



## People's Movement patron begins legal challenge on treaties

*Thomas Pringle TD explains why he felt compelled to take a court case on the proposed amendment to article 136 of the Treaty on the Functioning of the European Union and the ESM Treaty*



As an Irish public representative and citizen I keep asking myself if it would not be absurd if Irish voters were to vote on 31 May in the referendum on the Fiscal Compact Treaty in favour of imposing austerity rules on ourselves in order to

get access to a proposed permanent euro-zone loan fund when the separate but “complementary” treaty establishing that fund is arguably illegal under EU law, unconstitutional in Ireland, has not yet come into force, and indeed may never do so.

On 9 March last I wrote to the Taoiseach, the Minister for Finance and the Minister for Foreign Affairs explaining some of these very serious concerns. I have received no reply to this correspondence beyond the usual standard acknowledgement of receipt of the communication.

I have now been left with no other option but to initiate legal proceedings, challenging the Government on fundamental aspects of both the European Stability Mechanism (ESM) Treaty and the Stability, Coordination and Governance in the Economic and Monetary Union (Fiscal Compact) Treaty.

I believe that both treaties raise serious legal difficulties, at the level both of EU treaty law and of Irish constitutional law. My primary democratic concern as both a citizen and an elected public representative is the integrity of the Constitution of Ireland and the EU treaties, which now form such an important part of our constitutional framework. I believe that the matters on which I seek the clarification and assistance of the court are of crucial importance not only for the citizens of this country but for the future of the EU.

My contention is that the particular stability mechanism being set up under the ESM Treaty is in breach of article 29.4.4 of the Constitution of

Ireland, under which “Ireland affirms its commitment to the European Union within which the member states of that Union work together to promote peace, shared values and the well being of their peoples.”

The proposed stability mechanism seems on the face of it to permit member-states to work not in solidarity and togetherness but rather towards separation and exclusiveness. This is because it allows only some member-states, and indeed only some members of the euro zone rather than all of them, to participate in an arrangement that will clearly have implications for all.

I am asking the court to examine the legality of the amendment to article 136 of the Treaty on the Functioning of the European Union before any further action is taken by the Government to approve that amendment. That amendment permits the establishment of a “stability mechanism” that would be able to grant financial assistance, “subject to strict conditionality.”

This amendment is being adopted under the so-called “simplified revision procedure,” which I believe is legally wrong. My argument is that the changes being proposed are so fundamental that they should go through the ordinary revision procedure to ensure proper democratic scrutiny. They



also require the approval of the Irish people in a referendum.

I am also asking the court to consider whether the ESM Treaty is in breach of existing EU treaty principles that have been approved by the Irish people in previous referendums and that are now therefore part of our law.

In addition, I am asking the court to decide whether the state can ratify the Treaty Establishing the European Stability Mechanism without first having the approval of the people in a referendum.

The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed on 2 March 2012, is intertwined with the ESM Treaty. Each one depends on the other. Therefore, if I am right in my belief that the ESM Treaty is unlawful, there is a serious question over the validity of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.

And the implications for Ireland are vast, given its present economic situation. Under the ESM Treaty, Ireland would be obliged to make capital contributions of up to €11,145,400,000 in various forms of capital to the new permanent €500 billion bail-out fund that is to be set up. For Ireland this is the equivalent of approximately a third of Government tax revenue for 2011.

I believe that my application to the courts is just one more manifestation of a growing concern within the EU about developments towards a political union for the euro zone along the lines of what President Sarkozy has termed “a federation for the euro zone and a confederation for the EU as a whole.” It is not a direction that I want the EU to take, and I am sure that I am not alone.

### *In the footsteps of Raymond Crotty*

Raymond Crotty risked all in a challenge to the Government twenty-five years ago. Now Thomas Pringle follows in his footsteps, and he deserves the gratitude of all Irish people for his defence of democracy, irrespective of their other views on the matter.



Raymond, an agricultural economist, asked that the Single European Act (SEA) Treaty be put to a vote. A scornful Government ridiculed the idea: they swore that the treaty was not a big deal. That turned out to be completely untrue.

As we again wrestle with our role in the European Union, it is worth noting that last Christmas Eve was the twenty-fifth anniversary of the High

Court injunction against the Government as a result of the Crotty case. That judgement held the line until the Supreme Court had a chance to hear the case about the Single European Act, a treaty amending the EEC treaties.

As Mr Justice Barrington said in his judgement, the case was asking him to do something that was without precedent: to stop the Government finally committing Ireland to a treaty (which it had already signed but remained to be formally ratified by the delivery of a signed copy to the government of Italy, which holds the originals of these treaties) without first holding a referendum to obtain the permission of the people.

It is interesting to read the judgement to obtain a flavour of the argument in the light of the current debate on the Fiscal Compact Treaty. Mr Justice Barrington\* stated:

Now the respective contentions of the parties on this matter have been that Mr Fitzsimons for the defendants on the one hand has submitted that what the Single European Act does is merely to tidy up the administrative procedures of the Communities within the ambit of the original Treaties.

Mr Callan on the other hand submits that the effects are much more far-reaching. For instance he submits that the Single European Act contemplates the establishment of a new court within the EEC with powers presently undefined, although he has to admit that such a court, if established, would in fact be subordinate to the present Court of Justice of the European Communities which, in relation to the new court, would act as a court of appeal. He also submits that the Single European Act contains new provisions dealing with the health of workers, a matter on which the original Treaty of Rome was silent, in the sense that there was no specific reference to that matter in it, and he says that this being an extension of the law-making powers of the institutions of the EEC is necessarily a diminution of the sole and exclusive law-making powers of the Oireachtas referred to in Article 15 of the Constitution.

Likewise he says the Single European Act contemplates the waiver of certain existing provisions requiring unanimity among Member States and substitutes in their place different forms of majority decision whether weighted or otherwise and these matters are referred to in a schedule to a memorandum which was prepared apparently for the Foreign Affairs Committee of the British Parliament and which is conceded by both parties accurately to set out the contemplated changes.

The plaintiff submits that the result would be to give to the European institutions increased law-making powers over and above those contemplated in 1972 at the time of the referendum and thereby to encroach upon the sole law-making powers of

the Oireachtas under Article 15 of the Constitution. It appears to me that, on this question, the plaintiff has raised a fair issue for a court to decide.

Needless to say, I have found these matters very troublesome but it appears to me that even despite those presumptions I still must reach the conclusion that at this early stage the plaintiff has raised an issue of such substance and importance as to warrant preserving the status quo until the issue has been resolved in these courts.

\**Crotty v. An Taoiseach* [1986] IEHC 3 (24 December 1986).

Four months later the Supreme Court decided that Raymond Crotty was right and the Government was wrong. The outcome of the case remains to be seen, but the parallels with Pringle's arguments are nothing short of amazing.

