The fluoridation case: a milestone in Irish constitutional law

DR PATRICK QUINN explains how the case taken to prevent fluoridation of the Irish water supply had far-reaching constitutional consequences.

The case of Ryan v. Attorney General involved a challenge to the constitutional validity of the Health (Fluoridation of Water Supplies) Act, 1960, which provided the legislative basis for the fluoridation of the public water supply. While the importance of this case in the history of water fluoridation is well known, its contribution to constitutional law in this country may not be as widely appreciated.

Gladys Ryan, at the time a mother of five children residing in Dublin, and whose house was connected to the public water supply, challenged the Act of 1960, claiming that certain provisions of the Act were void on the grounds that they were in violation of her rights and those of her children under Article 40.3 of the Constitution. Mrs Ryan also claimed that said provisions were a violation of the authority of the family under Article 41, and the family’s right to physical education of the children under Article 42 of the Constitution. The case first came before Mr Justice Kenny in the High Court. In summary, the Court held that legislation involving the contents of food and drink did not in any way affect the authority of the family, and the Act was therefore not in contravention of Article 41 of the Constitution. Mrs Ryan’s claim that the Act violated the family’s right to physical education of the children under Article 42 was also rejected, as the Court considered education as referred to in the relevant Article as being scholastic in nature. Mr Justice Kenny considered the scientific evidence and concluded that fluoridation at a concentration of one part per million (ppm) would not be dangerous to anybody in our temperate climate. The Court also held that Mrs Ryan had no legal right to a piped water supply. However, the Court did recognise Mrs Ryan’s claim right to bodily integrity (the key constitutional point) but concluded that fluoridation of the water supply, even if dangerous, would not be an infringement of this right. Therefore, even though the case established the right to bodily integrity, the case was lost on the facts and the action was dismissed. Mrs Ryan subsequently appealed to the Supreme Court, but the High Court judgment was upheld.

Bodily integrity

Before considering the significance of the plaintiff’s right to bodily integrity in detail, it is necessary to examine the wording of Article 40.3 of the Constitution:

1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen;
2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.

It is clear from the wording of Article 40.3.2° that the life, person, good name and property rights of the citizen are expressly specified in and protected by the Constitution. However, what gives the case of Ryan v. Attorney General its enormous importance in Irish constitutional law is that the case represents the first time that somebody claimed a right as latent in the expression “personal rights” in Article 40.3.1° and not deduced from the rights actually specified in Article 40.3.2°. Gladys Ryan claimed that to oblige her and her family to use fluoridated water through the public water supply was an infringement of their rights under Article 40.3, specifically their right to bodily integrity. In the High Court, Mr Justice Kenny concluded that the rights guarantee was not confined to those specified in Article 40.3 but extended to other personal rights of the citizen. The judge focused on the use of the words “in particular” in Article 40.3.2° and deduced that because these words were used, Article 40.3.2° was a detailed statement of the more general guarantee contained in Article 40.3.1°, and therefore the general guarantee must extend to rights not specified in Article 40.3. This legal principle was supported in the subsequent Supreme Court appeal. Mr Justice Kenny in the High Court also stated that many personal rights of the citizen follow from the Christian and democratic nature of the State, and this also led to the conclusion that the general rights guarantee extended beyond those specified in Article 40. The Court therefore upheld Mrs Ryan’s claim to a right of bodily integrity (although concluding that fluoridation did not infringe upon this right), and this represented the first declaration of an unspecified right latent in the general guarantee of Article 40.3. This constitutional milestone led to the expansion of the scope of Article 40.3 and established the doctrine of unspecified rights in Irish constitutional law. As she challenged the constitutionality of the Act allowing for water fluoridation, little did Mrs Ryan know that even though she would lose her case on the facts, it would become one of the most important milestones in Irish constitutional law.

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