



THE SUPREME COURT

**O'Donnell C.J.
Dunne J.
Charleton J.
O'Malley J.
Woulfe J.
Hogan J.
Collins J.**

BETWEEN

Christopher McGee

Plaintiff

and

Governor of Portlaoise Prison, The Minister for Justice & Equality

and Ireland and the Attorney General

Respondents

**Ruling of Mr. Justice O'Donnell, Chief Justice delivered on the 18th of
December, 2023**

1. In this appeal, the Court [2023] IESC 14, dismissed the plaintiff's appeal against the High Court (Barr J. [2022] IEHC 210), on a preliminary issue that the plaintiff's proceedings were barred by the provisions of s.11(2) of the statute of limitations 1957. The High Court made no order as to costs.
2. The parties have exchanged submissions on the question of costs, and do not require an oral hearing. The State respondents (the Minister for Justice & Equality, Ireland and the Attorney General) and the first named respondent, the governor of Portlaoise Prison, adopt the same position in respect of costs. While they do not themselves seek an order for the costs of the appeal, they resist any application any application that the unsuccessful plaintiff should recover his costs, or any portion thereof against the respondents or any of them.
3. The plaintiff argues that this was a test case, which raised an important issue. It was pointed out that the respondents accepted that the proceedings involved an issue of general public importance when an application for leave to appeal to this Court was made. It was also pointed out that the litigation was conducted sensibly and efficiently, in particular the plaintiff agreed that the issue could be raised and determined as a net issue of law on a preliminary issue. It is acknowledged that the plaintiff had a personal interest in the outcome of the case, since, if successful, he could have obtained an award of damages, but it is argued that this fact in itself, would not preclude the Court from awarding costs, or some portion of them, in favour of an unsuccessful plaintiff. It was also pointed out that the State respondents in particular, have

obtained a significant benefit from the determination of an issue in respect of the application of the statute of limitations to constitutional torts.

4. The Court does not consider it necessary to review the extensive case law on the different circumstances in which a court may depart from the normal rule that costs follow the event, and those smaller cohort of cases, when a court may indeed, award the costs or some portion thereof, to an unsuccessful plaintiff. There is no doubt that there is an imbalance of interest between an individual plaintiff raising an important point of law, and respondents who may face that same point in a large range of cases. In addition, that while there was general acceptance that the statute of limitations applied to constitutional torts, the point argued had never been raised squarely in other proceedings. It is also true that proceedings were conducted in an efficient way, which tended to minimise the costs involved. The Court considers however, that these factors, while they could justify a court not making an order for costs against an unsuccessful plaintiff even if sought by the successful respondents, are not of such a nature, as could justify the Court in going further and awarding an unsuccessful plaintiff any portion of his costs.
5. Accordingly, the Court will make no order as to costs in this appeal.