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NEWS REPORT

Country:	Ireland
Title:	<i>Mohan v Ireland and The Attorney General</i> [2016] IEHC 35
Date:	7 March 2016
Expert:	Frances Meenan
<u>Context</u>	
Issue at stake:	Gender quotas and parliamentary candidates
Ground of discrimination:	Sex
Source:	National court decision
Field:	Employment
Applicable law:	Constitution of Ireland 1937; Electoral Act 1997 as amended by the Electoral (Amendment) (Political Funding) Act 2012

Content

Case development: The plaintiff sought to challenge the constitutional validity of the Electoral (Amendment) (Political Funding) Act 2012. This legislation provided that at least half of the future funding of political parties was linked to certain gender quotas being reached in relation to candidates at the next (and the next following) general election. This legislation came into operation in respect of the general election which took place on 26 February 2016. The legislation provides that certain state funding to registered political parties shall be reduced by 50 % unless at least 30 % of the candidates whose candidatures were authenticated by the political party at the next general election were women and at least 30 % were men. This provision is to remain in force for the next seven years. After seven years, the gender quota becomes 40 % women and 40 % men.

The plaintiff is a member of the *Fianna Fáil* party (the main opposition party) and was nominated to contest the party's convention to select a candidate(s) to contest the impending general election in the Dublin Central constituency. The plaintiff was told that there had to be a woman candidate selected at the convention; a woman candidate was selected. The plaintiff did not challenge that direction from the party. Instead the plaintiff challenged the constitutionality of the relevant section of the legislation.

Inter alia the plaintiff pleaded that the law contravened the requirement under Article 16.1.1 of the Constitution that 'every citizen, without distinction of sex,shall be eligible for membership of *Dáil Eireann*'; Article 40 was also pleaded where all citizens shall as human persons be held equal before the law. The state also stated that the plaintiff lacks standing to challenge this section; it was argued that the rights that the plaintiff seeks to rely on are those of the party. The court noted that at present *Dáil Eireann* is comprised of 139 male members of parliament and 27 female members, i.e. 83.7 % male and 16.3 % female.

It was noted that it was a fundamental feature of the Irish legislative framework that it is in no way prescriptive concerning the manner in which a political party is to achieve compliance with the candidate gender quota. The plaintiff also argued that that the only

means to achieve the party's gender quota was to exclude him from the selection convention for the party in the Dublin Central constituency. It was determined that the plaintiff had not satisfied the court that his exclusion from the candidate convention was imposed by the Act. Instead this was a decision made by the *Fianna Fáil* party. The plaintiff argued but for this section that the party would not have implemented a gender quota and that if the section was considered to be constitutionally invalid that he would be eligible to be freely considered as a candidate in the (then) forthcoming general election. Evidence was also considered that the *Fianna Fáil* party, the main opposition party, had in fact welcomed the legislation when it was being debated during its passage through parliament.

Given that this was a constitutional action, the plaintiff had to show that he was adversely affected by the particular section of legislation. The court decided *inter alia* that the plaintiff's rights to equal treatment had not been adversely affected by the legislation because he failed to establish any causal nexus between the direction of the party excluding his nomination from consideration at the candidate selection convention and the operation of that provision. The plaintiff's case was dismissed as he had no standing to bring the constitutional action.

Key points of analysis: This case was brought within the context of the Irish general election which was held on 26 February 2016. The judgment provides a very interesting analysis of female participation in the parliamentary process since the foundation of the Irish state in 1922. This action was a constitutional action against Ireland and the Attorney General where the plaintiff argued that because of the legislative provision providing gender quotas that he was denied the chance to be selected as a candidate at the convention. The plaintiff had no standing to bring such an action as he could not show that he was adversely affected by the legislation. Therefore, the constitutionality of the legislation was not fully considered. Interestingly, neither the EU Treaties nor legislation was cited in the lengthy judgment. As a postscript, the General Election was held on 26 February 2016 and there has been an increase of women members of parliament from 15 % to 22 %.

Internet link sources:

<http://www.courts.ie/Judgments.nsf/0/C9788FB8B228680580257F4F0037B507>,
accessed 25 February 2016.