Decision of the High Court of Ireland, 'Crotty v. An Taoiseach' (12 February 1987)

Caption: In 1987, Raymond Crotty attacks the ratification of the Single European Act, mainly on the basis of his interpretation of the third amendment of the Irish Constitution (which sets out the constitutionality of Ireland's participation in the Communities). In its judgment of 12 February of the same year, the Irish High Court dismisses Crotty's complaint, concluding that he has no locus standi. The case is subsequently referred to the Supreme Court.

Source: Decision of the High Court of Irland, "Crotty v. An Taoiseach" [1987] IEHC 1, No. 12036P, Dublin, 12 February 1987.

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The High Court

1986 No. 12036P

Between

Raymond Crotty

Plaintiff

And

An Taoiseach and Others

Defendants

[12th February, 1987]

BARRINGTON J:

The plaintiff is an Irish citizen. The first fifteen defendants are the Government of Ireland who exercise the executive power of the State pursuant to the provisions of the Constitution. The sixteenth defendant is the State and the seventeenth defendant is the Attorney General and law officer of the State designated by the Constitution and is joined as a defendant in such capacity. In these proceedings the plaintiff claims, *inter alia*:-

> (1) A declaration that the State cannot become bound by the Single European Act being a treaty designed to amend and augment the treaties establishing the European Communities and to establish European Political Cooperation in the sphere of foreign and security policy, except by virtue of a referendum to amend the Constitution;
> (2) A perpetual injunction restraining the defendants and each of them from depositing with the Government of the Italian Republic any purported instrument of ratification of the Single European Act otherwise than by virtue of and pursuant to an amendment of the Constitution through referendum;
> (3) If necessary, a declaration that the European Communities (Amendment) Act, 1986, is invalid having regard to the provisions of the Constitution.

The case raises very far-reaching issues touching Irish constitutional law, international law and the law of the European Communities.

The Treaty of Rome

The European Communities are the European Coal and Steel Community (established by the Treaty of Paris dated the 18th April, 1951), the European Economic Community (established by the Treaty of Rome dated the 25th March, 1957) and the European Atomic Energy Community (established by the Treaty of Rome dated the 25th March, 1957). The Single European Act purports, on its face, to amend and supplement all three Treaties. Similar issues arise in relation to all three Treaties and it may simplify matters if we discuss the problems which arise in the light of the Treaty of Rome establishing the European Economic Community.

The purpose of the Treaty of Rome was to establish a European Economic Community. The motives of the founder members of the Community appear from the preamble to the Treaty which, with its reference to the determination of the founder members "to lay the foundations of an ever closer union among the peoples of Europe", recalls the preamble to the American Constitution. The Treaty contemplated the progressive removal of barriers to trade and obstacles to the free movement of goods and capital over a period of time. Article 2 of the Treaty accordingly provides that the Community will have as part of its task the promotion of harmonious development of economic activities throughout the Community by establishing a common market and "progressively" approximating the economic policies of the Member States. The preamble to the Treaty reads as follows:-

> "HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF THE ITALIAN REPUBLIC, HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG, HER MAJESTY THE QUEEN OF THE NETHERLANDS,
> DETERMINED to lay the foundations of an ever closer union among the peoples of Europe,
> RESOLVED to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe,
> AFFIRMING as the essential objective of their efforts the constant improvement of the living and working conditions of their peoples,
> RECOGNISING that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition,
> ANXIOUS to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions,
> DESIRING to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade,
> INTENDING to confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations,
> RESOLVED by thus pooling their resources to preserve and strengthen peace and liberty, and calling upon the other peoples of Europe who share their ideal to join in their efforts,
> HAVE DECIDED to create a European Economic Community..."

Article 3 of the Treaty sets out the activities of the Community and reads as follows:-

> "For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:-
>
> (*a*) the elimination, as between Member States, of customs duties and of quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;
> (*b*) the establishment of a common customs tariff and of a common commercial policy towards third countries;
> (*c*) the abolition, as between Member States, of obstacles to freedom of movement

for persons, services and capital; .
(*d*) the adoption of a common policy in the sphere of agriculture;
(*e*) the adoption of a common policy in the sphere of transport;
(*f*) the institution of a system ensuring that competition in the common market is not distorted;
(*g*) the application of procedures by which the economic policies of Member States can be coordinated and disequilibria in their balances of payments remedied;
(*h*) the approximation of the laws of Member States to the extent required for the proper functioning of the common market;
(*i*) the creation of a European Social Fund in order to improve employment opportunities for workers and to contribute to the raising of their standard of living;
(*j*) the establishment of a European Investment Bank to facilitate the economic expansion of the Community by opening up fresh resources;
(*k*) the association of the overseas countries and territories in order to increase trade and to promote jointly economic and social development."

Article 4 entrusts the work of the Community to four institutions: (1) an Assembly, (2) a Council, (3) a Commission, and (4) a Court of Justice, each acting within the limits of the powers conferred upon it by the Treaty. By articles 5 and 6 the Member States pledge themselves to facilitate the achievement of the Community's tasks, commit themselves to abstain from any measures which would jeopardise the attainment of the objectives of the Treaty and promise to act in close co-operation with the institutions of the Community. Article 7 prohibits any discrimination on the grounds of nationality. Article 8 provides that the common market is to be established over a transitional period of twelve years divided into three stages of four years each. (This transitional period was to end in 1969. But, so far as Ireland was concerned, the transitional period was extended to 1977 under the terms of the Accession Treaty) .All of these provisions are contained in Part I of the Treaty under the heading "PRINCIPLES".

It seems clear that what the founders had in mind was a growing dynamic Community gradually achieving its objectives over a period of time. Article 210 provides that the Community is to have legal personality and article 211 provides that in each of the Member States the Community is to enjoy the most extensive legal capacity which the laws of the State allow. The Treaty is one of indefinite duration (article 240). Article 235 provides that if action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and the Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures. This article has been the basis of many regulations and directives and its use as such has been expressly approved by the Court of Justice of the European Communities. (See *Hauptzollamt Bremerhaven v. Massey-Ferguson GmbH* (Case 8/73) [1973] E.C.R. 897). .

Article 236 contains provisions for amending the Treaty. The Government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaty. If the Council, after consulting the Assembly and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the Governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the Treaty. It also provides that the amendments shall enter into force after being ratified by all the Member States "in accordance with

their respective constitutional requirements". There were a number of amendments to the Treaty prior to Ireland's accession and further amendments have taken place since.

The Single European Act

The Single European Act is an international treaty designed further to amend the provisions of the Treaty of Rome. It contains, however, (at article 33) its own ratification procedure. This provides that the Act is to be ratified by the High Contracting Parties "in accordance with their respective constitutional requirements." They make known their ratification by depositing the relevant instrument of ratification with the Government of the Italian Republic. Article 33 also provides that the Act is to enter into force on the first day of the month following that on which the instrument of ratification shall have been deposited by the last signatory State to fulfil that formality.

All Member States, except Ireland, have deposited their respective instruments of ratification with the Government of the Italian Republic. The Irish instrument of ratification has been sealed by the President, on the advice of the Government, is ready for deposit, and would have been deposited but for the interlocutory injunction granted by the High Court on the 24th December, 1986.

The Single European Act consists of a preamble which refers, *inter alia*, to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and of four titles. Of these the most important is Title II which contains four chapters amending the founding Treaties. Chapter I amends the European Coal and Steel Community Treaty; Chapter II amends the Treaty of Rome; Chapter III amends the Euratom Treaty; and Chapter IV contains general provisions.

Title I refers to certain common provisions of a procedural nature and would not appear to be important for the purposes of this case except for article 3 which provides as follows:-

> "(1) The institutions of the European Communities, henceforth designated as referred to hereafter, shall exercise their powers and jurisdiction under the conditions and for the purposes provided for by the Treaties establishing the Communities and by the subsequent Treaties and Acts modifying or supplementing them and by the provision of Title II.
> (2) The institutions and bodies responsible for European Political Cooperation shall exercise their powers and jurisdiction under the conditions and for the purposes laid down in Title III and in the documents referred to in the third paragraph of Article 1."

Title III contains provisions for co-operation by the members of the Community in the sphere of foreign policy.

Title IV contains certain general and final provisions including article 33 which lays down the procedure for ratification, and articles 31 and 32 which are as follows:-

> Article 31
> "The provisions of the Treaty establishing the European Coal and Steel Community, the Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community concerning the powers of the Court of Justice of the

European Communities and the exercise of those powers shall apply only to the provisions of Title II and to Article 31; they shall apply to those provisions under the same conditions as for the provisions of the said Treaties."

Article 32
"Subject to Article 3 (1), to Title II and to Article 31, nothing in this Act shall affect the Treaties establishing the European Communities or any subsequent Treaties and Acts modifying or supplementing them."

It would therefore appear that the most important provisions, so far as this case is concerned are those contained in Title II, Chapter II. These include additional provisions dealing with the internal market, monetary capacity, social policy (including health and safety of workers), economic and social cohesion, research and technological development and the environment (see Section II). The plaintiff submits that the effect of these provisions is to extend the scope of the Treaty of Rome and to add a new objective to the objectives set out in that Treaty.

Article 11 of the Single European Act provides that the Council may, acting unanimously, at the request of the Court of Justice and after consulting with the Commission and the European Parliament "attach" to the Court of Justice a court with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only, certain classes of action or proceedings brought by natural or legal persons. The new court, however, shall not be competent to hear and determine actions brought by Member States or by Community institutions or questions referred for a preliminary ruling under Article 177 of the Treaty.

Finally, Title II, Chapter I, Section I provides for the introduction of a "cooperation procedure" for arriving at decisions under articles of the Treaty of Rome and for the substitution of qualified voting for unanimous decision-making in a restricted number of cases.

The European Communities (Amendment) Act, 1986

The European Communities (Amendment) Act, 1986, amends the European Communities Act, 1972, by adding to "the treaties governing the European Communities" referred to in s. 1 of that Act, the following provisions of the Single European Act, namely:-

"Article 3.1; Title II; Articles 31 and 32; and, in so far as they relate to the said Article 3.1, the said Title II and the said Articles 31 and 32, Articles 33 and 34."

The Act of 1986 is to be read as one with the Act of 1972 and the effect of the amendment is to make the provisions of the Single European Act referred to part of the domestic law of Ireland, once the Minister for Foreign Affairs has made his order bringing the Act of 1986 into force pursuant to the provisions of section 3.

The Constitution

This case raises fundamental issues concerning the Irish Constitution and the relationship between it and the law of the European Communities. Both sides have therefore found it necessary to re-examine the principal features of our Constitution.

Article 5 provides that Ireland is a sovereign, independent, democratic state. Article 6 provides that all powers of government, legislative, executive and judicial, derive, under God from the people, "whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good." These powers of government are exercisable "only by or on the authority" of the organs of State established by the Constitution. The organs of State established by the Constitution include the President, the Oireachtas, the Government and the Courts. The Constitution provides for a form of separation of powers. Article 15, s. 2 vests in the Oireachtas "the sole and exclusive power of making laws for the State." The Constitution recognises means whereby the Oireachtas may delegate some of its law-making functions to subordinate legislatures. Prior to the Third Amendment to the Constitution there was no provision whereby it could delegate its law-making powers to a supranational authority. The Oireachtas may not enact any law which is in any respect repugnant to the Constitution. Every law enacted by the Oireachtas which is in any respect repugnant to the Constitution shall be, but to the extent only of such repugnancy, invalid.

Article 28 provides that the executive power of the State shall "subject to the provisions of this Constitution" be exercised by or on the authority of the Government. Article 29, s. 4, provides that the executive power of the State in or in connection with its external relations shall "in accordance with Article 28 of this Constitution" be exercised by or on the authority of the Government.

Article 34 provides that justice shall be administered in courts established by law by judges appointed in the manner provided by the Constitution. As the Supreme Court said in *Buckley and Others (Sinn Fein) v. Attorney General* [1950] I.R. 67, at p. 81:-

> "This seems to us to contemplate and require that justice shall be administered in such manner and not otherwise."

The High Court, and on appeal from it the Supreme Court, has jurisdiction to decide any question as to the validity of any law having regard to the provisions of the Constitution. In considering any such question the courts will presume that the law is in accordance with the Constitution until the contrary is clearly established. This presumption arises from the respect which each of the great organs of state owes to the other. Each will assume that the other is attempting properly to perform its constitutional function and will normally refrain from interfering in a field *prima facie* within the area of competence of the other. There appears to be no reason why the courts should not pay to the Government, acting within its own sphere, the same kind of respect it pays to the Oireachtas acting in its proper domain. This would appear to apply with special force when the Government is conducting the external relations of the State- an area within which the courts have not normally any competence.

Both sides in the present case relied heavily on the decision of the Supreme Court in *Boland v. An Taoiseach* [1974] I.R. 338. The defendants relied on it as authority for the proposition that the Government must be free to formulate the foreign policy of the State. The plaintiff on the other hand relied on it as authority for the proposition that, even in the conduct of the external relations of the State, the Government was subject to the Constitution and that, at some point, a stage might be reached where it was necessary for the courts to intervene to protect the

Constitution.

In that case FitzGerald C.J. , at p. 362 put the matter as follows:-

> "Consequently, in my opinion, the Courts have no power, either express or implied, to supervise or interfere with the exercise by the Government of its executive functions, unless the circumstances are such as to amount to a clear disregard by the Government of the powers and duties conferred upon it by the Constitution."

Budd J., at p. 366, put the matter as follows:-

> "It is for the Executive to formulate matters of policy. The judiciary has its own particular ambit of functions under the Constitution. Mainly, it deals with justiciable controversies between citizen and citizen or the citizen and the State and matters pertaining thereto. Such matters have nothing to do with matters of State policy. Viewing the matter from another angle, as to the nature of any relief that could properly be claimed in proceedings of this nature, I ask whether it could be said that the Courts could be called upon to pronounce adversely or otherwise on what the Government proposed to do on any matter of policy which it was in course of formulating. It would seem that that would be an attempted interference with matters which are part of the functions of the Executive and no part of the functions of the judiciary. From a practical standpoint alone, what action would be open to the Courts? The Courts could clearly not state that any particular policy ought not to be pursued.
>
> The Constitution goes further in indicating how far the policies involved in government decisions as to policy such as this are removed from the purview of the Courts in that it makes the Government responsible to the Dáil which can support or oppose those policies and review them. Ultimately, there is the responsibility of the Government to the people who must be consulted by way of referendum where any change of the Constitution is contemplated."

Griffin J., having surveyed the Articles of the Constitution dealing with the separation of powers, put the matter as follows, at p. 370:-

> "In my view, these Articles demonstrate that the Oireachtas, and the Oireachtas alone, can exercise the legislative power of government; that the Government, and the Government alone, can exercise the executive power of government; and that the judicial power of government can be exercised only by judges duly appointed under the Constitution in courts established by law under the Constitution. As the Oireachtas is prohibited from enacting any law which is in any respect repugnant to the Constitution or any provision thereof, the question of the validity of any law having regard to the provisions of the Constitution is reserved to the High Court and the Supreme Court. This is not, however, in any respect an interference by the judicial power in the exercise by the Oireachtas of the legislative power.
>
> By the Constitution the Government is expressly made responsible to Dáil Éireann: see s. 4, sub-s. 1, of Article 28. Counsel for the defendants argued that in no circumstances may the Courts interfere with the Government in the exercise of its executive functions. For the purpose of this action it is not necessary to determine this question in the form in which

> the argument was made, as the defendants need only show that the Courts cannot and should not intervene having regard to the circumstances of the present case. In the event of the Government acting in a manner which is in contravention of some provisions of the Constitution, in my view it would be the duty and right of the Courts, as guardians of the Constitution, to intervene when called upon to do so if a complaint of a breach of any of the provisions of the Constitution is substantiated in proceedings brought before the Courts."

Under Article 26 of the Constitution the President may, in certain circumstances, refer a Bill to the Supreme Court for a decision as to whether it is or is not repugnant to the Constitution. The defendants stressed that this was the only procedure whereby the constitutionality of legislation could be discussed, in the abstract, and in the light of hypothetical circumstances. In all other cases they suggested that a plaintiff, to have *locus standi*, had to have a specific personal grievance of the kind contemplated in *Cahill v. Sutton* [1980] I.R. 269. In this case, the defendants suggested the plaintiff was attempting to get from the High Court a constitutional review of the European Communities (Amendment) Act, 1986, without having any right to demand it. The plaintiff, on the other hand, says that he and his fellow citizens have been deprived of the right to take part in a referendum on what, he alleges, is in fact an attempt to amend the provisions of the Constitution.

Under Article 6 of the Constitution the people have the right "in final appeal" to decide all questions of national policy according to the requirements of the common good. The Constitution provides, however, only three methods whereby the people can be consulted. The first is by a general election held in accordance with the provisions of Article 16 of the Constitution. The second is under Article 27 of the Constitution where the President decides that a Bill is of such national importance that the will of the people thereon ought to be ascertained by referendum. The third is by a referendum to amend the Constitution.

No citizen has a constitutional right to obtain a referendum. A proposal for the amendment of the Constitution must be initiated in Dáil Éireann and be passed by both houses of the Oireachtas before being submitted to the people by referendum. But if such a referendum is held the plaintiff, like every other citizen who has the right to vote at an election for members of Dáil Éireann, has the right to vote at the referendum. This would appear to contemplate and require that, if the Constitution is to be amended, it is to be amended in accordance with the machinery established under Articles 46 and 47 of the Constitution and not otherwise. The plaintiff submits that he has a right to see that this is done and that this is a right which the State (and in particular the courts), are obliged to defend and vindicate in accordance with the provisions of Article 40, s. 3 of the Constitution.

Summary of plaintiff's case

The plaintiff maintains that the Constitution is that of an independent, democratic and constitutional state. It is a Constitution which, on its face, excluded the possibility of Ireland becoming a member of the European Economic Community. Article 29, s. 6 gave the Oireachtas power in certain circumstances, to make an international treaty part of the domestic law of the State. But the Treaty of Rome was no ordinary international agreement. It was a treaty which set up a group of supranational institutions, which, within the area of their competence, could override the legislature, executive and judiciary of their Member States and therefore necessarily conflicted with *inter alia* Articles 15, 28 and 34 of our Constitution. For us to join the E.E.C. required the Third

Amendment of the Constitution Act, 1972, carried at a referendum, the European Communities Act, 1972, and the Treaty of Accession. The present proposal is one to amend the Treaty of Rome but it is proposed to do this by means only of the ratification of the Single European Act and the enactment into law of the European Communities (Amendment) Act, 1986, without any referendum.

(a) Form of Third Amendment

The plaintiff's case rests largely on his interpretation of the Third Amendment to the Constitution. That amendment now appears at Article 251, s. 4, sub-s. 3 and reads as follows:-

> "The State may become a member of the European Coal and Steel Community (established by Treaty signed at Paris on the 18th day of April, 1951), the European Economic Community (established by Treaty signed at Rome on the 25th day of March, 1957) and the European Atomic Energy Community (established by Treaty signed at Rome on the 25th day of March, 1957). No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State."

The plaintiff lays particular stress on the second sentence of the subsection quoted.

(b) Nature and effect of ratification procedure

The plaintiff submits that the ratification procedure under article 33 of the Single European Act, once carried into effect, will have far-reaching effects on Community law and on domestic law. Article 33 of the Single European Act contemplates that each of the High Contracting Parties will ratify the Act in accordance with their respective constitutional requirements. But they signify a formal acceptance of the Treaty by the deposit of the instruments of ratification with the Government of the Italian Republic. By doing that each state represents to the other that it has complied with its own constitutional requirements and thereafter the matter passes from the field of national law into that of international law; the provisions of the Treaty of Rome are amended and the change in Community law takes place in all the Member States of the Community. To draw an analogy from company law the memorandum and articles of association of the Community have been changed. So also, the plaintiff submits, have the obligations of membership of the Community within the meaning of the second sentence of the Third Amendment. The European Communities (Amendment) Act, 1986, then, the plaintiff submits, becomes a law enacted by the State "necessitated by the obligations of membership" of the Communities and becomes immune from constitutional challenge by virtue of the provisions of the Third Amendment to the Constitution.

(c) The San Michele Case

Thereafter, the plaintiff submits, the matter cannot be challenged in Community law either and he cites as his authority the case of *Acciaierie San Michele SpA v. High Authority* (Case 9/65 and 58/65) [1967] E.C.R. 1. That was a case in which an Italian company sought to challenge in the Italian Constitutional Court the validity of Italy's accession to the European Coal and Steel Community. It then applied in the European Court for interim relief preventing the High Authority of the European Coal and Steel Community moving against it until such time as the constitutional issue raised by it in the Italian Constitutional Court had been determined. The European Court giving the grounds for its refusal of interim relief ([1967] E.C.R. 1 at p. 29) stated:-

"Whereas, in support of its application based on those factors for the adoption of the above-mentioned interim measure, the applicant thus alleged that the judgment to be given by the Corte Constituzionale carried "absolute" authority and that "any court having jurisdiction over Italian citizens" was obliged to suspend judgment;

Whereas, however, the Court of Justice, as the institution entrusted with ensuring that in the interpretation and application of the Treaty the law is observed, can only take into consideration the instrument of ratification, which itself was deposited on behalf of Italy on 22 July, 1952 and which, together with the other instruments of ratification, brought the Treaty into force;

Whereas it is clear from the instruments of ratification, whereby the Member States bound themselves in an identical manner , that all States had adhered to the Treaty on the same conditions, definitively and without any reservations other than those set out in the supplementary protocols, and that therefore any claim by a national of a Member State questioning such adherence would be contrary to the system of Community law;

Whereas such a claim is all the more inadmissible in that, in this case, any decision to suspend judgment would be tantamount to reducing the Community to a cipher by regarding the instrument of ratification either as only partially accepting the Treaty, or as the means of according to it different legal consequences, varying with the Member State concerned, or as the means whereby some nationals might evade its rules;

Whereas the participation of the Italian Republic in the common institutions and in the rights and obligations arising from the Treaty in fact preclude its nationals from avoiding the complete and uniform application of the said Treaty and from thus obtaining different treatment from that of other nationals in the Community;

Whereas, therefore, there must be dissmissed as contrary to Community policy any application the purpose of which is to establish discrimination of this nature which no law of ratification could introduce into a treaty prohibiting such discrimination; ..."

This judgment was merely a judgment on an interim application but the point being made by the European Court appears to be a basic one. It would not be open to the Court to question the validity of the Treaty to which it owed its existence any more than it would be open to this court to question the validity of the Irish Constitution. Whether the same line of reasoning applies to an amendment to the Treaty is not equally clear, but the plaintiff claims that it does.

(d) The Vienna Convention

The plaintiff seeks to reinforce his interpretation of the *San Michele Case* (Case 9/65 and 58/65) [1967] E.C.R. 1 by reference to the Vienna Convention on the Law of Treaties. Ireland is not a party to this convention but it is a convention which seeks to codify the international law in relation to treaties and it is therefore an instrument to which international authorities would pay respect. Article 16 refers to the exchange or deposit of instruments of ratification and provides:-

"Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:-

(*a*) their exchange between the contracting States;

(*b*) their deposit with the depositary; or

(*c*) their notification to the contracting parties or to the depositary, if so agreed."

(e) Primacy of Community Law

The plaintiff refers to the fact that, within the area of its competence, Community law takes precedence over the national law of the Member States. It constitutes a new legal order of international law for the benefit of which states have limited their sovereign rights and the subjects of which are not only the Member States but also their nationals. By contrast with ordinary international treaties the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply. By creating a community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane, and more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the states to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and thus created a body of law which binds both their nationals and themselves. The transfer by the states from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act, incompatible with the concept of the Community cannot prevail. See *Van Gend en Loos v. Nederlandse Belastingadministratie* (Case 26/62) [1963] E.C.R. 1; *Humblet v. Belgium* (Case 6/60) [1960] E.C.R. 559; *Costa v. E.N.E.L.* (Case 6/64) [1964] E.C.R. 585 and *Amministrazione delle Finanze dello Stato v. Simmenthal SpA* (Case 106/77) [1978] E.C.R. 629.

(f) Alleged Extension of Scope of Treaty

The plaintiff submits that the Single European Act in fact extends the scope of the objectives of the Treaty and increases the competence of its institutions thereby diminishing the sovereignity of the organs of government established by the Constitution. He submits that the institutions of the Treaty of Rome will now be competent to deal with matters such as the health of workers and the environment, on which the Treaty was previously silent. He submits that the shift from unanimous voting to qualified majority voting in certain cases will weaken the position of Ireland and enhance the competence of the Community. He is suspicious of the reference to the European Convention on Human Rights in the preamble to the Single European Act. He is worried lest this and the evolving jurisprudence of the Community, based as it is in some measure on the common constitutional heritage of the Member States, may threaten positions where the Irish Constitution takes a particular and unique stand. He refers for instance to the right to life of the unborn. He also fears that the provisions of Title III relating to European cooperation in the sphere of foreign policy may undermine this State's traditional policy of neutrality.

(g) Possible subversion of Constitution

However, his principal submission is that once the instrument of ratification is lodged with the Government of the Italian Republic it will be too late for him to look for relief because the obligations of membership of the Communities will have been changed and everything necessitated by the changed obligations of membership of the Communities will thereafter be immune from constitutional attack by virtue of the provisions of the second sentence of the Third Amendment. It is this extreme circumstance which, he says, entitles him to relief now. He is not, he claims, attempting to interfere with the formulation of policy but attempting to stop an administrative act which will bring about an irreversible constitutional change, and which, he suggests, is open to constitutional challenge now but will be immune from constitutional attack once the instrument of ratification has been deposited. Even the English courts, he says, with their tradition of parliamentary sovereignty and royal prerogative in foreign affairs, were prepared to entertain an

application by a taxpayer to prevent the approval of a draft order in council where the order, once approved, would create an irreversible position. See *Reg. v. H.M. Treasury, Ex p. Smedley* [1985] Q.B. 657.

The plaintiff submits that if what is attempted to be done in the present case is permitted then it can be repeated, and more and more of the sovereignty of the organs of State established by our Constitution can be transferred to the European Communities without the people generally being consulted in a referendum or having an opportunity to challenge the matter in the courts.

(h) *Locus Standi*

The plaintiff claims that, in these circumstances, he is a person aggrieved within the meaning of *Cahill v. Sutton* [1980] I.R. 269 in that procedures are in train, the effects of which are to amend the Constitution without holding a referendum. He, as a person entitled to vote in a referendum, if held, has *locus standi* to voice his complaint. Even if he were not an aggrieved person within the category primarily contemplated in *Cahill v. Sutton* there are still in the present case "countervailing considerations" of the kind contemplated by the judgment of Henchy J. in *Cahill v. Sutton* [1980] I.R. 269 at 285. These countervailing considerations he submits are circumstances of the most serious kind and bring him within the discretion which the Supreme Court reserved to itself in *Cahill v. Sutton*. He is attempting to assert the rights of himself and his fellow citizens in a case which is the kind of action to which the Attorney General might otherwise lend his name. But the Attorney General is already a defendant in these proceedings, and properly so, as representing the State and as law officer of the Government. He is not therefore available to assert the rights of the public in the circumstances of the present case.

The plaintiff asserts that it is not safe to allow the instrument of ratification to be deposited, to allow the European Communities (Amendment) Act, 1986, to come into force and to wait until some citizen comes along claiming that a specific right guaranteed to him by the Irish Constitution is violated by some act or regulation of the Community. By that time, he submits, the Treaty governing the Community will have been amended. The obligations of membership will have been changed. The European Communities (Amendment) Act, 1986, will be in force and immune from constitutional challenge by virtue of the second sentence of the Third Amendment to the Constitution. Community law will have primacy over national law so that it will be too late for the plaintiff to attempt to invoke rights guaranteed to him under the Constitution against the Community measure. Indeed the plaintiff submits that the very question arising would be one of Community law and that if any party to the litigation sought a reference to the European Court pursuant to article 177 of the Treaty our High Court would have to consider, and our Supreme Court would have to grant, such a request. .

Under these circumstances the plaintiff submits that now is the only time at which he can make his case and that therefore he has the *locus standi* to make it.

Summary of defendants' case

The defendants' case may be summarised as follows:-

(a) Premature

The defendants claimed that the plaintiffs application was premature. However they said

they were waiving this point because of their desire to get a decision on the substantive issue raised by the litigation.

(b) *Locus standi*

They were however relying on the point that the plaintiff had no *locus standi* in the sense that he could not point to any specific way in which he personally was adversely affected by the provisions of the Single European Act or by those of the European Communities (Amendment) Act, 1986. He could point to no concrete specific grievance and could not therefore bring himself within *Cahill* v. *Sutton* [1980] I.R. 269. Neither the Single European Act nor the European Communities (Amendment) Act, 1986, amended the Constitution. The question of a referendum did not therefore arise. In any event the plaintiff had no constitutional right to have a referendum held.

(c) No extension of scope of objectives

The Single European Act was an amendment to the Treaty of Rome. But it did not in any way extend the scope of the objectives of that Treaty. All of the objectives referred to in Title II of the Single European Act; to wit the articles dealing with the establishment of the internal market, with monetary capacity, with social policy, with economic and social cohesion, with research and technological development, with the health and safety of workers and with the environment, are all matters subsidiary to the establishment of an economic community. They are all provided for expressly or by necessary implication in the original Treaty. Some of these subjects such as "the environment" or "the health and safety of workers" may now loom larger in the public mind than they did when the Treaty of Rome was made in 1957. But they were nevertheless present in the minds of the founders of the Treaty which refers expressly, in its preamble, to the "living and working conditions" of the peoples of the Community. In fact the Community has, over the years, been issuing regulations and directives dealing with all these matters.

(d) Internal reform

When the Irish people voted to join the European Community in 1972 they voted to join what was intended to be a dynamic, expanding Community with definite objectives. The Community has, over the years, failed to achieve all of the objectives which the Members set for it. This has been blamed partly on defects in the decision-making machinery of the Community. The Single European Act is designed to improve the decision-making process. If an analogy is to be made with company law, changes are being made in the articles of association of the company but the object clauses remain, in substance, the same.

(e) Constitutional rights

There is nothing in the Single European Act which in any way affects constitutional rights guaranteed by the Constitution. The plaintiff is concerned about what might be introduced in legislation dealing with the health of workers. But the Community has been competent to legislate on this subject from its foundation. The plaintiff also points to the reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms contained in the preamble to the Single European Act, but this Convention is not being made part of the laws of Ireland and, by virtue of the provisions of article 31 and 32, it adds nothing new to the jurisprudence of the Court of Justice of the European Communities. The European Court already looks to the European Convention in its quest for common constitutional values which should guide the jurisprudence of the Court. (See *lnternationale Handelsgesellschaft mbH* v. *Einfuhr- und*

Vorratsstelle Getreide (Case 11/70) [1970] E.C.R. 1125; *J. Nold KG* v. *Commission* (Case 4/73) [1974] E.C.R. 491). The quest for common constitutional values is not designed to deprive nationals of Member States of fundamental rights guaranteed to them by their respective national constitutions. Rather is it designed to protect individuals against harsh or unfair legislative or administrative acts of the Community. The primacy of Community law within its own sphere is one of the fundamental principles applied by the Court. The Court is also sceptical of any provision of national law which might appear to be a disguised discrimination in favour of its own nationals contrary to the provisions of article 7 of the Treaty. Nevertheless, the Court is sensitive to the need to respect any provision of national law which is based on deeply held feelings of public morality in that particular Member State. (See *Adoui* v. *Belgium* (Case 115/81) [1982] E.C.R. 1665; *Rutili* v. *Ministre de l'Interieur* (Case 36/75) [1975] E.C.R. 1219; *Reg.* v. *Henn* (Case 34/79) [1979] E.C.R. 3795). But the fundamental submission is that nothing in the Single European Act alters this position one way or the other.

(f) Legitimate sphere of executive action

The decision whether to ratify or not to ratify the Single European Act falls within the legitimate sphere of executive action allotted to the Government by the Constitution. It is not a matter in which the. Courts should intervene. See *Boland* v. *An Taoiseach* [1974] I.R. 338. This is particularly the case with Title III of the Single European Act which deals with cooperation in the sphere of foreign policy.

(g) Dynamic Community

When the Irish people agreed in 1972 to join the European Economic Community, they agreed to join a Community which was, from its nature, a growing and expanding Community. By doing so, they gave the Government permission to take all such steps as might be necessary to make us effective members of that Community and to play our full part in it. If, however something were being done to change the nature of the Community from an economic community into a political community or a military power then it would be necessary for the Government and the Oireachtas to consult the people in a further referendum. The Community which we joined is governed by a Treaty which contains (at article 236) its own machinery for making amendments. The fact that the people agreed to a machinery for making amendments to the Treaty does not, of course, commit them to agreeing to any specific amendment. But it does mean that it is competent for the Government, with a mandate, where necessary, of a resolution of Dáil Éireann or of domestic legislation, to agree to amendments to the Treaty within the scope of its original objectives. Only if the proposed amendment goes outside the terms of the original objectives ,and amounts to an amendment to the Constitution as well, is it necessary for the Government to consult the people in a referendum.

(h) The new court

The defendants submit that the need for the new court arises from the growing volume of work in an expanding Community. This has put pressure on the European Court which finds an increasing amount of its time being taken up with matters of minor importance. The proposed court, which can only be set up at the request of the existing Court, will be "attached" to the existing Court and will be a court of first instance, subject to a right of appeal on points of law to the existing Court. The court will not be competent to hear actions brought by Member States or by Community institutions or questions referred for a preliminary ruling under article 177 of the Treaty. These important matters will remain with the existing Court. The proposed new court

therefore represents a natural development in the evolution of the Community.

(i) Misunderstanding of Article 29

The defendants claim that the plaintiff has misinterpreted the Third Amendment to the Constitution. This can only be understood in the light of Article 29 as a whole and against the background of the relationship between national and international law.

Analysis of Article 29

As the defendants' submission on Article 29 is fundamental to the issues raised in this case I now propose to consider this Article in detail. Article 29 of the Constitution is headed "International Relations" and, as amended by the Third Amendment to the Constitution, reads as follows:-

> "1. Ireland affirms its devotion to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality.
> 2. Ireland affirms its adherence to the principle of the pacific settlement of international disputes by international arbitration or judicial determination.
> 3. Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States.
> 4. 1° The executive power of the State in or in connection with its external relations shall in accordance with Article 28 of this Constitution be exercised by or on the authority of the Government.
> 2° For the purpose of the exercise of any executive function of the State in or in connection with its external relations, the Government may, to such extent and subject to such conditions, if any, as may be determined by law, avail of or adopt any organ, instrument, or method of procedure used or adopted for the like purpose by the members of any group or league of nations with which the State is or becomes associated for the purpose of international co-operation in matters of common concern.
> 3° The State may become a member of the European Coal and Steel Community (established by Treaty signed at Paris on the 18th day of April, 1951), the European Economic Community (established by Treaty signed at Rome on the 25th day of March, 1957) and the European Atomic Energy Community (established by Treaty signed at Rome on the 25th day of March, 1957). No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State.
> 5. 1° Every international agreement to which the State becomes a party shall be laid before Dáil Éireann.
> 2° The State shall not be bound by any international agreement involving a charge upon public funds unless the terms of the agreement shall have been approved by Dáil Éireann.
> 3° This section shall not apply to agreements or conventions of a technical and administrative character.
> 6. No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas. "

It is clear therefore that Article 29 contemplates a number of different kinds of international agreements which may be treated in different ways. International agreements or conventions of a technical and administrative character need not even be laid before Dáil Éireann. But all other international agreements must be laid before Dáil Éireann. If the international agreement involves a charge on public funds it is not enough to lay it before Dáil Éireann. The terms of the agreement must be approved by resolution of Dáil Éireann. In *The State (Gilliland)* v. *Governor of Mountjoy Prison* [1987] I.R. 201 the Supreme Court in its judgment struck down a governmental order made under the provisions of the Extradition Act, 1965, purporting to apply Part II of the Act to extraditions from this country to the United States of America. The relevant extradition treaty had in fact been laid before Dáil Éireann. But it involved a charge upon public funds and had not been approved by resolution of Dáil Éireann. It was not therefore binding on the State- at least in contemplation of Irish domestic law- and it was not competent therefore for the Government to make an order the effect of which would be to make the extradition arrangements enforceable in domestic law. The Supreme Court did not purport to adjudicate on the question of whether the extradition treaty was a valid international agreement. It was sufficient for our courts to say that under the provisions of our Constitution our State was not bound by it and therefore it could not be enforced in domestic law.

But more important for the present case is s. 6 of Article 29 which provides that no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas. This section clearly accepts the dualistic concept that some international agreements may be perfectly valid in international law but remain of no relevance to the national courts of a particular country simply because the relevant constitutional authority has not made them part of the domestic law. .

This distinction is illustrated by *In re Ó Laighléis* [1960] I.R. 93. The applicant in that case sought to rely upon the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which had been ratified by the State but had never been made part of its domestic law. Maguire C.J. delivering the judgment of the Supreme Court said, at p. 124:-

> "The insuperable obstacle to importing the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms into the domestic law of Ireland- if they be at variance with that law- is, however, the terms of the Constitution of Ireland. By Article 15, 2, 1° of the Constitution it is provided that "the sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State." Moreover, Article 29, the Article dealing with international relations, provides at section 6 that "no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas."
>
> The Oireachtas has not determined that the Convention of Human Rights and Fundamental Freedoms is to be part of the domestic law of the State, and accordingly this Court cannot give effect to the Convention if it be contrary to domestic law or purports to grant rights or impose obligations additional to those of domestic law.
>
> No argument can prevail against the express command of section 6 of Article 29 of the Constitution before judges whose declared duty it is to uphold the Constitution and the laws.
>
> The Court accordingly cannot accept the idea that the primacy of domestic

> legislation is displaced by the State becoming a party to the Convention for the Protection of Human Rights and Fundamental Freedoms. Nor can the Court accede to the view that in the domestic forum the Executive is in any way estopped from relying on the domestic law. It may be that such estoppel might operate as between the High Contracting Parties to the Convention, or in the Court contemplated by Section IV of the Convention if it comes into existence, but it cannot operate in a domestic Court administering domestic law. Nor can the Court accept the contention that the Act of 1940 is to be construed in the light of, and so as to produce conformity with, a convention entered into ten years afterwards."
>
> It therefore appears that no international treaty could be part of the domestic law of Ireland save as might be determined by the Oireachtas. If therefore the provisions of the Treaty of Rome were to have any effect in domestic law this could only be done by means of an Act of the Oireachtas.

Many international treaties- such, for instance, as the Warsaw Convention- had been made part of the domestic law of Ireland by virtue of Acts of the Oireachtas. But, as previously indicated, the Treaty of Rome was no ordinary international treaty. It was a treaty which created new supranational authorities with legislative, executive, and judicial powers claiming" within the area of their competence, to overrule the legislative, executive and judicial organs of this State. It therefore required an amendment to the Constitution to allow Ireland to accede to the Treaty.

The licence to join is contained in the first sentence of the Third Amendment to the Constitution and it is a mistake to emphasise the second sentence at the expense of the first. So far as relates to the European Economic Community, the first sentence reads:-

> "The State may become a member of...the European Economic Community (established by Treaty signed at Rome on the 25th day of March 1957) ..."

The' "licence" says that the State may become "a member" of a specific community which it identifies by reference to the Treaty of Rome. The Treaty of Rome (which, as previously indicated, had been amended several times before Ireland's accession) is not referred to for the purpose of limiting or freezing the activities of the Community but for the purpose of identifying the Community which the State is permitted to join. This is the Community incorporated by article 210 of the Treaty and it remains, in law, the same Community whether the Treaty is amended or not.

By the Accession Treaty made at Brussels on the 22nd January, 1972, it was provided, *inter alia*, that Ireland should become a member of the European Economic Community subject to depositing its instrument of ratification with the Government of the Italian Republic before the 31st December, 1972.

A referendum was held on the l0th May, 1972, at which the people voted by an overwhelming majority in favour of the Third Amendment of the Constitution, and the Third Amendment of the Constitution Act, 1972, was enacted into law on the 8th June, 1972. Ireland deposited its instrument of ratification on the 16th December, 1972.

These acts may have been sufficient to make Ireland a member of the European Community in international law as from the 1st January, 1973. Indeed Article 1 of the Treaty of Accession

provided:-

> "The Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland hereby become members of the European Economic Community ..."

But these acts were not sufficient in themselves to make Ireland an effective member of the Community. To make Ireland an effective member as ,of the 1st January, 1973, it was necessary to make the Treaty part of the domestic law of Ireland. To achieve this it was necessary to pass an Act of the Oireachtas pursuant to the provisions of Article 29, s. 6, making the Treaty of Rome part of the domestic law of Ireland and giving the institutions of the Community a status in Irish domestic law. Had the Oireachtas not passed the European Communities Act, 1972, Ireland might still have been a member of the Community in international law but it would have been in breach of its obligations in international law under the Treaty of Rome and under the Treaty of Accession. This however would not have been a matter in relation to which the domestic courts of this country would have had any competence because the Treaty would not have been part of the domestic law. The immunity from constitutional challenge conferred by the second sentence of the Third Amendment on laws enacted, acts done, or measures adopted by the Community or its institutions would therefore have been meaningless as these laws, acts or measures would not have been part of the domestic law of this country.

To make them part of the domestic law of this country the European Communities Act, 1972, was necessary. This Act cannot therefore have been passed by virtue of the second sentence of the Third Amendment but by virtue of the licence to join the European Community contained in the first sentence of the Third Amendment. It accordingly in s. 1 lists the Treaties governing the European Communities and, in s. 2, provides that from the 1st January, 1973, the Treaties governing the European Communities and the existing and future acts adopted by the institutions of those Communities, shall be binding on the State and shall be part of the domestic law thereof under the conditions laid down in those Treaties.

The European Communities Act, 1972, was clearly authorised by the people when they authorised the State to join the European Economic Community. It must be presumed to be constitutional and would appear to be safe from constitutional challenge. But had it gone outside the terms of the licence granted by the first sentence of the Third Amendment it would not have been immune from constitutional challenge.

The immunity conferred by the second sentence of the Third Amendment would appear to apply to legislative and administrative measures taken in the day-to-day running of the Community. For instance article 189 of the Treaty provides that the Council and the Commission may, in accordance with the provisions of the Treaty, make regulations and issue directives. A regulation is of general application, it is binding in its entirety and is directly enforceable in all the Member States of the Community. A directive, on the other hand, is binding only as to the result to be achieved, and leaves to each Member State the choice of form and method in its enforcement. Put another way, there are some acts of the institutions of the Community which are directly enforceable in all the Member States whereas others require legislative or administrative action by the Member States to procure their enforcement. It is these matters which are referred to in the second sentence of the Third Amendment when it says:-

> "No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State."

It is these matters alone which are given immunity from constitutional challenge by the second sentence of the Third Amendment. But such of these matters as are acts of the institutions of the Communities derive their status in domestic law from the European Communities Act, 1972. If the second sentence of the Third Amendment is the canopy over their heads, the Act of 1972 is the perch on which they stand.

The European Communities (Amendment) Act, 1986, purports to amend the European Communities Act, 1972. Section 1 provides that the portions of the Single European Act therein referred to are to be included in the definition of "the Treaties governing the European Communities" contained in s. 1 of the Act of 1972. The effect is to make them part of the domestic law of Ireland by virtue of the provisions of s. 2 of the Act of 1972.

The Act of 1986 amends the Act of 1972 and is to be construed with it as one Act. Naturally, being an Act of the Oireachtas it is presumed not to violate the Constitution but, like the Act of 1972, it derives its validity from the licence contained in the first sentence of the Third Amendment. If it goes outside the terms of this licence it is open to challenge, in an appropriate case, as being invalid having regard to the provisions of the Constitution. Should such challenge be successful such acts of the institutions of the Community as depend on it for their status in domestic law would lose that status and would be of no effect in domestic law. Such a result might be embarrassing for the Government, and might involve the State being in breach of its international obligations, but such considerations could not prevent this court from fulfilling its constitutional duty, should the matter be made out in a case properly before it.

Conclusion

I conclude that the plaintiff is mistaken when he submits that, on the deposit of the instrument of ratification of the Single European Act by the Government with the Government of the Italian Republic, the European Communities (Amendment) Act, 1986, or the order bringing it into force or both will become immune from constitutional challenge under the second sentence of the Third Amendment. It has immunity but only if it does not go outside the terms of the licence granted by the first sentence of that amelt1dment. That is a licence to join a living dynamic Community of the kind described by the defendants.

As I am satisfied that the mere deposit of the instrument of ratification will not confer on the European Communities (Amendment) Act, 1986, any immunity from challenge on constitutional grounds or any impregnable position in domestic law on such provisions of the Single European Act as will depend on it for their status, I conclude that the relief sought by the plaintiff is not necessary for the protection of the Constitution or of the fundamental rights guaranteed thereby. The extraordinary relief which the plaintiff claims of an injunction restraining the Government from depositing the instrument of ratification with the Government of the Italian Republic is not therefore necessary and could only be justified- if justified at all- in a situation

where there was no other method of protecting the Constitution.

The plaintiff, having failed on this point, has no *locus standi* to make the other points which have been advanced on his behalf in argument. He is not immediately affected or threatened by any of the other matters which he seeks to raise. Therefore on the authority of *Cahill* v. *Sutton* [1980] I.R. 269 he has no *locus standi* to advance these arguments. He is not entitled to a general review of the 'Act similar to the one which might be made of a Bill by the Supreme Court on a reference to it of the Bill by the President under Article 26 of the Constitution. This Court is not therefore called upon to decide them.

As O'Higgins C.J. said in *Cahill* v. *Sutton* [1980] I.R. 269 at p. 276:-.

> "This Court's jurisdiction, and that of the High Court, to decide questions concerning the validity of laws passed by the Oireachtas is essential to the preservation and proper functioning of the Constitution itself. Without the exercise of such a jurisdiction, the checks and balances of the Constitution would cease to operate and those rights and liberties which are both the heritage and the mark of free men would be endangered. However, the jurisdiction should be exercised for the purpose for which it was conferred- in protection of the Constitution and of the rights and liberties thereby conferred. Where the person who questions the validity of a law can point to no right of his which has been broken, endangered or threatened by reason of the alleged invalidity, then, if nothing more can be advanced, the Courts should not entertain a question so raised. To do so would be to make of the Courts the happy hunting ground of the busybody and the crank. Worse still, it would result in a jurisdiction which ought to be prized as the citizen's shield and protection becoming debased and devalued. "

In the same case Henchy J. put the matter as follows, at p. 284:-

> "The Constitution has given Parliament the sole and exclusive power of making laws. The Courts normally accord those laws the presumption of having been made with due observance of constitutional requirements. If a citizen comes forward in court with a claim that a particular law has been enacted in disregard of a constitutional requirement, he has little reason to complain if in the normal course of things he is required, as a condition of invoking the court's jurisdiction to strike down the law for having been unconstitutionally made (with all the dire consequences that may on occasion result from the vacuum created by such a decision), to show that the impact of the impugned law on his personal situation discloses an injury or prejudice which he has either suffered or is in imminent danger of suffering. "

It is therefore clear that the plaintiff has no *locus standi* to raise these matters.

This court would not like to say anything which would in any way inhibit any court which might, in the future, be called upon to decide any of them in a justiciable controversy properly before it. In deference, however , to the able and elaborate arguments which have been advanced to the court by counsel on both sides it is perhaps fair to say that the court is unconvinced that there is

anything in the Single European Act which is outside the terms of the licence granted by the first sentence of the Third Amendment, extends the scope of the objectives of the European Community, poses any new threat to any rights guaranteed by our Constitution or represents anything other than an evolution of the Community within the terms of its original objectives.

So far as the portions of the Single European Act dealing with European Political Cooperation, and which it is not proposed to make part of the domestic law of Ireland, are concerned, this court does not consider that it has any function in relation to them.

In the circumstances the plaintiffs case should be dismissed.