs in Irish."*
>
> *"… Moreover, the only conceivable reason for requiring the issuing of an official translation is so that it can be used by those who are lawfully desirous of conducting their legal business in that one of the official languages which was not the language in which the Bill was passed. Since they are entitled to do this it is plainly unreasonable, in both the ordinary and the legal senses of that term, to withhold the translation from them for any period of time, and certainly for years and indeed decades as has unfortunately occurred in the case of many statutes."*

I consider that the judgments of McGuinness, J. and Hardiman, J. in the case of ***O'Beolain v. Fahy,*** supra., fully support the conclusions that the appellants are not entitled to withhold translations of Acts of the Oireachtas for periods of time which are unreasonable, and/or which fly in the face of the status of Irish as the first official language pursuant to Article 8 of the Constitution. Both judgments make it clear that the obligation to make available Irish versions of Acts of the Oireachtas must be fulfilled within a reasonable period of time, or as soon as may be practicable.

No finding, however, is made in either judgment of an obligation to provide a version of an Act "simultaneously" or "at the same time". If it were the intention to do so, I consider it likely this would have been expressly stated. If, on the other hand, having regard to

any ambiguity flowing from use of the words "when/nuair" in the relief sought and granted in the *O'Beolain* case, it could be understood that this was intended to reflect such a simultaneous obligation, I would disagree with such an interpretation, which does not flow from the plain language of Article 25, nor from the judgments. In the O'Beolain case it is clear that neither of the majority judgments considered that the constitutional obligation arising from Article 25.4.4 had been met for a very considerable period of time. It is useful to repeat again the provisions of the Act of 2003, s.7 of which provides that *"as soon as may be after the enactment of any Act of the Oireachtas, the text thereof shall be printed and published in each of the official languages simultaneously".* (emphasis added). This provision appears to me to follow closely upon the finding of Hardiman J. in ***O'Beolain v. Fahy***, supra., that the translations must be made available *"as soon as practicable"*. It also seems to me to be sufficient and appropriate compliance with the obligation of translation found in Article 25.4.4., of the Constitution.

The respondent has contended in these proceedings for an alternative obligation, namely, an obligation on the appellants that when a Bill is signed in English by the President, the Irish version of that Act must be made available *"on terms no less favourable"* than the English version. From a constitutional point of view, it seems to me, that the provisions of Article 25 fully provide for such an event. If a Bill is signed by the President and is presented in one language, a translation thereof must be available in the other language. Where, therefore, a Bill is presented in Irish, an English version of the Bill as signed must be made available to meet the constitutional requirement. Similarly, if the Bill is presented in English, a version or translation of it must be made available in Irish. It seems to me, however, that the phrase *"on terms no less favourable"* is used, in reality, as being the same as, or not in any way materially different from, "*simultaneously*" as that word is used by the respondent. The phrase appears to be taken from Canadian case law. On many occasions, this Court finds it of assistance to consider the case law of other jurisdictions as being of use in cases concerning the interpretation of the Constitution, especially where such case law involves closely similar provisions. This is a very useful tool and a review of the case law of this Court makes it evident that this approach may be adopted in relevant cases. Some considerable reference is made, in particular, in the written submissions of the respondent, to the case law of Canada, and to the manner in which it has approached the constitutional obligations imposed there in respect of language, having regard of course to its particular political context and its Charter of Rights. While accepting that this may be an appropriate approach in many cases, I am nevertheless not entirely convinced that the invocation of such case law from other jurisdictions, such as Canada (or indeed from other analogous countries, - as, for example, Belgium or South Africa) is particularly helpful in reaching a view as to the correct interpretation of the particular language requirements or obligations flowing from Article 25.4.4 or Article 8 of the Constitution in this case. It is axiomatic that, in the case of language, perhaps more so than in respect of any other cultural issue, the particular social, political and/or historical contexts may be, and often are, quite different, depending on the particular circumstances arising at any given time when constitutions are adopted, and indeed depending on the language of the constitutional instruments themselves. Further, it is rare indeed for Constitutions to be drafted in precisely the same

language in different jurisdictions, and it is, after all, the language used in the Constitution which is of prime importance and which must be read in its particular context. I do not consider that use of the term "on terms no less favourable" alters in any way the conclusions which I have reached in relation to the constitutional obligations arising. Having found that no requirement exists under the Constitution for the simultaneous translation of a Bill presented in one language in the other official language, the provisions of the Act of 2003 constitute, in my view, sufficient compliance with any contended for constitutional obligation based on the phrase *"on terms no less favourable"*

The findings in ***O'Beolain v. Fahy*** supra. do not support the respondent's argument that Article 25.4.4 when read together with Article 8 of the Constitution obliges the simultaneous translation of an Act of the Oireachtas in Irish where it is signed into law by the President in an English language version. I am satisfied that, so far as Acts of the Oireachtas are concerned, the contended for obligation of simultaneous translation is not found by a combined reading of Article 8 with Article 25.4.4 of the Constitution.

**Statutory Instruments**

I propose to deal with Statutory Instruments in general, and later, with Rules of Court, which also fall under the rubric of Statutory Instruments but which, for the reasons I state below, require to be dealt with separately in the context of these proceedings.

In his judgment on the question of Statutory Instruments, the learned High Court judge stated:

> *"While the Statutory Instruments are not spelt out in the Act of 2003, and as O'Beolain v Fahy held in favour of an obligation to translate Acts and Rules of Court, it would seem to me to be an impediment (inhibition?) on the Plaintiff if the S.I.s were not translated".*

According to the written submissions of the respondent, it is contended that on the first day of the hearing of the matter before the learned High Court judge, counsel for the appellants accepted that they had a duty to issue or make available Acts of the Oireachtas and Statutory Instruments in both official languages, but did not agree with the respondent as to when this should be done. It is further contended on his behalf that since the learned High Court judge had concluded that Acts and Statutory Instruments are intertwined and cannot be separated from each other, and that it is therefore illogical to translate Acts without translating the Statutory Instruments made under Acts, this is clearly the basis for the above finding in the judgment. The respondent submits that the decision of the learned High Court judge was correctly made, based on this Court's judgment in ***O'Beolain v. Fahy***, supra., and contends that, having regard to the extent of the law which is available by means of Statutory Instruments, including those which amend Acts of the Oireachtas, no distinction can lawfully be drawn between what the respondent calls *"a person's right"* to have available all Statutory Instruments, as well as all Acts, in Irish, and any attempt to draw any such distinction is absurd.

The appellants, in their written submissions, commence by denying that they conceded any obligation to translate Statutory Instruments during the High Court hearing or that the hearing was limited to argument as to when that obligation should be discharged. They point out that the Notice of Opposition, the affidavits filed and the written submissions made in the High Court, all contested the existence of any such obligation, and say that on the 7th December 2004 senior counsel on behalf of the appellant said he could not agree that he had made any such concession, and had instructions to confirm and assert to the court the appellant's position which was that they did not accept there was any constitutional obligation to translate any or all Statutory Instruments. They contend that the transcript of the High Court hearing does not support the existence of any such concession, and they draw this Court's attention to the fact that the judgment nowhere recites any such concession, nor was the judgment based on any such alleged concession.

Further, the appellants argue that it is not possible from the judgment to say on what basis the finding of the learned High Court judge on Statutory Instruments was made, since he had accepted that there was no mention of them in the Act of 2003. They say that such a contended for constitutional obligation simply does not exist and that the learned High Court judge was wrong in law in finding otherwise. They point, *inter alia*, to the range of authorities or undertakings, including statutory undertakings, entitled in law to make such Statutory Instruments, as supporting the absence of any constitutional obligation on them, or on the Government, to provide a simultaneous translation into Irish of all and every Statutory Instrument made. The appellants state that the Government is committed to extending, as part of its executive function, and on an administrative basis, the range of Statutory Instruments to be translated and contends that this is a policy decision of the Government. They point out however that contrary to the respondent's submissions, the Rules and Orders made under the Constitution of Saor Stat Eireann were not always issued in both languages simultaneously, and they give examples of these.

They also argue that since there is no constitutional obligation to translate every Act of the Oireachtas simultaneously with the version signed by the President, it would be wholly inappropriate in law for this Court to find that such an obligation nevertheless exists in the case of Statutory Instruments.

**Conclusion on Statutory Instruments**

I do not think that the differences arising as to the precise basis for the judgment can resolve the issue which is before this court, which concerns the ambit of any constitutional obligation on the appellants to translate into or make available to the entire public, including the respondent, an Irish version of Statutory Instruments, simultaneously with the versions made or signed in English. That is the primary issue, and it is the High Court declaration to that effect which is challenged by the appellants, who also challenge the existence of any general constitutional obligation to translate all or any Statutory Instruments.

I am not persuaded that the respondent is correct that the basis for the finding of the learned High Court judge is that Acts of the Oireachtas and Statutory Instruments are so intertwined that they fall within any constitutional obligation to be translated into Irish, simultaneously, or otherwise, with the making of a Statutory Instrument in English. There is nothing in the judgment which would support that conclusion as a reasonable interpretation of the findings made. Nor is there anything in the Constitution itself to support a conclusion that, even if Statutory Instruments and Acts of the Oireachtas are intertwined, a Statutory Instrument, which has a particular definition and status as subsidiary legislation, could ever be construed as if it were an Act of the Oireachtas, for the purposes of Article 25.4.4, or as being in any way akin to an Act of the Oireachtas so as to permit them to be considered within the ambit of any constitutional obligation arising from that Article. Article 25 is drafted to deal with a particular context. It is the scheme or process by which Bills, passed by both Houses of the Oireachtas, are presented for the signature of the President, the times limits for the same, and the mechanism by which Acts of the Oireachtas are promulgated into law. It is not therefore surprising that delegated legislation in the form of Statutory Instruments is not included within its scope. That is so whatever the strength to be attached to Article 8 of the Constitution concerning the national language.

The Constitution does not deal expressly with the question of the translation into one or other language, or the provision of a version in one or other language, of every or any Statutory Instrument which is made, and certainly nothing which suggests that this must be done on a simultaneous basis with a version made and signed in the other language. If it be the case that the appellants are under such an obligation however, to make available a version in the Irish language of Statutory Instruments published in English, then the fact that these can be or are made by undertakings or institutions or bodies other than, for example, a Minister, could not, in law, stand in the way of the obligation being that of the appellants.

I have already found that there is no constitutional obligation to translate, simultaneously into Irish, Acts of the Oireachtas presented for signature by the President in English, whether under Article 25.4.4.of the Constitution or when that Article is read with Article 8. On the strength of the arguments on appeal, and the case law, I can find no legal basis upon which it could be said that there is any constitutional obligation on the appellants to provide to the general public, including the respondent, a translation of all Statutory Instruments, by whomsoever made, simultaneously with the availability or the making and publishing of those Statutory Instruments in English.

While it is clear that there is no such obligation as to the simultaneous translation of Statutory Instruments, and while it is equally evident from the case law, including ***O'Beolain v. Fahy***, supra., and ***Delap v. Minister for Justice*** supra. that an obligation to provide specific Statutory Instruments to facilitate proper access to Court to those wishing to deal with proceedings in Irish, may exist in a particular case - although no such argument on Statutory Instruments has been presented in this appeal - I do not find any general constitutional obligation to translate and make available to the entire public,

including the respondent, translations of all and every Statutory Instrument made pursuant to an Act of the Oireachtas. The respondent's argument that this must follow from the combination of Articles 8 and 25.4.4., and/or Articles 34 and 40 of the Constitution is not supported by the case law.

I am satisfied that the appellants are correct in law in their argument that no such general constitutional obligation exists. This was recognised by McGuinness, J., in ***O'Beolain v. Fahy***, supra. in dealing with Statutory Instruments (in that case specific Rules of Court) where, although granting declaratory relief, she stated:

> *"I should point out that this declaratory order applies solely to Statutory Instrument No. 93/1997. I am not to be taken as holding that all Statutory Instruments require to be translated. The Rules of Court are a special case due to their importance to the citizen who seeks his or her constitutional right of access to the Courts."*

I am in agreement with this limitation on the right which may exist in respect of particular Statutory Instruments, and I deal with Rules of Court next.

There being no such general obligation of translation, I cannot find any support for the learned High Court judge's finding that there exists an obligation to make available to the general public, including the respondent, an Irish version of any and all Statutory Instruments simultaneously with their publication in English, and the provisions of Article 25.4.4 whether read alone, or in conjunction with Article 8 of the Constitution or with any other article of the Constitution, do not lend themselves to being interpreted as creating any such general obligation.

**Rules of Court**

In his judgment the learned High Court judge, citing ***O'Beolain v. Fahy***, supra. stated:

> *"...*
>
> *2. That the third and fourth respondents had a constitutional obligation to provide an official translation of the Rules of the District Court, 1997, in the first official language to the public so that the applicant could conduct his side of the proceedings entirely in Irish without obstacle or disadvantage.*
>
> *..."*

As concerns his finding on this issue in the present case, he stated:

> *"Essentially the plaintiff has won his action. The Act itself is a sufficient embodiment on an undertaking that the work will be done in terms that the Act are to be available within three years as provided for, and priority given to S.I.'s referred to [The Rules of Court]. I accept that a concession is not a basis for an order in a constitutional action. I am not prepared to make draconian orders."*

Although the appellants correctly include Rules of Court under the general category of Statutory Instruments, they seek to draw a distinction in relation to Rules of Court based on the specific context in which statements have been made in the jurisprudence of this Court, or of the High Court, on such Rules, for the purposes of contending that there is no constitutional obligation on the appellants or indeed on the Government to make available to the public in general, (including the respondent), a translation into Irish of all Rules of Court (and of all levels of Court), or to do so simultaneously with the publication of their English versions.

In support of this approach they refer, firstly, to the decision in ***Delap v. Minister for Justice*** supra., in which O'Hanlon J., expressly ruled out any bare obligation to translate Rules of Court arising out of Article 8 of the Constitution. Rather he found an obligation arising from a combination of the right of access to the courts, the right of a party to court proceedings to conduct his side of those proceedings in Irish, and the "*great obstacle*" in his path posed by the complexity of Rules of Court together with the prescribed forms and the obligation to comply with the Rules arising in such circumstances, to ground a right to such Rules in Irish in that case.

Counsel for the appellants point also to the treatment of the obligation to translate Rules of Court into Irish considered by this Court in ***O'Beolain v. Fahy***, supra., but suggests that the observations in the judgments in that case should be approached with some caution when considering the issues in the present appeal. In their written submissions the appellants refer to the *"self-evident failure to comply with the express terms of Article 25.4.4."* as a basis for appreciating the judgments in *O'Beolain* as having been expressed in "*trenchant terms*". They submit, however, that since Article 25.4.4. contains an explicit obligation of translation of Acts of the Oireachtas, this Article should be understood as indicating that the framers of the Constitution did not envisage any broader obligation being imposed upon organs of the State, and, in particular, any broader principle to be derived from Article 8, read alone or in combination with Article 25.4.4., including any broader principle affecting any obligation as to the translation of all Rules of Court.

Secondly, the appellants contend that if the argument made by the respondent is made on the basis that because he is a solicitor he thereby has the right to access to *"all legal materials in Ireland",* pursuant either to Article 8, or to a combination of Article 25.4.4. and Article 8, then such an obligation would logically extend to the text of judgments delivered by the courts, administrative circulars and other materials, in particular having regard to the fact that there are many decisions of the Superior Courts where authoritative interpretations of relevant statutes or of Statutory Instruments are found. It is submitted, however, that there cannot be found any obligation in the Constitution which supports such an obligation. This, it is argued, is a further indicator that the constitutional obligation of translation is one which arises exclusively or solely within the ambit of Article 25.4.4.

In oral submissions to the Court, the appellants say that while they accept that Rules of Court should be made available in both languages, and where not available in an Irish

version, the Government is committed, on an administrative basis, to ensuring that they are available within a reasonable period of time after publication of the English version of the Rules, nevertheless the learned High Court judge had failed to permit the appellants to present to the Court evidence concerning the steps taken by the Government to do so. They submit that if that evidence had been taken into account by the learned High Court judge, as it ought to have been, the steps actually taken would be seen to have been reasonable and appropriate.

The respondent takes a diametrically opposite view of the position concerning the availability of Rules of Court, and says that, as of the date when he filed his written submissions to this Court in late 2008, the following was the position: an official version or translation of the District Court Rules was not available until January, 2005, and amendments of this had not yet been translated into Irish, notwithstanding the judgment of this Court in ***O'Beolain v. Fahy***, supra; Rules of the Circuit Court exist only in English since 2001, but no version or translation of these Rules, or of the amendments to them, existed; the position was the same in respect of the Rules of the Superior Court which came into effect on the 1st October, 1986, where an official translation into Irish became available in July, 1990 but only as a result of the decision of the High Court in ***Delap v. The Minister for Justice***, supra; the various amendments made to the Rules of the Superior Court since their introduction in the English language in 1986 were not available in Irish, and further neither the forms nor the indices attaching to the Rules had been made available. He relies on ***O'Beolain v. Fahy***, supra. in support of a requirement of simultaneously translation, including reliance on Articles 8, 25.4.4, 34 and 40.

**Conclusion on the Rules of Court**

Before dealing with the specific issues on Rules of Court, I should recall that the appellants point to the fact that no finding was made by the learned High Court judge in his judgment that Article 40 of the Constitution, either alone or when read with any other Article, obliges the provision of such simultaneous translation/version in Irish to the general public (including the respondent), and I agree. The appellants also say they do not themselves make any argument in this appeal on Articles 34 and 40, on the basis that these did not form the basis for the judgment of the learned High Court judge. The learned High Court judge in ***O'Beolain v. Fahy***, supra., which, according to his judgment, influenced to some very considerable extent the learned High Court judge in the present case, based her decision on a combination of Articles 34 and 40 of the Constitution for the findings which she made on the constitutional obligation, and which *O'Beolain* appealed. Nevertheless, a consideration of the two judgments of this Court finding in favour of *O'Beolain* in that appeal makes it clear they were based more on a combination of Article 8 and Article 25.4.4. Although in the judgment of Hardiman, J. he agreed with the learned High Court judge on the issue of equality of access to Court arising from Articles 34 and 40, his judgment I believe is best understood as depending very substantially on the importance attaching to the Irish language under Article 8 of the Constitution.

There being no reference whatsoever in the judgment of the learned High Court judge to Article 40 of the Constitution, I conclude that his findings, based as they are on the decision of this Court in ***O'Beolain v Fahy***, are also based on Articles 25 and 8 of the Constitution. Having regard to the grounds of appeal, and subject to what I say below, I do not consider that there is any issue before this Court arising from the judgment of the learned High Court judge which requires me to consider the general effect, if any, of Articles 34 or 40 of the Constitution on the obligation contended for in respect of Rules of Court, although the respondent in his written submissions invokes Article 40.

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. The same position applies in the case of Rules of Court. As mentioned above, this appears clear from the case law, including ***O'Beolain v. Fahy***, supra. and ***Delap v. Minister for Justice***, supra., although I refer again to the above extract from the judgment of McGuiness, J., as to the limits on such right. No such individual, even as a client of the respondent, is however, joined in these proceedings. Rather the claim is made that there is a constitutional obligation on the appellants to the general public, which includes the respondent, to make available, simultaneously with the availability of the English version of every Statutory Instrument, including Rules of Court, an Irish version or translation of the same.

It is correct to say, as the appellants contend, that O'Hanlon, J. was careful in the case of ***Delap v. Minister for Justice***, supra. not to find such an obligation in Article 8 of the Constitution, but rather to base his judgment on the combination of rights set out above, flowing from Articles 34 and 40.

The question which arises therefore is the extent, if any, to which the appellants are under a constitutional obligation to the respondent, as a member of the general public, to make available all Rules of Court in Irish. I am satisfied that there is no constitutional obligation to do so simultaneously with the making or publication of the Rules of Court in English. It does not follow either from the case law that there is a general constitutional obligation to publish all such Rules in Irish to the general public, including the respondent, qua member of that general public. In relation to Rules of Court, the appellants only go so far as to say that the Government, while accepting the "necessity" to translate these, is committed, on an administrative basis, to do so within a reasonable time. This stance seems to me to be not entirely inconsistent with the appellants stated position on this appeal. In their Notice of Opposition the appellants pleaded the Government "accepted the necessity" to translate the Rules of Court. In their written submissions they include the following, as concerns Rules of Court:

*"The appellants have not at any time challenged the Order made in O'Beolain by Laffoy, J. and confirmed by the Supreme Court".*

Their argument is based on the contention that the case law to date is limited, as concerns Rules of Court, in the same way as with Statutory Instruments, to an obligation deriving from the Constitution, towards those seeking specific Rules of Court in Irish so as to permit them to have proper access to court to defend their rights in court proceedings.

While I am satisfied that there is no general constitutional obligation to issue to the general public, including the respondent, Rules of Court in Irish when published in English, whether simultaneously or otherwise, it is, however, unreal to ignore the specific position of the respondent vis a vis Rules of Court. Where a respondent, as in the present case, is not disadvantaged simply by the absence of particular Rules of Court, in this case in the Irish language, arising peculiarly or coincidentally, out of the bringing or defending of specific court proceedings such as was the case of the applicant in ***O'Beolain v. Fahy***, supra., but rather, as a solicitor having a range of clients wishing to have their legal affairs conducted in Irish or wishing to secure advice in Irish in respect of them, he is in a singularly different but equally disadvantaged position. Indeed, the position of a person such as the respondent appears to have been recognised by those of the appellants in this appeal who were also named as State parties in ***O'Beolain v. Fahy***, supra. This is clear from the judgment of Hardiman, J. in that case. He referred to the State's argument that the case of ***Delap v. The Minister for Justice*** supra. could be distinguished from the position arising in *O'Beolain*, on the basis that Mr. Delap was a solicitor engaged, actually or potentially, in a wide variety of cases before the courts and therefore *"had an interest, actual or potential, in the Rules as a whole",* whereas the applicant (*O'Beolain*) is *"simply a citizen with an interest in one case only".* While Hardiman, J. rejected that distinction, his judgment acknowledged, correctly I believe, a factual and legal distinction between the general public (including the respondent) on the one hand, and this respondent, who is affected in a significant and material way by the absence of Rules of Court, their forms and indices, in his capacity as a solicitor having a wide court practice who is also, of course, an officer of the Court. In the present case the respondent has averred to the fact that he is obliged to undertake himself, or to find another party to undertake, to translate what are, in effect, prescribed forms or appendices to the Rules of Court because they do not exist in Irish, a situation which is wholly unsustainable.

It cannot be gainsaid that the absence of such Rules, their amendments, forms and indices, whether of the Superior Courts, the Circuit Court or the District Court, constitute an impediment on a solicitor, such as the respondent, having a significant clientele wishing to undertake their legal affairs in Irish, and adversely affects proper access to court and/or to the giving of advices arising from, or in relation to, matters covered by the Rules of Court. These extend not only to criminal matters and civil applications, but also to issues which might not be so readily apparent, such as probate matters or those concerning wardship, or other less immediately obvious involvements in procedures governed by Rules of Court. In *O'Beolain*, by way of example, having adopted the findings

of Kennedy, C.J. in ***O'Foghludha v. McClean***, supra., in relation to the availability of Superior Court Rules, Hardiman, J. stated:

> *"I am of the opinion that the same reasoning applies to the Rules of the District Court. These Rules, as noted above, are extremely important for the conduct of litigation in that court. In relation to the trial of summary offences, they contain provisions for such vital matters as service, powers of adjournment, powers of amendment, and the effect of variations between the offences alleged in the summons and the evidence actually given in court. Furthermore the Rules provide the appropriate forms to be used for such basic purposes as the summoning of a witness and the giving of notice of appeal."*

These examples constitute a small range of the forms essential to comply with procedures governed by Rules of Court, which, absent such compliance, may have significant adverse consequences for clients of a solicitor engaged in such matters, or for the solicitor himself, such as the respondent. The provision of such Rules must be ensured within a reasonable period of time, and preferably as soon as practicable after their publication in English, so as to respond to the obligation to ensure compliance with Rules relating to access to court or with procedures governed by the Rules of Court.

In light of the foregoing, it might therefore be considered appropriate, in light of the findings in ***O'Beolain v. Fahy***, and the acceptance on the part of the appellants in the present case, of a commitment to provide Rules of Court in Irish, to determine whether these have, at this point in time, been provided within a reasonable period. Nevertheless, I do not find it necessary to view the additional material which the appellants sought to have considered by the learned High Court judge, before any Order should be made in the present proceedings. Firstly, it is the case that after approximately 40 years, the Rules of the Superior Courts, their amendments, forms and appendices had not been made available in Irish by late 2008. Secondly, it appears clear that the position concerning the Circuit and District Court Rules had not been ameliorated to the extent that Irish versions thereof were yet available, at the date upon which written submissions were filed in this Court by the respondent in late 2008, notwithstanding the order made in ***O'Beolain v. Fahy***, supra. in 2001. No details were furnished by the appellants in response. It is, it seems to me, axiomatic that this cannot constitute compliance with any commitment which the appellants acknowledge themselves bound by, or with the commitment to do so, within a reasonable time, or with the constitutional obligation to ensure appropriate access to court or to court procedures to those wishing to conduct the same through Irish, through an instructing solicitor who seeks to comply with his client's language requirements in so doing. However, this judgment necessarily extends the obligation from that specified in ***O'Beolain v. Fahy***, supra. to cover the particular position of a solicitor such as the respondent. This means that the appellants must proceed forthwith to take all necessary steps to provide all translations necessary to comply with that requirement. On the assumption that the appellants will remedy the position relating to Rules of Court within a reasonable period of time of this judgment, it is not in my view necessary to make any Order beyond the declaration next provided for.

**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.